Al-Juwaynī's Understanding of Maqāsid

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Abstract

Though not systematically enough, al-Juwaynī elaborately addressed some key terms that form the basis of the science of maqāsid, such as munasaba (suitability), maslahat (the puplic good), hikmat (underlying reason), gharad (purpose), qā'ida (maxim) and usūl al-sharīa (the origins/essentials of sharīa), under the heading of qiyās. His approach is considered as a milestone in forming the relevant theory. In his opinion, a meaning-based ta'līl follows the pattern of meaning-suitability, maslahat, usūl *al-sharī'a/maqāsid.* Thus, he aimed to develop a controlled understanding of maslahat, thanks to the suitability for maqāsid *(munasaba).* He categorized the issues of maqāsid into dharuriyat (the essential), hadjiyyat (the needed), tahsiniyyat (the embellished), and bodily worships. Besides, he analyzed tahsiniyyat at two different levels, depending on whether the maslahat remained within the rule *(qiyās)* or made an exception, thereby addressing the issues of maqāsid under five categories altogether. Based on such a process of suitability, ta'līl in qiyās should be used in a way involving verification through maqāsid. Even though he never explicitly mentioned their names, al-Juwaynī can be assumed to have formed his approach by referring to the five obligatory maslahats. Being one of the first methodologists who established the science of maqāsid, al-Juwaynī managed to pioneer a path to be followed for centuries, thanks the contributions he made to this science.

Keywords

Cüveynî'nin Makāsıd Anlayışı

Öz

Cüveynî, makāsıd ilminin çerçevesini oluşturan münasip mâna, maslahat, hikmet, garaz, kāide, maksad, ve usûlü'ş-şerî'a gibi kavramları, -dağınık bir özellik arz etse de- kıyâs bölümü altında ayrıntılı bir şekilde ele almıştır. Onun yaklaşımları, konuya dair teorinin oluşum sürecinde dönüm noktasını teşkil etmiştir. Cüveynî'ye göre mâna merkezli tâlil, sırasıyla "münasip mâna, maslahat ve usûlü'ş-şerî'a (*makāsidü'ş-şerî'a*) aşamalarını takip eden bir süreç izlemektedir. Bu uyumluluk sürecine göre kıyâsta tâlil işlemi, makāsıd ile sağlaması yapılan bir formatta gerçekleşmelidir. Makāsıda uygunluk (*münâsebe*) şartı sayesinde Cüveynî, kontrollü bir maslahat anlayışı geliştirmeyi amaçlamıştır. O, makāsıd konularını zaruriyyât, haciyyât, tahsiniyyât ve bedeni ibadetler şeklinde kategorize etmiş; tahsiniyyâtı da maslahatın kural (*kıyâs/kāide*) dışı olup olmamasına bağlı olarak iki farklı düzeyde incelemiştir. Bunun sonucu olarak makāsıd konularını toplamda beş kategori altında değerlendirmiştir. Cüveynî'nin -isimlerini açıkça zikretmese de- beş zaruri maslahatın çoğuna atıfta bulunup düşüncelerini bu bağlamda şekillendirdiği görülmektedir. Keza o, sonraki usulcüler tarafından tekmile/tetimme/mükemmile/mütemmime gibi adlarla sistemleştirilen maslahat tü-

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rüne değinmiş ve konuyla ilgili bazı örneklere yer vermiştir. Makāsıd ilmine getirdiği yenilikleriyle ve katkılarıyla Cüveynî, makāsıd tarihinde takip edilen bir çizginin öncüsü olmuş ve bu ilmin kurucu teorisyenleri arasında yer almıştır.

Anahtar Kelimeler

İslam Hukuku, Cüveynî, Makāsıd, Maslahat, Münasip Mâna, Kıyâs, Tâlil.

Introduction

Imam al-Haramayn al-Juwaynī (d. 478/1085) is one of the leading scholars who placed emphasis on meaning in their ijtihād, considered maslahat and maqāsid, and tried to offer interpretations in line with the nature of the law. With his unique perspective and interpretations, al-Juwaynī made substantial contributions to the idea of maqāsid, particularly in his works titled *al-Burhan and Ghiyath al-Umam*.[1] He deeply influenced the maqāsid theorists following him and is known as a true pioneer in the history of maqāsid.[2] His student al-Ghazālī (d. 505/1111) speeded up the process of nomenclature he initiated by systematizing the innovations he introduced and the categories he established. Then Izzeddin b. Abd As-Salam (d. 660/1262)[3] produced an independent work on maslahat and maqāsid, and he was followed by Qarafi (d.

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[1]   al-Juwaynī has no work that solely focuses on maqāsid; however, maqāsid-oriented approaches are seen commonly in his works. See Aḥmad al-Raysūnī, "Imām al-fiqr al-maqāṣidī", *Nadva al-zhikr al-alfiyya li Imām al-Ḥaramayn al-Juwaynī* (Qatar: Jāmi'a Qatar, 1999), 969. Among his major works on maqāsid are *al-Burhān, Ghiyath al-Umam* and *Mughith al-Khalq*. See Hishām İbn Sa'īd Azhar, *Maqāṣid al-sharī'a 'inda Imām al-Ḥaramayn wa āthāruhā fī al-taṣarrufāt al-māliyya* (Riyadh: Maktaba al-Rushd, 2010), 63. Being one of his major works, *al-Burhan* reflects his understanding of maqāsid. In his work *Ghiyath al-Umam*, he also addressed maslahat with its theoretical and practical dimensions. For an overview and evaluation of the subject, see Abd al-'Aẓīm Maḥmūd al-Dīb, "Tawṭia". [al-Juwaynī] *al-Ghiyāthī/Ghiyāth al-umam fī iltiyāth al-ẓulam*. Ed. Abd al-'Aẓīm Maḥmūd al-Dīb (Bairut: Dār al-Minhāj, 2011), 164-167.

[2]   For more details, see al-Raysūnī, "Imām al-fiqr al-maqāṣidī", 969-990.

[3]   'Iz al-Dīn ibn 'Abd al-salām, a Shafi'ī jurist, addresses the whole of fiqh with its various aspects in line with maslahat, the prevention of mafsadah and the maqāsid al-sharī'ah, along with their provisions. His division of maslahat and mafsadah, particularly in the form of maqāsid and wasail, can be considered as one of the novel perspectives he introduced into the discussion. For an example of the division of *maqāsid* and *wasail*, see 'Iz al-dīn 'Abd al-'azīz Ibn 'Abd al-salām, Qawā'id al-aḥkām fī iṣlāḥ al-anām (al-Qawā'id al-kubrā). Ed. Naziyya Kamāl Ḥammād, 'Uthmān Jum'a Zamīriyya (Dimashq: Dār al-Qalam, 2007), 1/165-178. For more information about al-Juwaynī's views, see Rahmi Yaran, "Cüveynî'den İbn Abdüsselâm'a Makâsıd/Maslahat Söylemi", *Journal of Ekev Academy* 10/28 (2006), 209-214. 'Iz al-Dīn ibn 'Abd al-salām categorises the maslahat of the world and the hereafter into necessity, ḥādjat and tatimmat/takammulat. For example, according to him, sufficient worldly maslahats, such as eating and drinking, clothing, place of dwelling, marriage, mount carrying food are essential; the highest level of the world's maslahats, such as fine meals, elegant dresses, high dwellings, large palaces, healthy mounts can be considered as tatimmat/takammulat, and the measurements between the two are ḥādjat. The maslahats of the hereafter, such as performing wādjibs and avoiding harām are essential, while muakkad sunnahs are ḥādjats, and individual mandubs or those which are a part of fards are tatimmat/takammulat. See Ibn 'Abd al-salām, *Qawā'id al-aḥkām*, 2/123. According to him, the worldly maslahats and mafsadahs are known by 'aql (reason), and those of the hereafter are known only by means of naql (transmission). See Ibn 'Abd al-salām, Qawā'id al-aḥkām, 1/7-11.

684/1285),[4] who made some key contributions to the development of the theory of maslahat and the construction of qawaid-oriented thinking. Finally, Shatibi (d. 790/1388)[5] brought these issues to perfection.

To the best of our knowledge, there is no distinct and comprehensive article on al-Juwaynī's understanding of maqāsid in Turkey. In today's world, maqāsid is considered as an independent branch of science; research centers aiming to investigate it are being established and special studies are being carried out on it. Therefore, it is important to conduct such a study on al-Juwaynī's understanding of maqāsid. We hope that this article could be a modest contribution intended to address this gap.

1. Ta'līl through Maqāsid

Al-Juwaynī is the first scholar who intensively studied such concepts as maslahat, wisdom, gharad, principle, purpose and usūl al-fiqh, which form the framework of the science of Maqāsid. He thinks that these concepts are closely related with each other and draws attention to the interaction and correspondence among them.[6] He notes that a shared characteristic of these concepts is that they are all based on "appropriate meaning". The views of al-Juwaynī constitute a milestone in the formation and development

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[4] For more information about Qarafi's views, see H. Yunus Apaydın, "Karâfî'nin İzlediği Yöntemin Genel Çizgileri ve Maslahat Anlayışı", *Makâsıd ve İctihad (İslâm Hukuk Felsefesi Araştırmaları)*, Prep. Ahmet Yaman (İstanbul: IFAV [no.], 2017), 307-312.

[5] On Shatibi's views on the subject, see Abū Isḥāq Ibrāhīm ibn Mūsā al-Shāṭibī, *al-Muwāfaqāt* (*'Unvān al-ta'rīf bi esrār al-taklīf*). Talīq. 'Abd Allāh Dirāz (Dimashq: Muassasa al-Risāla Nāshirūn, 2011) 1/43-45, 52; 2/337-382. In the context of sharīa evidence, he emphasizes how kulliyyat al-sharīa and djuz'īyyat al-sharīa should be in accordance with each other. That is, particular legal issues (djuz'īyyat al-sharīa) should not contradict the universal principles (kulliyyat al-sharīa), which are composed of essentials, hadjiyyat and tahsiniyyat. For more information, see al-Shāṭibī, *al-Muwāfaqāt*, 3/5-13. In other words, "djuz'ī provisions should be interpreted together with the general ones, and the general provisions should be evaluated together with djuz'ī ones. This is one of the novel perspectives that Shatibi introduced into the discussion." Kâşif Hamdi Okur, *İslam Hukuk Metodolojisinde Münâsebet Kavramı* (Ankara: Ankara University, Social Sciences Institute, Master Thesis, 1997), 72.

