



Session 4: Islamic Law & Bioethics Summary

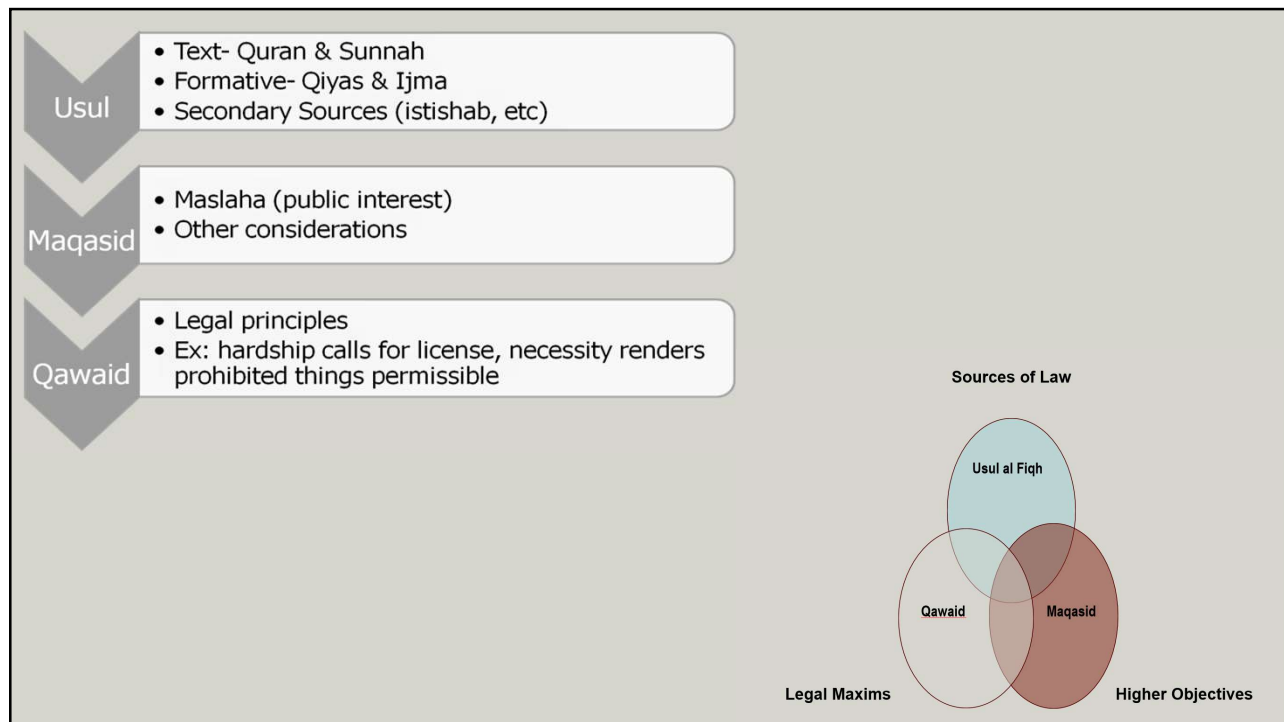


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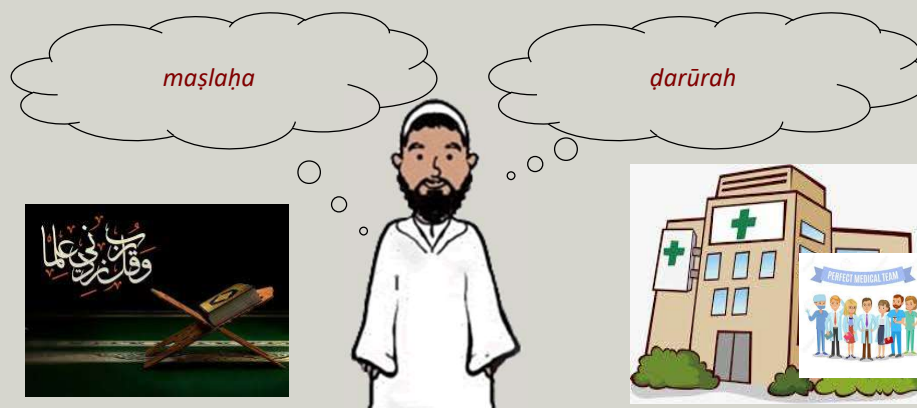
Focus Questions

- What is Islamic law?
 - An approximation of Divine will regarding human actions and affairs
 - Musawwiba and Mukhattia
- What is the role of the jurist?
 - Mediate between texts and contexts
 - Exert reasoning and effort to discern Divine will
 - Communicate Islamic morality to polity
 - Remove sin
- How do *qawā'id*, *maqāṣid*, *usūl* relate?
 - Probative Insights into Islamic morality





Juridical Imaginary & Biomedical Realities



Sources of Debate:

- Preconceived Notions of Biomedicine Bias Assessments
- Are benefits scripturally-bounded?
- Is dire necessity purely subjective?



