CRITICAL RESPONSE

# Using the *Maqāṣid al-Sharīʿah* to Furnish an Islamic Bioethics: Conceptual and Practical Issues

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**Abstract** The field of Islamic bioethics is currently in development as thinkers delineate its normative content, ethical scope and research methods. Some scholars have offered Islamic bioethical frameworks based on the *maqāṣid al-Sharīʿah*, the higher objectives of Islamic law, to help advance the field. Accordingly, a recent JBI paper by Ibrahim and colleagues describes a method for using the *maqāṣid al-Sharī ah* to provide moral end-goals and deliberative mechanisms for an Islamic bioethics. Herein I highlight critical conceptual and practical gaps in the model with the hopes of fostering greater discussion about how *maqāṣid al-Sharī ah* frameworks may fit within Islamic bioethics deliberation.

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## Introduction

Recent years have witnessed a number of conferences, journal articles, and edited volumes dedicated to Islamic bioethics (Clarke et al. 2015; Ghaly 2013; Ahmed 2016; Padela 2013; Bagheri and Al-Ali 2018). The burgeoning interest reflects an effort to coalesce Islamic bioethics into an academic field with distinguishable disciplinary parameters, research methods, and scope. Since Islam arguably informs the ethical thinking of nearly a quarter of the world's population, creating a coherent discipline of Islamic bioethics is of import to a great many people. Furthermore, defining the field would help to resolve multiple scholarly debates regarding the sources of normativity for "Islamic" bioethics, how various Islamic sciences, for example, law, philosophy, and character ethics (*adab*), inform Islamic bioethical guidelines, and how the genre relates to academic bioethics discourses (Sachedina 2007; Qureshi and Padela 2016; Aksoy 2010; Chamsi-Pasha and Albar 2013; Hamdy 2013).

Against this backdrop, Ibrahim and colleagues aim to describe a bioethical framework based upon the higher objectives of Islamic law, *maqāṣid al-Sharīʿah* (Ibrahim et al. 2019). The authors propose a model of ethical deliberation that sets the *maqāṣid* as end goals for biomedicine. Where a technology, on balance, furthers these interests it is judged to be ethical, and where it detracts from them it is considered to be immoral. Their model of moral evaluation involves multiple steps. First, the moral ends for biotechnology (the human interests biotechnology should serve) are determined by reinterpreting the five essential (or *ḍarūrī*) higher
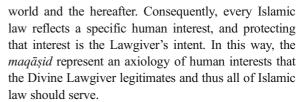
objectives of Islamic law—namely the preservation of religion (*dīn*), human life (*nafs*), progeny (*naṣl*), material wealth (*māl*), and intellect (*ʿaql*)) "in accordance with contemporary contexts" so that knowledge from the biosciences is combined with scriptural knowledge (Ibrahim et al. 2019, 6). Thereafter moral assessment proceeds by evaluating whether the reasons the technology was developed, its procedural aspects, and the outcomes it produces "comply with Islamic teachings" (Ibrahim et al. 2019, 10). By compliance, the authors mean whether, on balance, the positive aspects of the technology cohere with the five essential higher objectives and whether these positives outweigh any threats to these objectives. This moral calculus is performed by preserving proposed hierarchies among the objectives and by accounting for the inclusiveness as well as the certainty with which certain interests are protected or threatened. The authors argue that such a framework for Islamic bioethics enhances the dominant four principle model for medical ethics by overcoming its focus on individuals rather than on society and community, and that it also addresses the shortcomings of a bioethics based on Islamic law (*fiqh*), namely, a reliance upon the Quran for moral norms.

Despite being somewhat unclear, the paper is a welcome contribution to Islamic bioethical literature in that it attempts to provide methodology for bioethical deliberation. At the same time, however, the proposed model accentuates the conceptual gaps and methodological issues that plague the usage of *maqāṣid al-Sharīʿah* for modern ethical analysis. In this piece I will draw attention to several lacunae in the proposed framework in order to stimulate greater discussion about how *maqāṣid al-Sharīʿah*–based models may fit within Islamic bioethics deliberation and discourses.