[6] al-Juwaynī used hikmat and maslahat synonymously. For example, see Imām al-Ḥaramayn Dhia' al-dīn Abū a'l-Ma'ālī 'Abd al-Mālek ibn Abī Muḥammad al-Juwaynī al-Nīshāpūrī al-Ṭāī al-Sinbisī, *al-Burhān fī uṣūl al-fiqh*. Ed. Ṣalāḥ ibn Muḥammad ibn 'Uwaiḍa (Bairut: Dār al-Kutub al-'Ilmiyya, 1997), 2/213. In fact, hikmat is defined as "the need for (the act of) getting maslahat or avoiding mafsadah." See Abū 'Abd Allāh Badr ad-Dīn Muḥammad ibn Bahādir ibn 'Abd Allāh al-Zarkashī al-Shāfi'ī, *al-Baḥr al-muḥīṭ fī uṣūl al-fiqh*. Ed. Muḥammad Muḥammad Tāmer (Bairut: Dār al-Kutubi al-'Ilmiyya, 2007), 4/120. In his work called al-Mustasfa, al-Ghazālī also stated that what is meant by hikmat is "maslahat that evokes appropriate meaning". See Abū Ḥāmid Muḥammad ibn Muḥammad b. Muḥammad al-Ghazālī al-Ṭūsī, *al-Mustaṣfā min 'ilm al-uṣūl*. Ed. Muḥammad Sulaymān al-Ashqar (Dimashq: Muassasa al-Risāla, 2012), 2/349. While addressing the same issue, the use of the word hikmat in al-Burhan and maslahat in *al-Mankhūl* also indicates this unity of meaning. See al-Juwaynī, *al-Burḥān*, 2/212-213; al-Ghazālī, *al-Mankhūl min ta'liqāt al-usūl*. Ed. Nācī al-Suwayd. (Bairut: al-Maktaba al-'Aṣriyya, 2008), 286. On the other hand, al-Juwaynī used hikmat and gharad, hikmat and base, hikmat and purpose as pairs of synonymous concepts. For an example of the synonymous use of hikmat and gharad, see al-Juwaynī, *al-Burḥān*, 2/208, 211. For an example of the synonymous use of wisdom and rule, see al-Juwaynī, *al-Burḥān*, 2/209, 211, 212. For an example of the synonymous use of hikmat and purpose, see al-Juwaynī, *al-Burḥān*, 2/207. Researchers like Mayyada clearly state that hikmat and purpose have the same meaning. See Muḥammad Ḥusayn Mayyāda, *al-Ta'līl bi al-shabah ve atharuh fī al-qıyās 'inde al-uṣūliyyīn* (Riyadh: Maktaba al-Rushd, 2001), 80. The terms *referral (ihala)*, munasaba and maslahat were also used synonymously, particularly by al-Juwaynī and al-Ghazālī. For more detailed information, see Tuncay Başoğlu, *Hicrî Beşinci Asır Fıkıh Usûlü Eserlerinde İllet Tartışmaları* (İstanbul: Marmara Üniversity, Social Sciences Institute, Doctoral Thesis, 2001), 232-238.

of the theory on these issues.[7] However, even though an intense terming process is evident, it is seen that the way in which the related concepts are addressed is unsystematic, and their boundaries and corresponding meanings are not clear. Al-Ghazālī accelerated this terming process initiated by his teacher al-Juwaynī and put the aforementioned subjects in a distinct form.

al-Juwaynī developed a three-phase hierarchical process and a pattern of appropriate meaning for the meaning-driven process of ta'līl and tadiyah. The first of these stages is the appropriate meaning.[8] As he claims, as a rule of thumb, the possibility of the ta'līl and the amendment of the provision depend on if an appropriate meaning exists.[9] According to his perspective, appropriate meaning is the main method that ensures ta'līl and tadiyah in qiyās and istidlāl,[10] which are the main components of religious perspective and represent the meaning aspect of usūl.[11] This is because the possibility of the ta'līl and tadiyah of a provision

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[7]   See al-Raysūnī, "Imām al-fiqr al-maqāṣidī", 975. In fact, Hakīm al-Tirmidhi (b 320/932), al-Māturīdī (d. 333/944), Kaffāl al-Shashī [Kebir] (d. 365-976), Abū Bakr al-Abharī (b. 375/986), Abū al-Ḥasan al-Āmirī (b. 381/992), Ibn Bābawayh Kummī [Shaikh Sadūq] (d. 381/991) and Baqillānī (b. 403/1013) mentioned maslahat/maqāsid issues before al-Juwaynī and composed their own distinct works in this field. For more detailed information, see Azhar, *Maqāṣid al-sharī'a 'inda Imām al-Ḥaramayn*, 46-49. But the conceptualization of the process of maqāsıd begins with al-Juwaynī." Ömer Yılmaz, "Cüveynî'nin Makâsıd Düşüncesi", *Genç Akademisyenler İlahiyat Araştırmaları* (İstanbul: IFAV [no: 226], 2009), 129.

[8]   In our investigations, we have not come across an established definition of appropriate meaning by al-Juwaynī. Islamic jurists define appropriate meaning in various ways. Below are some of these definitions: "It is the quality/meaning that the mind would accept if reasoned out. This definition is attributed to al-Dabusi. However, it is doubtful if it really belongs to him. See Okur, *İslam Hukuk Metodolojisinde Münâsebet Kavramı*, 54. Another definition is that appropriate meaning equals to what complies with maslahat, and when judgment is attributed to it, it becomes proper." See al-Ghazālī, *al-Mustaṣfā*, 2/306. "It is a quality that leads a person to a provision that helps gain an advantage or prevents harm." "Based on folk wisdom, meaning is a quality that matches the actions of wise people." It is Razi, who cites these two definitions. According to him, the first definition is offered by usūl scholars who explain Allah's provisions through hikmat and maslahat, while the second belongs to those who do not use ta'līl in Allah's provisions. See Fakhr al-dīn Muḥammad Ibn 'Umar Ibn al-Ḥusayn al-Rāzī, *al-Maḥṣūl fī 'ilm uṣūl al-fiqh.* Ed. Ṭāhā Jābir al-Alwānī (Cairo: Dār al-Salām, 2011), 3/1246-1247. "It consists of a manifest and apparent quality. From the qualifications of the provision, a provision that is suitable for being maqṣūd is essential. Maqṣūd refers to either receiving the maslahat or avoiding the mafsadah. Maslahat is the means that leads to taste and delight, and mafsadah is the means that leads to pain and suffering." This definition belongs to al-Āmidī and Ibn al-Hajib. See Sayf al-Dīn Abū al-Ḥasan 'Alī ibn Abū 'Alī al-Āmidī, *al-Iḥkām fī uṣūl al-aḥkām* (Bairut: al-Maktaba al-'Aṣriyya, 2010), 2/215; Abū 'Amr Jamāl al-dīn 'Uthmān ibn 'Umar Ibn al-Ḥājip, *al-Mukhtaṣār.* [with al-Aṣfahānī's *Bayān al-mukhtaṣār sharḥ Mukhtaṣar Ibn al-Ḥājip*]. Ed. 'Alī Jum'a Muḥammad (Cairo: Dār al-Salām, 2004), 2/732. "It is a quality that helps a person receive a benefit or avoid a harm." See Nasīr al-Dīn Abū al-Khayr 'Abd Allāh ibn 'Umar al-Bayḍāwī. *Minhāj al-wuṣūl ilá 'ilm al-uṣūl* [With al-Asnavī's commentary named *Nihāya al-sūl fi sharḥ Minhāj al-wuṣūl*]. ed. Muḥammad Ḥasan 'Ismā'īl, Aḥmad Farīd al-Mazīdī (Bairut: Dār al-Kutub al-'Ilmiyya, 2009), 4/93. For more information on these definitions, see 'Īsā Mannūn, *Nibrās al-'uḳūl fī taḥqīq al-qıyās 'inde 'ulamā al-uṣūl* (Cairo: Maṭba'at al-Tadhāmun al-Aḥvā, 1345), 267-273; Mayyāda, *al-Ta'līl bi al-shabah,* 76-78; Aḥmad Maḥmūd 'Abd al-Wahhāb al-Shinqīṭī, *al-Waṣf al-munāsib li şar' al-ḥukm* (Madina: el-Jāmi'a al-Islāmiyya, 1415), 173-186.

[9]   See al-Juwaynī, *al-Burḥān*, 2/66

[10] According to al-Juwaynī, the sharīa perspective has the following four components: Ilhak al-maskut 'anh bi al-mansus 'alayh, qiyās al-ma'nā/illa, qiyās al-shabah and istidlāl. See al-Juwaynī, *al-Burḥān*, 2/21.

[11] al-Juwaynī is the first jurist to address and conceptualize istidlāl as a distinct term. For more information about the subject, see As'ad 'Abd al-Ghanī al-Sayed al-Kafrāvī, *al-Istidlāl 'inda al-uṣūliyyīn.* Ed. 'Alī Jum'a Muḥammad. (Cairo: Dār al-Salām, 2009), 52, 59-60, 75, 105. al-Juwaynī defined istidlāl as follows: "Even though it is hardly rooted in commonly accepted essence, it is a meaning that is suitable (munasib) for the provision, based on the requirements of reasoning (al-fikr al-'akl) and evokes the provision, in which the aforementioned ta'līl is valid." al-Juwaynī, *al-Burḥān*, 2/161. For more information about Istıdlāl, see M. Macit Sevgili, *Cüveynî'nin Kıyâs Anlayışı* (Ankara: Ankara University, Social Sciences Institute, Doctoral Thesis, 2016), 51-54.

are mostly realized through appropriate meaning in qiyās and istidlāl. According to al-Juwaynī, a major characteristic of qiyās and istidlāl is that the process of ta'līl and tadiyah is built on the existence of appropriate meaning. On the other hand, the main difference that distinguishes these two methods (sources of evidence) is that there is an essence that is agreed upon in qiyās, while there is no such essence in istidlāl.[12]

According to al-Juwaynī, the second stage of ta'līl and tadiyah is maslahat. However, he notes that not every appropriate meaning can be considered to be a maslahat. In order for an appropriate meaning to be acceptable, it must have beneficial qualities. Based on his analysis of "proper meaning/munasaba-maslahat" relationship, appropriate meaning can be defined as the meaning that is in accordance with hukm in terms of reason and maslahat. In this context, al-Ghazālī drew attention to the relationship in question, which his teacher al-Juwaynī addressed, using the term *al-munasaba al-maslahi*.[13]

The final stage of the ta'līl and tadiyah process offered by al-Juwaynī is usūl al-sharīʿah (*maqāsid al-sharīʿah*). According to him, just like the appropriate meaning, not every mashalat is valid as disproportionate, groundless and open-ended maslahats can also be produced. For a meaning to be valid, the maslahat must be in accordance with the usūl al-sharīʿah and must not contradict it,[14] and to understand its compatibility, it should be tested using the usūl al-sharīʿah.[15] Based on al-Juwaynī, al-Ghazālī says that what is meant by maslahat is to protect the maqṣūd al- sharīʿah and clearly states that maqṣūd al-sharīʿah includes five components (usūl al-hamsa: religion, life, mind, lineage and property).[16] As understood from al-Juwaynī's thoughts, usūl al-sharīʿah (*maqāsid al-sharīʿah*) is a cornerstone that determines if meaning and maslahat are valid; it functions as a mechanism that monitors their implementation. Then according to the process and compatibility sequence in question that al-Juwaynī followed in the ta'līl process, the appropriate meaning is based on maslahat, and maslahat is based on usūl al-sharīʿah (*maqāsid al-sharīʿah*); as a result, the meaning becomes appropriate (*munasaba*) to usūl al-sharīʿah (*maqāsid al-sharīʿah*).[17] Regarding the issue of qiyās, al-Ghazālī clarified al-Juwaynī's statements by noting that when they used the term "appropriate meaning"[18] they meant the five essentials corresponding to maqāsid al-sharīʿah and once again conformed to the practice of systematizing al-Juwaynī's incoherent views.

