Editorial Note

On May 2-5, 2021, as the world stood humbled by COVID-19—the smallest of God's creation that has humbled the mightiest—over a dozen Muslim scholars spent a portion of the Blessed Days of Ramadan in a virtual AJIS symposium. The meeting, titled "Theory and Uses of *Maqāṣid al-Sharīʿa*" was inaugurated by a keynote address by the senior contemporary Muslim jurist and leading commentator on the *Maqāṣid* discourse, Dr. Mohammad Hashim Kamali. That thoughtful presentation is being reproduced here as a fitting introduction to this collection of articles. In this brief introductory note, I provide a summary of the presentations in the symposium before turning the reader over to our learned jurist's critical appraisal of where the *maqāṣid* discourse stands today.

Starting with the familiar history of the *maqāṣid* (wise purposes or objectives) of Islamic law, Dr. Kamali laments the prolonged marginalization of *maqāṣid* by the premodern *uṣūl al-fiqh* and hails the recent revival of the discourse in the latter part of the twentieth century. He suggests that the discourse was revived, not invented, because its intimations could be found in Islamic scripture and the early practice. Instead of trying to rationally understand what the law is trying to do, classical jurists developed a sophisticated discourse on what the divine law is, how to derive it from the divine sources, and how to manage mutual disagreements in a discourse that came to be known as the *uṣūl al-fiqh*. He reflects on how classical field of *uṣūl* relates to the modern *maqāṣid*. Are the two complementary, or does the new discourse need to free itself from the shackles of the old?

The most interesting part of Dr. Kamali's essay may be the final observations, where the confidence and exhortation of the first part gives

way to some misgivings, which were given even clearer expression in the question-and-answer session that followed his delivered remarks. Dr. Kamali's actionable recommendations that follow at the end paint the picture of a discourse that needs to rein in its "arbitrariness", that suffers from frequent and imprecise overuse, and that is in tension with the classical legal tradition of *uṣūl*. Despite the generally sanguine and compassionate tone with which Dr. Kamali presents and critiques the present state of the field, it is clear that he too agrees with the many less charitable critics of the *maqāṣid* discourse, namely that it has failed to mature in crucial ways. The case studies he cites do not inspire much confidence.

In one of the exemplary cases he offers, the *maqāṣid*-friendly jurist Shaykh Yusuf al-Qaradawi favors reversing the classically agreed-on norm that Muslim and non-Muslim do not mutually inherit (that is, under the agreed-on rule, they would lose their inheritance share from a non-Muslim relative were they to convert). The "objective" al-Qaradawi offers as rationale for his intervention is incentivizing conversion to Islam of someone who stands to inherit from their non-Muslim relative. But, to be clear, the prohibition on the Muslim inheriting from the non-Muslim does not destroy wealth, rather simply rearranges it; and one can easily imagine cases when it would be the prohibition that favors conversion to Islam (for instance, if the deceased relation were Muslim). The benefit of protecting wealth would be a more plausible rationale for this opinion if the inheritance were permitted only in one direction (to the benefit of Muslims), as Shaykh al-Qaradawi's second alternative ijtihad suggests.

But what exactly is the basis of this new opinion: *maqāṣid* or simply a reformist *uṣūl* that permits accepting existing minority opinions? If the *ijtihād* itself is based on preferring a minority opinion, as al-Qaradawi suggests, then it is not clear what role the *maqāṣid* play in effecting the legal change in question. Consider a purer use of the purpose-oriented law, one in which the existing scriptural norms are overturned by the force of the *maqāṣid*. Assuming that preservation of wealth is a valid purpose (whose wealth, *maqāṣid* discourse does not tell us), someone simply refusing to pay one's loans or other dues to non-Muslims would fulfil this purpose in

the same way. But such a reasoning would count as simply fraud or theft under old Islamic law. If the *maqāṣid* discourse is interested in overturning inconvenient scriptural norms for supposed scriptural purposes, how far is it willing to go? Our admittedly rudimentary investigation suggests that, far from giving a convincing instance when the *maqāṣid* method can be fruitfully used, this case instantiates what critics might call a casual disregard for both scriptural texts and the classical legal norms, and indeed leaves one to wonder how to reliably and objectively differentiate good purposive reasoning from crass utilitarianism. As this very example illustrates, the problem might not be with the idea of purposes in the law but the result-oriented way in which it is at times applied.

The papers presented in the symposium furthered some of the recommendations and critiques that Dr. Kamali intimated. Dr. Aasim Padela's "Maqāṣidī Models for an 'Islamic' Medical Ethics: Problem-Solving or Confusing at the Bedside?" brought the author's extensive engagement with the *maqāṣid*-based approaches to bear on the questions he confronts as a Muslim physician and bioethics scholar. Dr. Thahir Jamal Kiliyamannil explored the deployment of the *maqāṣid* discourse by India's Islamic movements. Dr. Sami al-Daghistani suggested how the discourse on Islamic economics might benefit from an ethical, Ghazalian Sufi perspective. David Drennan focused on the intellectual life of the great pioneering text on the *maqāṣid*, Imam al-Shatibi's *al-Muwāfaqāt*, by tracing out Mauritanian commentaries on the text at the turn of the twentieth century—thus challenging the notion that the text or the *maqāṣid* discourse it inaugurated remained forgotten until contemporary reformists brought it to light. Sh. Ahmed Khater's presentation proposed that Ibn Taymiyya already employed a notion of *maqāṣid* in his own way, which may explain his departure from the dominant strains in the four jurisprudential schools on certain issues. Mohammad Mehdi Ali offered a philosophical critique of the *maqāṣid* discourse by deploying American legal philosopher Ronald Dworkin's concept of law as integrity, rather than a pragmatic instrument, as modern advocates of *maqāṣid* seem to presuppose. All of these thoughtful papers, although not yet ready for publication, added much depth to the symposium and generated earnest commentary and discussion.

Included in this issue are three papers from the symposium. The first is Dr. Yomna Helmy's paper "From Islamic Modernism to Theorizing Authoritarianism," which probes how the *maqāṣid* discourse, developed by Islamic reformists and modernists, has been deployed against its grain to bolster authoritarianism and sabotage the purposes of the law. The crucial observation in her paper is the distinction between the "objectives" or wise purposes of the law and the result-oriented, self-serving fashion by which it has been put to use by the spokespersons for authoritarian agendas in the Middle East.

The second article is Dr. Youcef Soufi's "Before Maqāṣid: Recovering the Contested Vision of Benefit (*maṣlaḥa*) in Islamic Law," which explores the discourse on human benefit (*maṣlaḥa*) within the classical Shafi'i school and demonstrates how it already played a central role in the interpretation of scripture. It thus offers an alternative to more recent but perhaps hasty approaches to *maqāṣid*, an alternative that not only has a deep pedigree within the Islamic tradition but that also promotes the democratization of discussions over the benefits of the law.

The third article, which nicely complements the other two, is Rezart Beka's "Maqāṣid and the Renewal of Uṣūl al-Fiqh in Abdallah Bin Bayyah's Discourse." This article meticulously presents one contemporary scholar's attempt to trace the genealogy of the *maqāṣid*. In the process, it uncovers the deep conceptual anachronisms and intellectual moves that enable the "result-oriented" jurisprudence diagnosed in Helmy's paper, and the absence of the democratization hoped for in Soufi's.

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