## Conceptual Gaps: Defining the *Maqāṣid*

Before getting too far afield, it is important to elaborate upon the *maqāṣid al-Sharīʿah*. The term *maqāṣid al-Sharīʿah* is commonly translated as the higher or overarching objectives of Islamic law. They reflect the purposes or intents of the Lawgiver in commanding, prohibiting, or recommending an action. The idea of there being knowable purposes behind injunctions found in revelation is based on the view that God generally legislates in order to procure specific benefits and forestall specific harms from humankind in this

world and the hereafter. Consequently, every Islamic law reflects a specific human interest, and protecting that interest is the Lawgiver's intent. In this way, the *maqāṣid* represent an axiology of human interests that the Divine Lawgiver legitimates and thus all of Islamic law should serve.

Based on this linking of divine purposes with human interests, Islamic scholars have developed multiple different frameworks of the *maqāṣid al-Sharīʿah*. Legists disagree on (i) how to identify the *maqāṣid*, (ii) which specific interests are the essential ones, and (iii) whether *maqāṣid*-based legal frameworks can furnish Islamic ethico-legal injunctions anew (Ramadan 2009; Auda 2008b; Raysūnī and International Institute of Islamic Thought 2005).

Ibrahim and colleagues' article seems to bypass this diversity. The authors appear to draw upon the model of Abū Isḥāq al-Shāṭibī, a fourteenth century Malikī jurist. Indeed, they set the five essential (*ḍarūrī*) higher objectives of Islamic law he identified—the preservation of religion (*dīn*), human life (*nafs*), progeny (*naṣl*), material wealth (*māl*), and intellect (*ʿaql*)—as the end goals for an Islamic bioethics. Yet, they do not tell the reader why they privilege his objectives. Other classical legists held the protection of honor (*ʿird*) to be an essential objective, and others still argued that the protection of progeny should instead be the protection of lineage.

Beyond classical models, many contemporary scholars have moved to catalogue many more *maqāṣid*. Illustratively, Gamal Eldin Attia, a contemporary scholar holding posts in Islamic law at multiple universities and think tanks, lays out twenty-four essential *maqāṣid* across four domains: (i) the individual, (ii) the family, (iii) the Muslim community, and (iv) at the level of general humanity (Attia 2007). At the individual level, he marshals scriptural and scientific evidence for five essential *maqāṣid* that are somewhat different than al-Shāṭibī's. These are the preservation of human life, consideration for the mind, the preservation of personal piety, the preservation of honour, and the preservation of material wealth (Attia 2007). The article by Ibrahim and colleagues presents no rationale for why the *maqāṣid* they list serve as end goals for Islamic bioethics better than others.

Perhaps more important for a discussion of Islamic bioethics, then, is the fact that *maqāṣid* scholars disagree about how scientific data informs these moral ends. Recall that Ibrahim and colleagues propose to update al-Shāṭibī's five essential *maqāṣid* by incorporating

scientific knowledge into their description. Yet, al-Shāṭibī maintained that his catalogue of essential *maqāṣid* were inductively derived from scripture and that social and natural science could only identify secondary objectives (Shāṭibī et al. 2011). Attia, on the other hand, giving much greater authority to science, identifies new essential *maqāṣid* and argues that modern knowledge must be used to determine how these *maqāṣid* are attained in contemporary society (Attia 2007).

As Ibrahim and colleagues move to refashion the *maqāṣid* by removing the scriptural anchor that bounds the definitions of religion, life, progeny, wealth, and intellect, the "Islamic" nature of the bioethical theory could, arguably, become suspect since the human interests and the ethical duties that surround them are no longer firmly rooted in scripture. It appears that Ibrahim and colleagues are aware of this concern and thus, somewhat circularly, suggest that to reinterpret the *maqāṣid* one "applies the concept of *maslahah*[1] [benefits], *mafsada*[2] [harms], and *maqāṣid al-Sharīʿah* … in accordance to the … Quran and the Sunnah," using the methods of discovering the rationale behind Qur'anic injunctions and "… within the scope of the Islamic shariah" (Ibrahim et al. 2019, 7).