Based on the perspectives of Imam al-Shāfi'ī (d. 204/820), al-Juwaynī thinks that, just as the meaning that is the subject of ta'līl in qiyās must be in accordance with maqāsid al-sharīʿah (*munasaba*), the meaning that is the subject of ta'līl in istidlāl should more or less conform with usūl al-sharīʿah (*takrib*).[19] Contrary to

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12   See al-Juwaynī, *al-Burḥān*, 2/161, 205.

13   See al-Ghazālī, *al-Mustaṣfā*, 2/320.

14   See al-Juwaynī, *al-Burḥān*, 2/30, 42. Also see al-Dīb, "Tawṭia". [al-Juwaynī] *al-Ghiyāthī/Ghiyāth al-umam fī iltiyāth al-ẓulam,* 165. In his critical work which addresses maslahat and its scope, Buti noted that "maslahats must not contradict the Qurʾān (muʿāradah), the Sunnah or an authentic qiyās and must not invalidate any other equal or more important maslahat". See Muḥammad Saʿīd Ramaḍân al-Būṭī, *Ḍawābiṭ al-maṣlaḥa fī al-sharīʿa al-Islāmiyya* (Dimashq: Dār al-Fikr, 2005), 127-277.

15   See al-Juwaynī, *al-Ghiyāthī/Ghiyāth al-umam fī iltiyāth al-ẓulam*, Ed. Abd alʿaẓīm Maḥmūd al-Dīb (Bairut: Dār al-Minhāj, 2011)., 498.

16   The prevention of the mafsadah is also a maslahat. see al-Ghazālī, *al-Mustaṣfā*, 1/416-417.

17   For more information about the subject, see Sevgili, *Cüveynî'nin Kıyâs Anlayışı*, 97-100.

18   See al-Ghazālī, *al-Mustaṣfā*, 1/417.

19   For more information, see al-Juwaynī, *al-Burḥān*, 2/162-170, 205-207. For detailed information about the relationship between "qiyās-maqāsid al-sharīʿah" and "istidlāl-maqāsid al-sharīʿah," see respectively Azhar, *Maqāṣid al-sharīʿa ʿinda Imām al-Ḥaramayn*, 147-149, 177-178.

qiyās, the absence of a commonly accepted principle in istidlāl further increases the risk of creating unfounded and open-ended maslahat.[20] In fact, the reason why the evidential value of istidlāl is open to questioning is the absence of a sharīa statement (*asl*) that shows its validity.[21] Thanks to the criterion of conformity/closeness to the maqāsid al-sharī'ah, which he proposed, al-Juwaynī developed a standardized understanding of maslahat by eliminating the possibility of producing unfounded and out-of-context maslahats. Moreover, he wanted to theoretically contribute to the order and stability of the law by ensuring the consistency between the internal dynamics of qiyās and istidlāl, which are the two main components of the perspective of sharīa. Ultimately, al-Juwaynī thinks that the ta'līl and tadiyah process in qiyās and istidlāl should work in a way that is oriented towards the rational and maslahi meaning, which is verified by maqāsid.

al-Juwaynī, who wanted to develop a conservative and restricted understanding of meaning, criticized Imam Malik (d. 179/795)[22] as he thought that Imam Malik isolated maslahats/hikmats from their contexts, thereby going too far, and adopted some meanings that could conflict with *maqāsid al-sharī'ah*. He also criticized Abu Hanifah (d. 150/767) on the grounds that he failed to properly comply with maslahat/hikmat and put forward provisions that conflicted with usūl al-sharī'ah.[23]

For the final stage of the process he followed, al-Juwaynī used such concepts as usūl al-sharī'ah, purpose, maqāsid al-sharī'ah, maqāsid al-kullīyah/maqāsid al-kullī, qawaid al-sharī'ah, mahasin al-sharī'ah, kullīyah al-sharī'ah/kullīyyu al-sharī'ah, matālib al-sharī'ah/matlub al-sharai, al-qā'ida al-kulliya, usūl al-kullīyah, buġyat al-shari', murad al-shari', zabt al-shari' and waz al-shari'.[24]

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[20] Regarding the fact that there is no unanimously agreed truth in istidlāl, see al-Juwaynī, *al-Burḥān*, 2/161, 205.

[21] al-Juwaynī has functioned as a balancing factor between a positive and a negative perspective, regarding the value of istidlāl as a source. Al-Baqillani and some Shafi'ī theologians reject istidlāl in absolute terms, while Imam Malik accepts it as mursal. For more information, see al-Juwaynī, *al-Burḥān*, 2/161-170. Al-Ghazālī, on the other hand, thinks that meaning should be "necessary", "absolute" and "universal" for istidlāl to be acceptable. See al-Ghazālī, *al-Mustaṣfā*, 1/421. As understood, there are four perspectives, including that of al-Juwaynī (following Imam Shafi'ī) about the value of istidlāl as a source. See ʿAlī b. Ismāʿīl al-Abyārī, *al-Taḥqīq wa al-bayān fī sharḥ al-Burḥān fī uṣūl al-fiqh*. Ed. ʿAlī ibn ʿAbd al-Raḥmān Bassām al-Jazāirī (Kuwait: Dār al- Dhiā', 2011), 4/126-127.

[22] For more information about the issue, see Sevgili, *Cüveynî'nin Kıyâs Anlayışı*, 103-105; 166-167. See al-Juwaynī's criticism of Malik, al-Juwaynī, *al-Burḥān*, 2/161-164; 180-181; 205-207; 212-213; al-Juwaynī, *Kitāb al-ijtihād wa al-fatwā*. [in al-Abyārī's *Taḥqīq*'s fourth volume]. Ed. ʿAlī ibn ʿAbd al-Raḥmān Bassām al-Jazāirī (Kuwait: Dār al-Dhiā', 2011), 549-550; al-Juwaynī, *al-Ghiyāthī*, 352. For similar criticisms by al-Ghazālī, See al-Ghazālī, *al-Mankhūl*, 319.

[23] For more information on the issue, see Sevgili, *Cüveynî'nin Kıyâs Anlayışı*, 103-105; 166-167. For al-Juwaynī's critisism of Abū Ḥanīfa see al-Juwaynī, *al-Burḥān*, 2/179-180; 208-209; al-Juwaynī, *Kitāb al-ijtihād wa al-fatwā*, 550-551, 573-574. For similar criticisms by Baqillani and al-Ghazālī, see al-Ghazālī, *al-Mankhūl*, 285-286, 317, 319-322.

[24] *For an example of the use of usul al-sharī'ah,' see al-Burḥān*, 2/30, 42, 79; al-Juwaynī, *al-Ghiyāthī*, 494, 495, 500, 505. For an example of use of *purpose* see al-Juwaynī, *al-Ghiyāthī*, 328. Here al-Juwaynī states that the *purpose* is "religion". *For an example of the use of maqāsid al-sharī'ah, see'* al-Juwaynī, *al-Burḥān*, 2/94; al-Juwaynī, *al-Ghiyāthī*, 326. al-Juwaynī is known to be the first scholar to use the concept of Maqāsid al-sharī'ah. See al-Raysūnī, "Imām al-fiqr al-maqāṣidī", 974; Ali Pekcan, *İslâm Hukukunda Gaye Problemi (Zarûriyyât-Hâciyyât-Tahsîniyyât)* (İstanbul: Ek Kitap, 2012), 35; *for an example of the use of al-maqāsid al-kulliyah/al-maqsud al kullī* see al-Juwaynī, *al-Ghiyāthī*, 326, 500. For an example of the use of al-kawaid al-sharī'ah, see al-Juwaynī, *al-Burḥān*, 2/46; al-Juwaynī, *al-Ghiyāthī*, 497, 499, 500, 508. For an example of the use of mahasin al-Sharīa, see al-Juwaynī, *al-Burḥān*, 2/38, 39, 83, 94; al-Juwaynī, *al-Ghiyāthī*, 360. For an example of the use of kullīyyah al-sharīa/kullī al-sharīa , see al-Juwaynī, *al-Ghiyāthī*, 508. For an example of the usage of matālib al-sharī'ah/matlub al-sharai see al-Juwaynī, *al-Burḥān*, 2/41; al-Juwaynī, *al-Ghiyāthī*, 326. For an example of the usage of al-qā'ida al-kulliya, see al-Juwaynī, *al-Burḥān*, 2/81. For an example of the use of usūl al-kulliyah, see

2. Categories and Characteristics of Maqāsid

In the section devoted to qiyās, al-Juwaynī elaborates on his views on the categories and characteristics of maqāsid, with respect to appropriate meaning, maslahat, hikmat, gharad, principle, purpose and usūl al-sharīʿah. This not only shows the place of maqāsid in methodology, but it also indicates that the meaning undergoing taʾlīl in qiyās should be maqāsid-oriented, as noted earlier.

al-Juwaynī divides maqāsid into the categories of dharuriyyat, hadjiyyat, tahsiniyyat and bodily worship. He addresses tahsiniyyat *(makruma/makarim/makarim al-ahlak/mahasin)* in two categories based on if maslahat is in accordance with the rule (qiyās/qāʿida) or not (i.e., maslahat that conforms to the rule or that is out of it), and based on this, he divides maqāsid into five categories.[25] This distinction, based on dharuriyyat, hadjiyyat and tahsiniyyat, is one of the critical reforms which al-Juwaynī introduced into the science of maqāsid, and it has been adopted throughout the history of maqāsid.[26]

According to al-Juwaynī, it is possible to divide the maslahat into two main categories: kullī malahats and djuzʾī maslahats. He thinks that kullī maslahats have an objective character and can be appreciated using the mind even if the details are forgotten.[27] The djuzʾī maslahats that he refers to as "djuzʾī",[28] "istislah"[29] and "djuzʾī istislah" *(al-istislah al-djuzî)*[30] are subjective and can only be known through a sharīa statement.[31] al-Juwaynī says the following in *al-Burhan:*

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al-Juwaynī, *al-Burḥān*, 2/82; for the usages of buġyat al-shari, murad al-shari, zabt al-shari' and waz al-shari, see al-Juwaynī, *al-Burḥān*, 2/45-46.

[25] al-Juwaynī established the five categories in question through induction. See Azhar, *Maqāṣid al-sharīʿa ʿinda Imām al-Ḥaramayn*, 97-99. For some critical and accurate considerations about these categories, see Azhar, *Maqāṣid al-sharīʿa ʿinda Imām al-Ḥaramayn*, 131-137.

[26] See Azhar, *Maqāṣid al-sharīʿa ʿinda Imām al-Ḥaramayn*, 134-135, 221, 405. al-Shāṭibī makes a distinction between al-kulliyah al-salas and al-qawāʾid al-salas and draws attention to the relationship between them. See al-Shāṭibī, *al-Muwāfaqāt*, 2/371, 373. According to him, the necessity is the essence. Hajiyyat and tahsiniyyat are the tatimmah/tammilah of dharuriyat, and tahsiniyyat is the tatimmah/tammilah of hadjiyyat. When dharuriyat is damaged, hadjiyyat and tahsiniyyat are also damaged. However, the harm given to hadjiyyat and tahsiniyyat does not necessarily mean harm given to dharuriyat. For more information, see al-Shāṭibī, *al-Muwāfaqāt*, 2/344-346; Muḥammad Muṣṭafā al-Shalabī, *Uṣūl al-fiqh al-Islāmī el-muqaddima al-taʿrīfiyya bi al-uṣūl wa adilla al-aḥkām wa qawāʿid al-istinbāṭ* (Bairut: Dār al-Nahdha al-ʿArabiyya, 2010), 518-519. In fact, it is Iz b. Abd al-Salam, who first addressed the hierarchy between the three kullī maslahats long before al-Shatibi. According to him, in case of conflict, dharurat is given priority over hādjat, and hādjat prioritized over tatimmah/takammulat. See Ibn ʿAbd al-salām, *Qawāʿid al-aḥkām*, 2/123.

[27] See al-Juwaynī, *al-Burḥān*, 2/84; al-Abyārī, *al-Taḥqīq*, 3/529.

[28] In al-Juwaynī's words, djuzʾī does not mean that it happens to a person or part. Rather, it means that a djuzʾī rule is based on an essential/obligatory rule, and not complying with the former does not harm the universal rule in question. See al-Juwaynī, *al-Burḥān*, 2/82.

[29] He uses the word istislah sometimes to mean partial maslahat and sometimes absolute maslahat. To view an example of the former, see al-Juwaynī, *al-Burḥān*, 2/82, 83. For an example of the latter, see al-Juwaynī, *al-Burḥān*, 2/84. He was the first jurist to use the word istislah, meaning maslahat. It has been used literally after him. See al-Dīb, "Tawṭia". [al-Juwaynī] *al-Ghiyāthī*, 171. For an example of the use of the concept of *istislah*, see al-Juwaynī, *al-Burḥān*, 2/29, 82, 83, 84; al-Juwaynī, *al-Ghiyāthī*, 328, 353, 398, 498.

[30] See al-Juwaynī, *al-Burḥān*, 2/82.

[31] See al-Juwaynī, *al-Burḥān*, 2/83; al-Abyārī, *al-Taḥqīq*, 3/529.

Therefore, the ultimate way to be aware of this type of maslahat (*istislah*) is to obey it (*taqlid*) [as ordered by Allah] and to rely on the judgment made by the one who has the authority [Allah]. This is the way to [infer] the inherent beauties (*mahasin al-sharīa*) in the sharīa.[32]

In his work titled *Ghiyath*, he has the following to say on the issue:

Whoever thinks that the sharīa can be derived from the maslahat of the wise (*istislah*) and the scholars' (*hukama*) opinions denies the sharīa, and this statement becomes a means (*zari'a*) to deny the sharia.[33]

The djuzʾī maslahat mentioned by al-Juwaynī corresponds to the concept of "complementary maslahat", which was systematized by later scholars with names, such as tatimma/takmilah/mutammimah/mukemmilah. For instance, Abyari, a Mālikīs jurist who wrote a commentary on al-Juwaynī's work *al-Burhan*, notes that al-Juwaynī means "tatimmah" with the word "djuzʾī" and uses such terms as takmili/takmili/tatimmah for the same maslahat examples.[34]

2.1. Essential Maslahats:[35] Examples of Qisās and Swapping

There are five kullī/essential principles (*kullīyyat al-hamsa/dharurat al-hamsa/usūl al-hamsa*) that are inviolable and need to be protected in Islamic maslahat theory.[36] These are religion, soul/life (*soul/dem*), intellect, lineage (*generation/progeny*) and property/asset.[37] Some usūl scholars also add the word "ʿird" which means "human dignity, honor and personality values".[38]

The way he addressed the subject and the examples he cited indicate that al-Juwaynī implied most of the five essential meanings and shaped his thoughts accordingly.[39] It was al-Ghazālī, who mentioned their names and systematized them.[40] According to al-Ghazālī what is meant by maslahat is to protect the maqṣūd

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[32]   al-Juwaynī, *al-Burḥān*, 2/83.

[33]   al-Juwaynī, *al-Ghiyāthī*, 353. For more information, also see al-Juwaynī, *al-Ghiyāthī*, 352-354.

[34]   For more information, see al-Abyārī, *al-Taḥqīq*, 3/516-519. He also uses the word istislah for such maslahats. See al-Abyārī, *al-Taḥqīq*, 3/517.

[35]   al-Juwaynī uses the terms meaning, maslahat, hikmat, asl, gharad and rule interchangeably in the same context. To avoid a possible conceptual confusion, term maslahat is used in the present study.

[36]   These are also called maqāsid al-hamsa. See al-Shinqīṭī, *al-Waṣf al-munāsib*, 194.

[37]   Religion is protected by killing an apostate and making jihad obligatory, and similarly life is protected by making qisās legitimate; the mind is protected by forbidding drinking and giving the punishment of hadd for those who drink; generation/lineage by forbidding adultery and giving the hadd penalty for it; the property is protected by compensating it when it is destroyed and by giving hand cutting penalty against theft. See al-Zarkashī, *al-Baḥr al-muḥīṭ*, 4/188-189; Mannūn, *Nibrās al-ʿuḳūl*, 280; al-Shinqīṭī, *al-Waṣf al-munāsib*, 194-195. It is noted that all the sharīa were established to protect these five essential purposes. For this perspective, see al-Ghazālī, *al-Mustaṣfā*, 1/417; al-Shāṭibī, *al-Muwāfaqāt*, 1/52. However, such a perspective is difficult to prove and is open to discussion.

[38]   For more information on the issue, see Pekcan, *İslâm Hukukunda Gaye Problemi (Zarûriyyât-Hâciyyât-Tahsîniyyât*, 152-153. See also al-Zarkashī, *al-Baḥr al-muḥīṭ*, 4/189-190; al-Shinqīṭī, *al-Waṣf al-munāsib*, 198-199.

[39]   As an example, see al-Juwaynī, *al-Burhān*, 2/79-81, 207-212. See also Aḥmad al-Raysūnī, *Naẓariyyat al-maqāṣid ʿinde al-Imām al-Shāṭibī* (Virginia: al-Maʿhad al-ʿAlamī li al-Fiqr al-Islāmī, 1995), 51.

[40]   It should be noted that Abū al-Hasan Amiri, a famous philosopher who lived long before al-Juwaynī and al-Ghazālī, discussed these five essentials and provided examples of them. See al-Raysūnī, "Imām al-fiqr al-maqāṣidī", 974.

al-sharīa, which is composed of religion, soul, intellect, lineage, and property *(usūl al-hamsa).* According to him, any meaning/quality that aims to protect these five essentials is maslahat, whereas any meaning/quality that disregards them is mafsadah. The prevention of mafsadah is also maslahat.[41]

In *al-Burhan*, al-Juwaynī highlights the inviolability of life, property and progeny and their protection as an essential maslahat.[42] He stresses the example of qisās for the inviolability and protection of life and focuses on the example of swapping for the inviolability and protection of the property.[43] The reason why swapping is considered one of the essential maslahats is as follows: It is obligatory to exchange unneeded goods with those that are needed.[44] Based on this necessity, a rule called swapping has been established in the doctrine. However, not all particular exchanges have to conform exactly to this rule.[45] This is because the goods that are needed can be exchanged with those that are not needed, and this does not harm the validity and enforcement of the rule mentioned above.[46]

According to al-Juwaynī, the following two forms of qiyās are possible in the essentials based on essential maslahat: (1) It is the qiyās of two essentials.[47] It would follow the same line of logic to compare a punishment to qisās or vice versa and to compare any compulsory contract to swapping.[48] (2) It is the comparison of the components of an essential to each other. al-Juwaynī describes this kind of qiyās as "juzi' qiyās" and epistemologically positions it at the highest level of qiyās al-mana/qiyās al-illa.[49]

As an example of a djuzʾī qiyās, al-Juwaynī mentions that the jointly committed crimes that lead to the cutting of an organ, in the punishment of retaliation for each of the accomplices are compared to murder.[50] Therefore, a bodily organ is inviolable and remains under protection. The failure to envisage punishment of retaliation for each of the accomplices in such jointly committed crimes that lead to organ amputation runs counter to the dharuri maslahat of "being under protection and immunity" and encourages organ cuts/injuries upon committing.

The fact that a bodily organ is inviolable/protected like life itself and therefore is equivalent to life lends support to the djuzʾī qiyās mentioned.[51]

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[41] For more information about the way al-Ghazālī addressed the issue and the examples he cited, see al-Ghazālī, *al-Mustaṣfā*, 1/416-417.

[42] He also mentions the limitations for the protection of the generation. See al-Juwaynī, *al-Burḥān*, 2/179. "I have not seen any expression about the protection of the mind." Azhar, *Maqāṣid al-sharīʿa ʿinda Imām al-Ḥaramayn*, 226.

[43] See al-Juwaynī, *al-Burḥān*, 2/79. He also mentions the penalty of cutting the hand as a compensation for the crime of theft to protect property. See al-Juwaynī, *al-Burḥān*, 2/179, 212-213.

[44] al-Juwaynī, *al-Burḥān*, 2/79.

[45] al-Juwaynī, *al-Burḥān*, 2/79, 86.

[46] al-Abyārī, *al-Taḥqīq*, 3/555.

[47] This corresponds to kullī qiyās.

[48] al-Juwaynī, *al-Burḥān*, 2/81-82.

[49] See al-Juwaynī, *al-Burḥān*, 2/80.

[50] See al-Juwaynī, *al-Burḥān*, 2/81.

[51] al-Juwaynī, *al-Burḥān*, 2/80.