This suggestion does not resolve the quandary and remains unclear. When Ibrahim and colleagues suggest that their version of the *maqāṣid* will be open to science because human interests and harms will be filtered through the Qur'an, Sunnah, and conventional Islamic legal devices, it is not clear what their innovation is. Historically, al-Shāṭibī derived his five essential *maqāṣid* by examining what human benefits Qur'anic

injunctions secure, as well as which human harms they forestall. Thereafter, he interrogated the Prophetic Sunnah to assure that his theory of *maqāṣid* was completely aligned with both aspects of revelation—the Qur'an and the Sunnah. If Ibrahim and colleagues want to filter the harms and benefits associated with achieving the *maqāṣid* based on scriptural texts, they seem to be repeating al-Shāṭibī's process, and if they want to apply conventional Islamic law to discerning harms and benefits, then they are using conventional Islamic law and not a "new" *maqāṣid* framework. Consequently, it remains obscure how bioethicists would refashion "new" end goals for biomedicine based on the model they propose.

The problem of delineating which *maqāṣid* should serve as the moral end goals for an Islamic bioethics and how classical formulae for the *maqāṣid* should be revised to incorporate modern biomedical science is not unique to Ibrahim and colleagues. Indeed there appear to be three approaches used by contemporary thinkers to approach this problem.

The first I term *surface-level theorization*, where al-Shāṭibī's five essential objectives are set as end goals but are redefined in terms of healthcare. Religion, life, progeny, wealth, and intellect are all delineated with respect to common biomedical understandings of the terms, and medical treatment's moral purview is to help preserve these human interests as far as possible. Consequently, "for a medical issue to be considered ethical it must fulfill or not violate one of more of the five purposes (*maqāṣid*)" (Kasule 2010, 39). Using surface-level theorization, preserving religion comes to represent facilitating worship; thus biomedicine contributes to the preservation of religion by "protecting and promoting good health so that the worshipper will have the energy" to pray and perform meritorious deeds (Kasule 2009). Preserving human life as a value is seen as self-explanatory, and medicine serves it by preventing and treating disease, ensuring proper nutrition of the body, and promoting a high quality of life. Progeny as a human interest is correlated with procreative capacity, and the intellect is reshaped into mental health. Finally, wealth is defined as societal wealth, and the maintenance of health assists citizens to be financially productive (Kasule 2009). This approach appears close to the one Ibrahim and colleagues advocate and is one that has several other proponents (Saifuddeen et al. 2014).

Another approach involves *conceptual extension*. These approaches reformulate al-Shāṭibī's essential
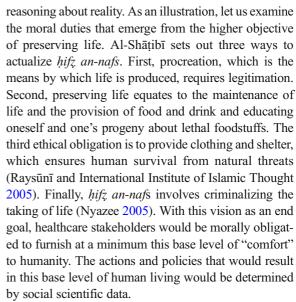
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[1] The term *maslahah* can refer to different ideas within the Islamic ethical tradition. Most generally it refers to human interests or benefits, and this is the way Ibrahim and colleagues use the term. However, in the context of discussing the *maqāṣid*, the term can take on different meanings. The first is one that the polymath Islamic theologian-jurist Imam al-Ghazālī uses when he states "what we mean by interests (*maṣalih*) are those interests that conform specifically to the objectives of Islamic law (*maqāṣid*)," and harms are detriments to these interests (see his al-Mustāšfā min ʿilm al-usúl). In this way, benefits are those human interests that align the higher objectives of Islamic law. The second usage of the term *maslahah* is to refer to a specific ethico-legal device within Islamic law through which human benefits can ground Islamic legal rulings. This scope of this device as grounds is debated across the Islamic legal schools (see Opwis 2005; al-Būṭī 2000).