According to al-Juwaynī, when a djuzʾī maslahat *(djuzʾī istislah)* conflicts with kullī maslahat, it loses its function in the face of the kullī maslahat and is invalidated.[52] He cites the rule of "the equivalence/balance of crime and punishment" *(tamasul),* which occupies an important place in criminal law, as an example of djuzʾī qiyās. In line with this equivalence, only the perpetrator of the crime is punished for retaliation in the case of murder. According to the aforementioned rule, retaliation should not be imposed on each of the accomplices in joint murder.[53] However, this approach conflicts with the kullī maslahat of "protecting life" and "deterring the perpetrator from crime". This is because it is easy to kill people jointly, and not foreseeing the punishment of retaliation for each of the accomplices encourages jointly committed murders.[54] Here, the rule of equivalence/balance, which is djuzʾī maslahat, is disregarded so as not to neglect the kullī maslahat, and qiyās between joint crime and individual crime is not possible. As noted earlier, the djuzʾī maslahat mentioned by al-Juwaynī corresponds to the concept of "complementary maslahat", which is referred to as tatimma/takmilah/mutammimah/ mukemmilah. al-Juwaynī stresses that the logic of retaliation is quite different from that of compensation for lost goods. Accordingly, the rationale for compensating for lost goods is to supply the properties in kind. The logic of qisās is to warn offenders/criminals and to avenge the owners of qisās.[55] This difference indicates that the principle of equivalence/balance in qisās is not as essential as it is in the compensation of properties.[56]

al-Juwaynī's point could be summarized as follows based on Abyari (d. 616/1219):[57] "It is obligatory to cancel all djuzʾī maslahats that lead to the negligence of the kullī maslahats when considered." Potential cases of conflict would mean the neglect of the kullī maslahats and the cancellation of the djuzʾī maslahats. Therefore, it is better to cancel only djuzʾī maslahat than to cancel both.[58] Below is one of the examples that Abyari cited for this: "The preservation of life" is a kullī maslahat, while "getting rid of impurity" is a djuzʾī one. In the case of necessity, when protecting life depends on taking a najis substance, it can be taken because, in such a case, to rely on the djuzʾī maslahat of "purification of najasa" will lead to neglecting the kullī maslahat of "protection of life".[59]

2.2. Hadji Maslahat: The Case of Idjarah

According to al-Juwaynī, dharurat is valid for each person, while hadjat is valid for the universal. In this respect, the hadjat of the universal resembles that of the individual.[60] In fact, failure to meet the hadjat of the universal may lead to greater mafsadahs than the failure to fulfill the individual's dharurat.[61]

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[52] al-Juwaynī, *al-Burḥān*, 2/80.

[53] al-Juwaynī, *al-Burḥān*, 2/81; al-Abyārī, *al-Taḥqīq*, 3/518.

[54] See al-Juwaynī, *al-Burḥān*, 2/81.

[55] al-Juwaynī, *al-Burḥān*, 2/81.

[56] See al-Abyārī, *al-Taḥqīq*, 3/519.

[57] The phrase he uses is as follows: إن كل تكملة أفضى اعتبارها إلى رفض أصلها وجب اطراحها
See al-Abyārī, *al-Taḥqīq*, 3/516.

[58] See al-Abyārī, *al-Taḥqīq*, 3/516.

[59] See al-Abyārī, *al-Taḥqīq*, 3/516-517. Also see al-Shāṭibī, *al-Muwāfaqāt*, 2/342-343. It is seen that Shatibi quoted Abyari's words and examples above without citing his name.

[60] al-Juwaynī, *al-Burḥān*, 2/79, 82.

[61] See al-Juwaynī, *al-Burḥān*, 2/79; al-Abyārī, *al-Taḥqīq*, 3/506.

Al-Juwaynī states that most usūl scholars avoid the comparison of two essentials based on hadji masla-hat *(kullī qiyās)* and that there is no disagreement about the operability of qiyās *(djuzʾī qiyās)* among the sub-sidiary issues in an essential based on hadji maslahat.[62]

al-Juwaynī cites the contract of idjarah as an example of hadji maslahat.[63] He claims that the djuzʾī maslahat in the form of "exchange of existing equivalents", which is a rule in "muawaza" contracts such as swapping', is not in effect in commerce.[64] Operationalizing this maslahat in idjara causes the contract to lose its special structure and leads to its cancellation, as a consequence.[65] Maslahat, which goes well with the nature of the idjarah contract, is "replacement of the existing equivalent with the non-existing one";[66] that is, the sale of what does not exist.[67]

Contrary to al-Juwaynī, Abyari finds it more accurate to consider idjara as one of the essential masla-hat like swap.[68] In al-Juwaynī's swapping example, what is meant by reciprocal exchange of goods is not the "ayn" of the goods, but the benefit obtained from the goods; all of the sharīa dispositions in the property of "ayn" *(milku'l-'ayn)* are interest-driven; their emphasis on the fact that the rights of interest are also consid-ered as a kind of property[69] points out that necessity and public needs are basically close to each other. According to the thirty-second article of al-Majalla, public needs are reduced to the level of necessity.[70] Thus, there are some usūl scholars who consider swap as one of the maslahats, such as idjarah.[71]

al-Juwaynī reports that Imam Shafiʿī finds the state of muhayyar *(being able to select)*[72] and maturity contrary to the rule of "correspondence" *(qiyās)*, which is valid in "mutual" contracts such as swap.[73] Ac-cording to the rule of "reciprocity," the property right changes hands; in other words, the property of one of the two parties that make the contract is no longer his property (on of the parties); thus, another property comes into his possession.[74] Therefore, the payment must be in advance *(hulul)* and the contract must be binding *(luzum).* However, it is possible to choose one of the options of postponing the time of price in ma-turity, and to select one of the options of endorsing and canceling of the contract in being able to select.[75]

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[62]   al-Juwaynī, *al-Burḥān*, 2/82.

[63]   See al-Juwaynī, *al-Burḥān*, 2/79, 82.

[64]   al-Juwaynī, *al-Burḥān*, 2/82.

[65]   For similar expressions by Ebyârî, see al-Abyārī, *al-Taḥqīq*, 3/526-527.

[66]   al-Juwaynī, *al-Burḥān*, 2/82.

[67]   al-Abyārī, *al-Taḥqīq*, 3/527.

[68]   See al-Abyārī, *al-Taḥqīq*, 3/504-505.

[69]   see al-Juwaynī, *al-Burḥān*, 2/82.

[70]   The thirty-second rule in al-Majalla is as follows: "Whether the need is public or private, it is it is considered as necessity." See Mustafa Yıldırım, *Mecelle'nin Küllî Kâideleri* (İzmir: Tibyan, 2015), 98. al-Raysūnī stresses that al-Juwaynī may have been the first scholar to introduce this qāʿida. See al-Raysūnī, "Imām al-fiqr al-maqāṣidī", 975.

[71]   As an example, see al-Shinqīṭī, *al-Waṣf al-munāsib*, 201.

[72]   Being muhahayyar means that "one or both parties have the right to choose either of the options of approving or terminating the contract, particularly in a contract of sale, based on an agreement or a religious reason; therefore, the contract ceases to be binding for the relevant party." H. Yunus Apaydın, "Muhayyerlik", *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* (İstanbul: TDV, 2006), 31/25-26.

[73]   See al-Juwaynī, *al-Burḥān*, 2/83.

[74]   al-Juwaynī, *al-Burḥān*, 2/83.

[75]   See al-Juwaynī, *al-Burḥān*, 2/83.

Maturity enables the customer to acquire the property/price at the end of a certain period of time, while the ability to select enables the customer eliminate the risk of damage (tarawwi) by considering the properties/goods that is sold.[76] Due to their mitigating (fusha/tahfifat) functions, Imam Shafi'ī considers both legal acts as types of rukhsat. On the other hand, al-Juwaynī opposes the considering the time and the ability to select as rukhsat. He thinks that the qualities of "prepaying" and "bindingness" constitute the aspect of djuz'ī maslahat in swapping.[77] The fact that maturity is not "in advance" and the ability to select is not "binding" means that the legal action is devoid of kullī/djuz'ī maslahat. In this respect, maturity and the ability to select have the characteristics of swapping and stipulating them as conditions does not harm the dharuri and hadji maslahat.[78] In this context, al-Juwaynī argues that the fundamental characteristic of the contracts is "mutual consent". According to him if the details of the sharīa are lost and the bearers of the sharīa are exhausted and only the usūl al-sharī'ah remains, it is necessary to accept all acts of consent-based swapping as valid.[79] This is because in the hypothetical case in question, it is not possible to be mentally aware of the details of the maslahat.[80]

2.3. Tahsini Maslahats: The Case of Tahārat al-Hadas and Izalat al-Najasa

According to al-Juwaynī, these are maslahats which aim to make life beautiful and help people not only develop humane behavior but also gain moral values.[81] al-Juwaynī called such interests as makruma/makarim/makarim al-ahlaq/mahasin,[82] while the scholars after him called them tahsiniyyat/tahsinat/tazyinat.[83] It is difficult to keep such meanings in use across time and to take note of what is required by maslahat. For this reason, sharīa imposed some rituals (wazaif) for realizing what is intended.[84] Thus, on the one hand, it becomes possible to get rid of the difficulty and suffering of always being in touch with these purposes, which were intended to be obtained as much as possible. On the other hand, the opportunity to be blessed with these purposes is seized.[85] Likewise, human instinct tends to have a reactionary/reflexive property that supports these meanings.[86]

The first example mentioned by al-Juwaynī, regarding this category is tahārat al-hadas/wudū. Accordingly, cleanliness (nazafah) is a kullī meaning that is strongly encouraged in the doctrine.[87] However, it is rather challenging for people to stay clean all the time. On the other hand, sharīa made a ritual of tahārat

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[76] al-Juwaynī, al-Burḥān, 2/83.

[77] al-Juwaynī, al-Burḥān, 2/83-84; al-Abyārī, al-Taḥqīq, 3/538. The existence of equivalence (kafa'ah) in marriage can also be cited as an example of the complementary hadji maslahat. See al-Shinqīṭī, al-Waṣf al-munāsib, 202.

[78] See al-Juwaynī, al-Burḥān, 2/84.

[79] al-Juwaynī, al-Burḥān, 2/84.

[80] He notes that he discusses these issues in his work titled Ghiyath. See al-Juwaynī, al-Burḥān, 2/84.

[81] See al-Juwaynī, al-Burḥān, 2/79, 84.

[82] See al-Juwaynī, al-Burḥān, 2/79, 80, 84, 85, 92, 93.

[83] For instance, see al-Ghazālī, al-Mustaṣfā, 1/416, 418-419; al-Shāṭibī, al-Muwāfaqāt, 2/340, 344-345, 349, 350, 3/6. Also see Azhar, Maqāṣid al-sharī'a 'inda Imām al-Ḥaramayn, 244.

[84] al-Juwaynī, al-Burḥān, 2/84-85.

[85] See al-Juwaynī, al-Burḥān, 2/85.

[86] See al-Juwaynī, al-Burḥān, 2/80, 84-85.

[87] See al-Juwaynī, al-Burḥān, 2/79.

al-hadas/wudū wādjib at certain times. This wādjib ritual bears a sign that could help realize the purpose and meaning of cleaning.[88] Instinctive reactions that are apparent as "not being covered in dust/soil" and "not getting dirty" are influential, not only in reinforcing the impression that it is "cleanliness" that is meant by tahārat al-hadas/wudū but also in reducing the strength of the religious emphasis on this impression.[89]

al-Juwaynī states that the meaning of ṭahārat al-hadas is reasonable according to some later Shafi'ī jurists, while most scholars think that it is not reasonable.[90] al-Juwaynī does not deny the reasonable aspect of tahārat al-hadas.[91] However, it is understood that he is close to the perspective that the meaning of tahārat al-hadas is "taabbudi" in general and that he opposes the effort to highlight its rational dimensions.[92]

Some later Shafi'ī jurists note, regarding the mentality of ṭahārat al-hadas, that people take great care not to get dirty. However, the most exposed and polluted bodily parts of a person while working are his face, two hands up to the elbow, and two feet up to the knuckle bone. For this reason, humans are ordered to wash these organs in certain situations and at certain times.[93] This explanation implies that the head is usually covered with a turban and it is rare for the front parts of the head to be exposed. For this reason, the wiping of the head is considered sufficient.[94] al-Juwaynī thinks that this explanation of the rationality of tahārat al-hadas is "a perspective readily adopted by those who do not examine the essence of the issue but are content with the apparent side".[95]

al-Juwaynī mentions some objections that give the impression that they harm the sanity of tahārat al-hadas. Arguing that tahārat al-hadas is reasonable, usūl scholars provided responses to the objections in question. It is seen that al-Juwaynī was not very pleased with these answers and considered them as "unacceptable".[96]

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88   See al-Juwaynī, *al-Burḥān*, 2/84-85; al-Abyārī, *al-Taḥqīq*, 3/506-507.

89   See al-Juwaynī, *al-Burḥān*, 2/84-85.

90   al-Juwaynī, *al-Burḥān*, 2/74. Imam Malik, Imam Shafi'ī and Ahmad b. Hanbal considers wudū as worship (ibadat-al mahza) with an unreasonable meaning like tayammum and states that intention is a must in such worship. Abū Hanifah, on the other hand, sees wudū as a form of worship with a reasonable meaning, such as izalat al-najasah and stresses that intention is not necessary in such worship. For more information, see Mayyāda, *al-Ta'līl bi al-shabah*, 357-359.

91   For instance, he has the following to say about the reasonable aspect of wudū: "The wise [people] hardly deny the [existence of] the meaning of cleanliness in wudū." al-Juwaynī, *al-Burḥān*, 2/84.

92   It is reported that al-Baqillani also thought that the mental aspects of raf'al-hadas were dominant. See al-Ghazālī, *al-Mankhūl*, 251.

93   See al-Juwaynī, *al-Burḥān*, 2/74.

94   al-Juwaynī, *al-Burḥān*, 2/74. The explanations attributed to Shafi'ī jurists regarding the rationality of ṭahārat al-hadas in *al-Burḥān* bear a striking resemblance to the those quoted from Baqillani in *al-Mankhūl*. For a comparative overview, see al-Juwaynī, *al-Burḥān*, 2/74-76; al-Ghazālī, *al-Mankhūl*, 251. On the other hand, according to the jurists who think that the meaning of tahārat al-hadas is reasonable, *"...Allah does not want to impose any hardship on you, but wants to make you pure, and to bestow upon you the full measure of His blessings,* so that you might have cause to be grateful." This verse (al-Maida 5/6) indicates that the meaning of wudū is "to be purified" and "not to be contaminated". See al-Juwaynī, *al-Burḥān*, 2/74.

95   See al-Juwaynī, *al-Burḥān*, 2/74.

96   Some of these objections and corresponding responses are as follows: Objection: The meaning of tayammum contradicts that of wudū as there is an unreasonable meaning such as dusting the face (taġbîrü'l-wach) in tayammum. Response: A meaning found in wudū does not need to be found in tayammum. Furthermore, the fact that the meaning of tayammum is not reasonable hardly makes the meaning of wudū unreasonable. On the other hand, people often undertake expeditions, on which water is often

Contrary to the above approaches, Abyari, who wrote a commentary to al-Burhan, apparently exhibited a more moderate attitude on the subject. According to him, the meaning of wudū is rational in terms of "the meaning of the word", "implication of ta'lil" and "the ruling of the custom";[97] on the other hand, it is taabbudi in terms of the fact that the wudū's being wādjib is related to the occurrence of hadas, that the person who becomes dirty/dusted does not need to perform wudū, that the intention is necessary, and that tayammum is considered as the equivalent to it.[98]

The second example that al-Juwaynī cites regarding this category is izalat al-najasa/izalat al-hubs. According to him, the purpose and meaning of izalat al-najasa is clearer than that of tahārat al-hadas [99] because the attitude toward impurity are more negative than the attitude towards dust or soil.[100] For example, in taharet al-hadas, as noted earlier, there are many provisions in which "taabbudi" characteristics are dominant, such as to be able to take tayammum with soil or breaking of wudū by touching the genitals or a woman.[101] In izalat al-najasa, two provisions that are thought to be "taabbudi" stand out. First, only water was considered as a means of cleaning; the second is that izalat al-najasa was made wādjib only in prayers, not in other acts of worship.[102] Al-Juwaynī states that Hanafī scholars, who argue that the meaning of izalat al-najasa is rational, have difficulty in responding to such taabbudi provisions.[103]

There are two perspectives regarding the thought that the meaning of using water as a cleaning tool is not taabbudi. According to the first perspective attributed to Abu Hanifa and Hanafī jurists, the purpose

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scarce. Failure to resort to an alternative in such cases could lead to an impermissible practice such as praying without wudū, which causes a person to deviate from the purposes and procedures of the divine responsibility and act arbitrarily. The purpose (gharad) of tayammum is to maintain the habit of performing wudū. See al-Juwaynī, *al-Burhān*, 2/75. Objection: The prayer performed by a person who is covered in dust or mud after doing wudū is valid. If the rationale for wudū were "cleaning", dusting body with earth or covering it with mud would break wudū. If wudū were wādjib, due to the risk of being dusted and contaminated, it would be wādjib in the first place in cases where dusting/contamination actually took place. Response: After the originals are arranged based on qā'idas, no attention is paid to the details. The reason why making swap, for example, permissible is the need for the mutual exchange of properties. Despite this qā'ida, an act of swap done by 'replacing something that is needed for something that is not needed' is valid. Moreover, there are some instinctive reactions that prevent such an act of swap. It is a rare, therefore, an unnoticed detail to contaminate oneself like this. Human nature barely tolerates such an act. See al-Juwaynī, *al-Burhān*, 2/75-76.

[97] The word wudū is derived from "wadaat", which means cleanliness. The implication of "ta'lil" is that the verse "...But He wants to make you clean..." (al-Maida 5/6) indicates that wudū is made wādjib for "cleanliness". The "ruling based on custom" is that a wise person does not deny the meaning of "cleanliness" in wudū and knows that the habit of making wudū leads to good morals. See al-Abyārī, *al-Taḥqīq*, 3/492-494.

[98] See al-Abyārī, *al-Taḥqīq*, 3/492-494.

[99] al-Juwaynī, *al-Burhān*, 2/77, 85.

[100] According to him, it is the strong reaction against impurity that lies behind why it is forbidden to wear the skin of dogs and pigs, why Shafi'ī's stress that it is prohibited to become impure for no reason and why other jurists adopt this view. Similarly, it is the reason why in many parts of Shafi'ī's work, the judgment that the skin of an unclean animal (mayta) is harām unless it is tanned. See al-Juwaynī, *al-Burhān*, 2/85.

[101] See al-Abyārī, *al-Taḥqīq*, 3/549. According to Cüveynî, the same reason lies at the heart of Shafi'ī's seeing the intention in ṭahārat al-hadas as wādjib, unlike in izalat al-najasa. See al-Juwaynī, *al-Burhān*, 2/85. According to some jurists, intention is obligatory both in izalat al-najasa and tahārat al-hadas, while for some others, it is not obligatory in neither of them. See al-Abyārī, *al-Taḥqīq*, 3/492.

[102] See al-Juwaynī, *al-Burhān*, 2/76-77. For more information on the issue, see al-Abyārī, *al-Taḥqīq*, 3/544-546.

[103] al-Juwaynī, *al-Burhān*, 2/76.

of izalat al-najasa is to scrape the najasa "itself" and to eradicate its traces. This purpose could be achieved using all "clean" liquids that could scrape and remove najasa.[104] According to the second perspective, seeing water as a means of cleaning is due to its essential properties[105] and its homogeneous structure.[106] In the same way, it is stated that izalat al-najasa's being wādjib not specific to prayer is not taabbudi; conversely, it is based on some reasonable meanings.[107] However, al-Juwaynī finds these statements baseless.[108]

al-Juwaynī thinks that kullī qiyās (the comparison of two essentials to each other) is not possible in tahsini maslahat because the meanings of these maslahats are based on some unseen purposes, and these can only be properly known by the sharīa.[109] According to Abyari, the reason why kullī qiyās is not possible in tahsini maslahat is that all kullī qāʿidas are determined and enacted in the doctrine. At this stage, there is no need for establishing any kullī qāʿidas.[110] According to him, the verse *"...Today I have perfected your faith for you, completed my favour upon you, and chosen Islam as your way..."*[111] confirms this.[112]

In the same way, al-Juwaynī thinks that in general, djuzʾī qiyās (the comparison of the two parts of an essential) is not possible in tahsini maslahat, either.[113] For example, according to him, the impact of touching a woman on wudū cannot be compared to substances that come out of the urinary and fecal tracts. This is because there is neither a spiritual *(qiyās al-mana)* nor a comparative *(qiyās al-shabah)* illa/link that could combine touching a woman and the substances that come out of the urinary and fecal tracts.[114] However, al-Juwaynī, who favors djuzʾī qiyās al-shabah, appreciates the fact that Hanafī jurists compare the impurity that does not come out of the urinary and fecal tracts, and the impurity that do come out of the urinary and fecal tracts, in terms of fiqh understanding. However, as a result of further research, al-Juwaynī draws the conclusion that what causes the lack of wudū is not "najasa" itself and approaches the Hanafī scholars' comparison mentioned above in caution.[115] This is because, according to al-Juwaynī, Shafiʿī scholars may raise the following objections to the comparison: The fact that the existence of najasa coming out of the urinary and fecal tracts requires wudū is not due to the najasa itself because the first thing to do about najasa is to remove it from its place of origin. The use of water to wash the body parts for wudū that are hardly impure, in contrast to the fact that najasa comes out of certain places in the body, indicates that it is not najasa that

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[104] See al-Juwaynī, *al-Burḥān*, 2/74; al-Abyārī, *al-Taḥqīq*, 3/545. Abyari claims that other liquids cannot replace water, based on the hadīth "... scrape it, rub it, then wash it with water...". See al-Abyārī, *al-Taḥqīq*, 3/482. For the related hadīth, see Abū Dāwūd Sulaymān ibn al-Ash'ath ibn Isḥāq al-Sijistānī, *Sunan Abī Dāwūd*. Ed. Muḥammad Muḥy al-dīn ʿAbd al-Ḥamīd (Bairut: al-Maktaba al-ʿAṣriyya), "eṭ-Ṭahâra(t)", 132 (No. 362).

[105] al-Juwaynī, *al-Burḥān*, 2/77.

[106] al-Abyārī, *al-Taḥqīq*, 3/546.

[107] For detailed information about these *meanings*, see al-Abyārī, *al-Taḥqīq*, 3/546-547.

[108] See al-Juwaynī, *al-Burḥān*, 2/76-77.

[109] See al-Juwaynī, *al-Burḥān*, 2/85-86.