[2] The term *mafsada* refers to human detriments and harms. In the context of the *maqāṣid*, a harm (*mafsada*) is that which harms the higher objectives or promotes what is contrary to them (see Ibn Abd al-Salām, al-Izz *al-Qawāʿid al-kubrā al-mawsūm bi qawāʿid al-aḥkām fī iṣlāḥ al-anām*).

*maqāṣid* and also add new ones by recourse to empirical, social scientific, and other contemporary data. Many different thinkers, including Attia, utilize this approach (Ramadan 2008; Ramadan 2013; Auda 2008a). Detailing how Attia refashions al-Shāṭibī's essential human interests provides some insight into this approach. For example, he incorporates contemporary views about "what is referred to in the law as the right to life …[and] the sanctity of the body" into his expansion of the preservation of life (Attia 2007, 119). Consideration of the mind expands beyond the traditional view of preserving intellect to also require developing intellectual capacities and utilizing the mind in "intellectual acts of worship" (Attia 2007). Attia revises the preservation of religion into the preservation of personal piety by performing the obligatory acts of worship and engaging in moral formation. The preservation of honour refers to "anything related to human dignity," one's reputation, and the "sanctity of one's private life" (Attia 2007, 122). The preservation of material wealth is accomplished through financial laws and penalties for theft. Attia reformulates the classical *maqṣid* of preservation of progeny into the preservation of the human species and moves it from an individual level to one that resides at the level of families. In this way he expands the scope and meaning of the classical objectives.

The third approach is *text-based postulation*. This approach differs from surface-level theorization and conceptual extension in that the human interests identified by al-Shāṭibi are left as he defined them. And it differs from conceptual extension in that "new" *maqāṣid* must be subsidiary to the essential ones identified by al-Shāṭibi. At the same time, the approach allows for understandings coming from the human, social, and natural sciences to specify the means by which the ethical mandates emerging from the *maqāṣid* are accomplished. Glimpses of this methodology are seen within the writings of several scholars, but a full exposition remains to be undertaken (Ebrahim 2014; Kamali 2012; Padela 2018). This approach involves explicating the visions of human and societal flourishing embedded within al-Shāṭibī's essential *maqāṣid* and setting this vision of life to represent the base conditions demanded by Islamic morality. Means (policies and actions) to achieve this vision for human existence are then identified by drawing upon natural and social scientific data. Building upon this base or minimal threshold for human existence, secondary *maqāṣid* are identified via inductive readings of scripture or by recourse to human

reasoning about reality. As an illustration, let us examine the moral duties that emerge from the higher objective of preserving life. Al-Shāṭibī sets out three ways to actualize *ḥifẓ an-nafs*. First, procreation, which is the means by which life is produced, requires legitimation. Second, preserving life equates to the maintenance of life and the provision of food and drink and educating oneself and one's progeny about lethal foodstuffs. The third ethical obligation is to provide clothing and shelter, which ensures human survival from natural threats (Raysūnī and International Institute of Islamic Thought 2005). Finally, *ḥifẓ an-naf*s involves criminalizing the taking of life (Nyazee 2005). With this vision as an end goal, healthcare stakeholders would be morally obligated to furnish at a minimum this base level of "comfort" to humanity. The actions and policies that would result in this base level of human living would be determined by social scientific data.

From a conceptual perspective, the model proposed by Ibrahim and colleagues appears to overlook the diversity in views about what the *maqāṣid* of Islamic law are and does not fully describe how scientific data is to be used to reformulate these for bioethical purposes.

**Practical Gaps: Balancing *Maqāṣid* Hierarchies**

Although maintaining that al-Shāṭibī's five essential *maqāṣid* require revision, Ibrahim and colleagues use these *maqāṣid* to discuss how moral evaluation of biotechnology can be performed. They note that when there is a conflict between a technology preserving one interest but harming another, the interest "with higher importance is given priority" (Ibrahim et al. 2019, 7). Thus "preservation of religion and life is given priority over preservation of wealth" and, similarly, "preservation of progeny" is given precedence over wealth preservation. They seem to give first rank to the preservation of life, noting that "if the technology is detrimental to human life, then it is prohibited." They also appear to reduce the rank importance of preserving religion, noting that protecting this interest is "a consequence of the preservation of life, progeny, intellect, and wealth" (Ibrahim et al. 2019, 7). Hence, in terms of rank importance, the authors appear to place the human interest of life first, the preservation of progeny and intellect somewhere in the middle, and the preservation of religion and wealth last.