[110] See al-Abyārī, *al-Taḥqīq*, 3/551-552.

[111] al-Maida 5/3.

[112] al-Abyārī, *al-Taḥqīq*, 3/552.

[113] al-Juwaynī, *al-Burḥān*, 2/87.

[114] al-Juwaynī, *al-Burḥān*, 2/87.

[115] al-Juwaynī, *al-Burḥān*, 2/88.

requires wudū.[116] According to al-Juwaynī, the emergence of najasa from the aforementioned vents shows that the wudū is no longer valid.[117] In addition to this, according to him, the najasa, which cause one to perform the wudū, must be in the form of substances repeatedly and naturally produced. Therefore, rare and non-repeating substances, such as blood flowing from the nose, do not lead to the breaking the wudū'.[118]

al-Juwaynī finds it valid that Imam Shafi'ī compares the usual najis coming out of a hole opened in the body when the normal path is closed to usual najis that comes out of a usual hole in the body. He notes that the usual najis coming out of the hole also invalidates wudū (wudū) and adds that it is a case of djuzʾī qiyās al-shabah. This is because in the case mentioned above, urine and feces *(fadalat)* come out the holes in the body, just as in the usual way, naturally and repetitively.[119]

2.4. Tahsini Malahats: The Example of the Contract of Kitabat

"The contract of kitabat *(mukataba)* refers to the agreement between a slave and his/her master to ensure the freedom of the slave in return for a price."[120] The contract of kitabat encourages the slave owner to free the slave, and this constitutes the appropriate meaning *(al-gharad al-mukhīl)* aspect of the contract.[121]

al-Juwaynī states that the contract of kitabat violates the rule (qiyās/qāʿida), which is valid in "muʿāwada" contracts, which state that "the master cannot do business with the slave and cannot exchange the goods under his ownership".[122] This is because, according to the contract of kitabat, the master makes an agreement with his/her slave in return for a slave-earned property, which already belongs to the slave owner himself.[123] According to al-Juwaynī, who divided tahsini maslahats into two categories, the contract of kitabat become a lower-level tahsini maslahat than tahārat al-hadas because of the aforementioned anomaly.[124] This approach probably forms the basis of al-Juwaynī's addressing the contract of kitabat in the second category of the maslahat and as a separate category of the maqāsid. Considering this categorization, usūl scholars such as Zarkashī divided tahsini meaning into two categories as "appropriate although being against the rules" and "appropriate and not against the rules".[125] However, al-Juwaynī cannot help stressing an objection to the prioritization of the contract of kitabat.[126] According to this objection by Abyari, tahārat

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[116]   See al-Juwaynī, *al-Burḥān*, 2/87. İz b. Abd al-Salam cites washing the body parts intended for the wudū rather than washing the part not contaminated by najasa as an example of taabbudi provisions. See Ibn ʿAbd al-salām, *Qawāʿid al-aḥkām*, 2/175.

[117]   al-Juwaynī, *al-Burḥān*, 2/87.

[118]   al-Juwaynī, *al-Burḥān*, 2/87.

[119]   See al-Juwaynī, *al-Burḥān*, 2/88.

[120]   Fahrettin Atar, "Mükâtebe", *Türkiye Diyanet Vakfı İslâm Ansiklopedisi* (İstanbul: TDV, 2006), 31/531.

[121]   al-Juwaynī, *al-Burḥān*, 2/88.

[122]   al-Juwaynī, *al-Burḥān*, 2/88. The contract of kitabat is an agreement with such characteristics as muawaza and taʿlīq (making the provision of freeing a slave conditional on providing an equivalent). The anomaly mentioned above is at work when the contract of kitabat is perceived as an absolute agreement. Otherwise, the said illegality is no longer valid. See al-Abyārī, *al-Taḥqīq*, 3/510-511, 566. al-Juwaynī is also aware the kitabat includes components that bear the qualities of taʿlīq. See al-Juwaynī, *al-Burḥān*, 2/91-92.

[123]   al-Juwaynī, *al-Burḥān*, 2/80.

[124]   al-Juwaynī, *al-Burḥān*, 2/80, 88. See also al-Abyārī, *al-Taḥqīq*, 3/508.

[125]   For more information on the issue, see al-Zarkashī, *al-Baḥr al-muḥīṭ*, 4/191-192.

[126]   See al-Juwaynī, *al-Burḥān*, 2/88.

al-hadas also goes outside the rule "wādjib cannot be made a means/reason for mandub," which is valid for the relationship of "asbab-musabbabat"[127] This is because cleanliness is mandub, while tahārat al-hadas, which is made a means/reason for this mandub, is wādjib itself. Contrary to what happens in tahārat al-hadas, there is a case in which mandub is used as a means/cause for mandub in the contract of kitabat[128] because not only "freeing a slave" is mandub but also the contract of kitabat that is made the means/reason for this act is mandub. In this respect, the contract is not illegal.

al-Juwaynī stresses that, through qiyās, Imam Malik and a group of Salafist concluded that the contract of kitabat is also obligatory by comparing it to tahārat al-hadas.[129] In contrast to this approach, al-Juwaynī remain distant from the qiyās/tasbih of the contract of kitabat because he claims that tahsini maslahat, as emphasized earlier, is not applicable to general comparison.[130] According most scholars, including Imam Shafiʻī, the contract of kitabat is not wādjib.[131]

2.5. Essentials Related to Bodily Worship

al-Juwaynī claims that djuzʾī meanings that are detailed cannot be found in the essentials (aṣls) related to bodily worship and these meanings can hardly be understood.[132] Only some overall meanings can be deduced.[133] According to him, these kullī meanings can be described as "continuing the rituals that lead to goodness", "attracting hearts with the dhikr of Allah", "curbing worldly desires" and "getting prepared for the uqba".[134] For example, the verse *"Prayer restrains [man] from loathsome deeds and from all that runs counter*

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[127] See al-Abyārī, *al-Taḥqīq*, 3/509-510, 566-567.

[128] See al-Abyārī, *al-Taḥqīq*, 3/567.

[129] For more information on the issue, see al-Juwaynī, *al-Burḥān*, 2/88-89. According to al-Juwaynī, one of the proofs of Malik's considering the contract of kitabat as fard is the following excerpt from the Qurʾān "...Those your right hand owns who seek their freedom, make a contract with them accordingly if you know some good in them, and give them from the wealth of Allah that He has given you" (Surah An-Nur 24/33). See al-Juwaynī, *al-Burḥān*, 2/88. As understood from this evidence, كاتبوهم is in the imperative mood, and based on the principle that an order involves requirement, the contract of kitabat should be wādjib. On the other hand, Abyari, a member of the Mālikī school, notes that he never adopted the perspective of Imam Malik that the kitabat is wādjib. For his critical approach, see al-Abyārī, *al-Taḥqīq*, 3/567-570. On the other hand, according to Ikrima al-Barbarī, ʿAṭāʾ b. Abī Rabāḥ, Masrūq Ibn al-Ajda and Amr b. Dīnār, the mujtahids of the "tâbiîn era", it is fard for a slave owner to draw up an agreement with his slave who wants to gain his freedom by paying the price." Atar, "Mükatebe", 31/532.

[130] al-Juwaynī, *al-Burḥān*, 2/89.

[131] "According to the Hanafi, Mālikīs, Shafiʻī and Hanbalī madhhabs, it is mandub for a person to accept his reliable and able-bodied slave's offer for an agreement." Atar, "Mükatebe", 31/532. In addition, based on Allah's order "Give them of the wealth which Allah has given you" as mentioned in the verse above, Shafiʻī thinks that it is obligatory to help the slave financially. See al-Juwaynī, *al-Burḥān*, 2/88-89. "According to the Hanafis and Mālikīss, it is mandub for the master to facilitate the process and to reduce some of the price of the contract of kitabat that has to be paid; he and the Muslim community have to help the slave financially. According to the jurists of Hanbalī madhhab, it is fard for the slave owner to return the one-fourth of money he received to the slave, and according to the Shafiʻīs, it is again fard for the slave owner to provide financial assistance to him." Similarly, "the Zahirites and reportedly to Ahmad b. Hanbal consider it fard to give some financial aid to the slave." See Atar, "Mükatebe", 31/532.

[132] See al-Juwaynī, *al-Burḥān*, 2/93; al-Abyārī, *al-Taḥqīq*, 3/597.

[133] al-Juwaynī, *al-Burḥān*, 2/93.

[134] al-Juwaynī, *al-Burḥān*, 2/93.

to reason"[135] point to these kullī meanings.[136] In this regard, al-Juwaynī mentions another kullī meaning that represents the psychological dimension of the work. This meaning implies that a person remains far from being in a state of "calmness". Driving forces keep humans in the mode of "movement". If these forces are left unattended, they head for "shahawāt," whereas if taken under control, they turn to "worshipping". In this respect, worship helps restrain the driving forces.[137]

According to al-Juwaynī, it is not permissible to compare an essential hukm related to bodily worship with another because the meanings of the essential hukms related to bodily worship are not definite; therefore, an usūl scholar who makes comparisons and draws judgments fails to have a comprehensive knowledge of them.[138] These meanings which bear the feature of "unseen secret" can only be properly known by Allah.[139]

According to al-Juwaynī, the comparison of the parts of an essence related to bodily worship is permissible provided that an appropriate meaning (*ma'ani fiqh*) is present.[140] To exemplify this kind of qiyās, he cites the comparison of kadha fasting with fard fasting, with respect to "the requirement of intending at night. In this qiyās, illa (*djami'*) is the meaning to which the concept and nature of "intention" corresponds. In the light of al-Juwaynī's explanations, the meaning in question can be conveyed as follows: "Acts of worship express affinity thanks to "intention". Intention refers to a present "intent" or a future "purpose". It is impossible to adapt "intention" or "purpose" to a practice/ritual related to the past tense. Kadha fasting is a form of worship that is ordered to be performed like a fard fast, and in this respect, it is necessary to make an intention for the kadha fast at night, just like the fard one."[141] In contrast to this approach, Abyari sees the permissibility of a partial/detailed comparison as an indicator of a paradoxical case, despite the lack of understanding of the partial/detailed meanings of the essentials related to bodily worship.[142]

al-Juwaynī states that qiyās is not permissible in bodily worship which come from from sharīa *(rasm al- sharīa)* but have no reasonable meaning, just like the fact that the ruku is one, while the prostration is two in number, and that the takbir at the beginning of the prayer and the salam at the end of it (taslim) are obvious.[143] On the other hand, Hanafī scholars think that the meaning of takbir in tahrim and the salam at the end is reasonable and that the relevant provisions are not taabbudi.[144] For example, according to them, takbir is a kind of exaltation, and all dhikrs expressing exaltation can be compared to takbir.[145] According to al-Juwaynī, the essential hukm that is not rational is dhikr's being wādjib at the beginning of prayer. He thinks that the Hanafī's perspective that takbir means exaltation, so its meaning's being rational relates to

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135   al-Ankabūt 29/45.

136   al-Juwaynī, *al-Burḥān*, 2/93.

137   See al-Juwaynī, *al-Burḥān*, 2/93.

138   al-Juwaynī, *al-Burḥān*, 2/93.

139   al-Juwaynī, *al-Burḥān*, 2/93.

140   al-Juwaynī, *al-Burḥān*, 2/93.

141   al-Juwaynī, *al-Burḥān*, 2/93.

142   See al-Abyārī, *al-Taḥqīq*, 3/610.

143   al-Juwaynī, *al-Burḥān*, 2/93.

144   For more information, see Abū al-Manāqep Shihāb al-dīn Maḥmūd ibn Aḥmad al-Zanjānī, *Takhrīj al-furū' 'alā al-uṣūl*. Ed. Muḥammad Adīp al-Sāleḥ (Riyadh: Maktaba al-Ubayqān, 2006), 49-51.

145   For more information, see al-Juwaynī, *al-Burḥān*, 2/93-94.

the philological analysis of takbir and is beyond the scope of the discussion, therefore.[146] However, it is possible that Hanafī scholars may have found a reason for dhikr at the beginning of the prayer by referring to the customary metaphor that a person performing prayer is in the position of the one who is standing before a king, showing humility towards him, along with praising and glorifying him with words.[147]

According to al-Juwaynī, Imam Shafi'ī thinks that some sharīa benefits (gharad) are effective and valid in the chanting of takbir. Based on what al-Juwaynī reported, we can summarize Shafi'ī's related thoughts follows: "There is a purpose (gharad) intended by the sharīa, the Companions and the later sharīa scholars in chanting takbir. The successors adopted the takbir from the predecessors, and people kept chanting it verbally and practically for centuries. That is, assuming that prayer is finished with a dhikr other than takbir would be considered munkar and nonsensical talk. In such a case, to assume that the tahsis of takbir has no effect and that it is an accidental dhikr means being unware of the maqāsid al-sharī'ah. If dhikr other than takbir functioned as takbir, for the Shari to mention the takbir[148] would be as useless as the question "Is it harām for a junub person to recite Surah al-Imran?" although the same provision is valid in other suras.[149] As Abyari states, the truth is that no usūl scholar denies the existence of some sharīa purposes in the tahsis of takbir.[150] Here, the subject of discussion seems to be knotted in the tahsis-qiyās relationship. According to al-Juwaynī, the aforementioned tahsis disables the qiyās mechanism and impairs the act of comparing a dhikr other than takbir to takbir itself.[151] On the other hand, Abyari, unlike al-Juwaynī, states that qiyās is compatible with tahsis.[152]

According to Mālikī scholars, and particularly the Hanafī scholars,[153] salam at the end of prayer is a dhikr against prayer, so all dhikrs and actions that are against prayer can be compared to the salam. [154]However, al-Juwaynī claims that this approach could lead to a scandalous result, so to speak, like intentionally comparing breaking one's wudū' to salam at the end of prayar in order to end it, and he bitterly accuses the scholars holding this view in his following words:

A person who makes the mistake of comparing a dhikr other than takbir to takbir admits ugliness that can hardly be accepted by a person in whose heart religion is deeply rooted. This resembles the substitution of amd al-hadas (intentionally breaking one's wudū') for the salam, due to being opposed to prayer. A person who considers it permissible to compare amd al-hadas and the end-of-prayer salam that the sharīa made permissible is either a stubborn person who does not reveal what is his inside, or someone whose foresight is blunted by Almighty Allah.[155]

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[146] al-Juwaynī, *al-Burḥān*, 2/94.

[147] al-Abyārī, *al-Taḥqīq*, 3/612-613.

[148] For examples of hadīths about chanting takbir, see Abū ʿAbd Allāh Muḥammad ibn Ismāʿīl al-Bukhārī, *Al-Jāmiʿ al-Ṣaḥīḥ*. Ed. Muḥammad Zuhayr b. Nāser b. al- Nāser (Dār Tawq al-Najāt, 1422/2001), "el-Eẕân", 84, 85.

[149] al-Juwaynī, *al-Burḥān*, 2. 94.

[150] See al-Abyārī, *al-Taḥqīq*, 3/614-615.

[151] al-Juwaynī, *al-Burḥān*, 2/94.

[152] al-Abyārī, *al-Taḥqīq*, 3/617.

[153] al-Abyārī, *al-Taḥqīq*, 3/618.

[154] al-Abyārī, *al-Taḥqīq*, 3/612.

[155] al-Juwaynī, *al-Burḥān*, 2/94-95.

Abyari strongly rejects the above criticisms of al-Juwaynī against Mālikīs and Hanafī scholars. According to him, as mentioned in *Sunan Abī Dāwūd*, "A person whose wudū is broken after sitting enough to accomplish the tashahhud, the prayer is completed." The hadīth above[156] renders al-Juwaynī's accusations unjustified and in vain.[157]

As understood from al-Juwaynī, the difference between the essentials related to bodily worship and the tahsini essentials, in terms of maqāsid al-sharīʿah, is as follows: "The purpose *(maqṣūd, gharad)* is not definite in the essentials related to bodily worship. Only some global meanings can be understood. On the other hand, the existence of the purpose in tahsini essentials is the commonly accepted perspective.[158]

Conclusion

Being one of the leading scholars of idjtihād, Imam al-Haramayn al-Juwaynī attaches importance to meaning, takes into account the maslahat and purposes and tries to offer interpretations that accord with the spirit of the law.

al-Juwaynī elaborates on the concepts such as maslahat, hikmat, gharad, qāʿida, purpose and usūl al-sharīʿah, which form the framework of the science of maqāsid, with respect to the concept of appropriate meaning. He draws attention to the relationship between these concepts. His views constitute a significant milestone in the formation and development of the theory on these issues. However, even though an intense terming process is evident, it is seen that the way in which the related concepts are addressed is unsystematic, and their boundaries and corresponding meanings are not clear.

Aiming to develop a controlled understanding of maslahat, al-Juwaynī developed a three-stage hierarchical process for ta'līl. The first stage of the process is appropriate meaning. According to him, the possibility of ta'līl depends on its existence. Appropriate meaning is the main tool that ensures ta'līl and tadiyah, not only in istidlāl but also in qiyās. He notes that not every appropriate meaning has the competence/capacity to be maslahat; in order for a meaning to be appropriate, it must possess the characteristics of maslahat. The second stage of the process suggested by al-Juwaynī is maslahat. According to him, not every public interest is valid as there might be baseless and open-ended interests. In order for it to be valid, the maslahat must not run counter to usūl al-sharīʿah and not contradict it. The final stage of the process is usūl al-sharīʿah *(maqāsid al-sharīʿah).* According to the process introduced by al-Juwaynī, appropriate meaning is based on maslahat, and maslahat itself is based on usūl al-sharīʿah *(maqāsid al-sharīʿah).* In short, meaning must concord well with usūl al-sharīʿah *(maqāsid al-sharīʿah).* Maqāsid functions like a control mechanism that checks the validity and enforcement of the meaning and maslahat.

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[156] For a related hadīth and some disagreements on the issue, see Abū ʿĪsā Muḥammad ibn ʿĪsā ibn Sawra al-Tirmizhī, *Sunan al-Tirmizhī.* Ed. Aḥmad Shakir, Muḥammad Fuād ʿAbd al-Bāqī, Ibrāhīm ʿAwd (Egypt: Matbaʿa Mustafā al-Bābī, 1397/1977), "Ebvâbüʾṣ-ṣalâ(t)", 300 (No: 408). For the hadīth, see also Abū Dāwūd, *Sunan Abī Dāwūd,* "eṣ-Ṣalât", 71 (No: 617).

[157] Abyari describes al-Juwaynī's words as "being daring against Allah and scholars" and prays that Allah will hopefully forgive him and save him from the right holders on the Day of Judgment. For his critique of al-Juwaynī, see al-Abyārī, *al-Taḥqīq,* 3/618-619.

[158] al-Juwaynī, *al-Burḥān,* 2/93.

al-Juwaynī elaborates on his views on the content, categories, and characteristics of maqāsid under the title of qiyas, with reference to the concepts of appropriate meaning, maslahat, hikmat, gharad, qāʿida, purpose and usūl al-sharīʿah. This shows the place of maqāsid in usūl methodology and provides information about the relationship between qiyās and maqāsid. As noted earlier, he thinks that just as the meaning in qiyās must accord with the maqāsid *(munasaba)*, the meaning in taʾlīl in istidlāl should be close to the maqāsid *(taqrib)*, following Imam Shafiʿī. Thanks to the condition of conformity/closeness to maqāsid, al-Juwaynī wanted to develop a standardized understanding of maslahat and to contribute to the order/stability of the law, by eliminating the possibility of producing uncontrolled and disproportionate maslahat.

al-Juwaynī is the first usūl scholar to categorize maqāsid into dharuriyyat, hadjiyyat, tahsiniyyat and bodily worship. He also divides tahsiniyyat into two categories depending on whether maslahat conforms to the rule or violates it: "maslahat in accordance with the rules" and "maslahat that are against the rules". As a result, he addresses maqāsid under five categories. al-Juwaynī is one of the leading scholars who make references to most of the five kullī/essential facts (religion, life, mind, lineage, property) and shape the thoughts accordingly. He also referred to djuzʾī maslahat *(djuzʾī istislah),* which he thinks are subjective and could only be appreciated through the sharīa. It is clear from the examples he cited and the way he discussed the issue that these concepts correspond to the type of maslahat systematized by later scholars with the names takmilah/tatimma/muhkammilah/mutammima. He was also the first scholar to use the term "istislah", meaning maslahat, just as he introduced the term maqāsid al-sharīʿah.

In each of the maqāsid categories, al-Juwaynī also considered the issue of whether it is permissible to qiyās two essentials to each other *(kullī qiyās)* and to qiyās two parts of an essential *(djuzʾī qiyās).* He thinks that kullī qiyās is permissible only in essential maslahat; he is doubtful about such qiyās in hadji maslahat. According to him, since the taabbudi features are dominant, kullī qiyās is not permissible in tahsini maslahats and especially in the essentials related to bodily worship. al-Juwaynī states that there is no dispute about the fact that the comparison of two parts of an essential is necessary and permissible for hadji maslahats. According to him, djuzʾī qiyās which is valid in dharuri maslahat is epistemologically at the highest level of qiyās. He thinks that, in principle, djuzʾī qiyās is not valid in the essentials based on tahsini maslahat and in the essentials related to bodily worship. However, when it sounds appropriate, it is possible to see this type of qiyās in both categories.

With his original approaches and interpretations, apparent in his works *al-Burhân* and *Ghiyath al-Umam,* al-Juwaynī introduced major innovations and made major contributions to the thought of maqāsid. It is seen that his views on maqāsid, as well as many of his disorganized ideas and scholarly considerations, were coherently presented by his student al-Ghazālī. al-Juwaynī heavily influenced the usūl scholars who came after him and became the pioneer of a school followed in the history of maqāsid. Thanks to his contributions, he is accepted as one of the founding theorists of the science of maqāsid and has taken his well-deserved place in the history of Islamic law.

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