Clearly a more specified rank order is necessary in order to enable bioethicists to adopt a principled reasoning process. Moreover, their hierarchy significantly differs from al-Shāṭibī's. He held religion to be the most important human interest, for if religion is not preserved then the "affairs of the next world cannot survive" and the ultimate purpose of creation is thwarted (Shāṭibī et al. 2011, 14). After this, the preservation of life was next in importance (Attia 2007). However, among the preservation of progeny (naṣl), material wealth (māl), and intellect (ʿaql), there is debate as to whether al-Shāṭibī maintained a consistent rank order (Attia 2007, Raysūnī and International Institute of Islamic Thought 2005).

More problematic is that a strict application of the authors' posited hierarchical order seems to lead to ethical duties that contravene existing Islamic legal positions and bioethical perspectives (Qureshi and Padela 2016; Padela and Mohiuddin 2015). Take, for example, a case where a certain biotechnology can treat a patient's life-threatening ailment but would leave the patient in a severely compromised neurological state where worship is not possible and it would cost a family their entire life-savings. In this scenario the preservation of life is possible, though the resulting state of "life" might be of limited religious utility, the preservation of intellect is not possible, and the preservation of wealth is under threat. The authors' schema would suggest that it is an Islamic obligation to pursue such treatment, or at least that Islamic bioethics would sanction such therapy, since it prioritizes life above all other human interests, considers the preservation of wealth to be of the lowest priority, and is indifferent as to the preservation of intellect and religion when life can be protected. Yet Islamic jurists have sanctioned the withdrawal and withholding of life support when patients are severely compromised neurologically and have ruled that seeking medical treatment is generally non-obligatory (Qureshi and Padela 2016; Padela and Mohiuddin 2015). Hence the proposed hierarchical schema may need to be further specified for the model to cohere with Islamic juridical perspectives.

Another potential pitfall where the maqāṣid are redefined and then treated as deontological principles is that of falling prey to relativism. Recall that the human interests—religion (dīn), life (nafs), progeny (naṣl), wealth (māl), and intellect (ʿaql)—are to be redefined for contemporary contexts on the basis of the social and natural sciences. A particular concern arises when these interests are viewed differently across societies. For example, in some countries adoption serves the human interest in progeny, whereas in others (like in traditional Islamic societies) an adopted child does not inherit from the adopted parents and technically does not carry forth lineage either. Thus the way each of these interests is preserved may differ across societies, and such relativism threatens the ability to argue for a uniform Islamic bioethical framework. Moreover, it raises the question as to whether the hierarchy must be reconfigured based on the society within which a particular bioethical matter is being evaluated. Greater details on hierarchies to be used for, and how they are to be maintained during, bioethical deliberation is needed before the authors' model can be implemented.

## Final Remarks

Islamic bioethics as a field and a discipline is still developing. Many different experts are involved in demarcating the "Islamic" content of the field and in establishing the reasoning processes it should employ. Some theoreticians advocate for Islamic bioethics to be rooted in the maqāṣid al-Sharīʿah, where the maqāṣid provide moral ends for biomedicine. Some also argue that since the maqāṣid represent human interests legitimated by divine intent in protecting them, the maqāṣid also provide a vision of human health that Islamic ethics should aim for. However, before constructing an Islamic bioethics based on the maqāṣid al-Sharīʿah, it is necessary to clarify how the maqāṣid are to be identified for bioethical purposes, to delineate how the maqāṣid are to be balanced when they conflict in a given case, to determine how they should be specified to cases, and also to describe how they should be adapted for use in different societies.

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