Maṣlaḥa

- Literally “benefit” or “interest”
- Theological significance
 - Represents ultimate end of moral law
 - removing harms +/- procuring benefits for humankind (in this world and hereafter) [Tufi, Ghazali, al-Izz]
- Categorizations in ethico-legal theory
 - Source:
 - *Mursala* = unrestricted, extra-textual, rationally-derived
 - *Mu'tabarah* = scripturally-based
 - *Malghā* = nullified/rejected by scripture
 - Importance:
 - *Ḍarūrī* = essential; necessary
 - *Hajī* = need
 - *Taḥsīnī* = enhancing

Maṣlaḥa

- Function in Islamic law
 - Use in analogical extension of rulings (*qiyās*)
 - When scripture is not univocal or is silent, grounding for law
 - Overturn textually-derived rulings if found to harm interests (**debated**)

ḍarūra

- Lexically related to harms (*ḍarar*)
- Theological significance
 - Non-normative, undesirable state (Q 22:78; 16:115)
- Within ethico-legal theory
 - Function
 - Used to allow for contingent permissibility when literal application of normative ruling leads to hardships
 - Ideally is a motive force for social change

NOTIONS OF NECESSITY

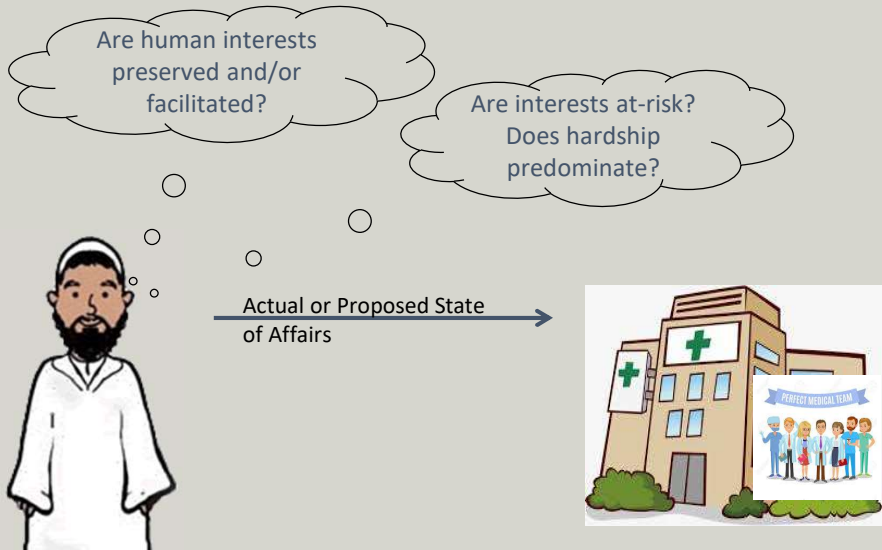
- Ethico-legal construct
 - Moral valuation of a social (biomedical) reality
 - If X then Y; but X is “fuzzy”
- Ethico-legal maxim: *al-ḍarūrāt tubīḥu al-maḥẓurāt*
 - “Circumstances of necessity make the unlawful lawful”
 - Can overturn a normative prohibition when:
 - Classical jurists: there is a life threat
 - Contemporary scholars: *maqāsid* of Islamic law are threatened
 - Varied application in law
 - Subjective – personally assessed
 - Deliberative – constellation of societal concerns

MAQĀṢID AL-SHARĪ'AH FRAMEWORKS LINK BENEFITS & NECESSITIES

- Refer to
 - “Uṣul al-dīn wa qawā'id al-sharī'ah wa kulliyāt al-millāh”
 - Frameworks for delineating moral norms, human interests, ethics and law based on these objectives (*naẓariyyāt; 'ilm al-maqāṣid*)
- Can signify multiple overlapping constructs based on context
 - The Lawgiver's intents/wisdoms behind rulings (*ḥikmah*)
 - A specific *ratio legis* ('illah) behind a set of laws
 - Human interests (*maṣālih*) that the Lawgiver affirms and thus the law serves
- Illustration: Shortening prayer during travel
 - 'illah = being on travel (trigger condition allowing for juristic analogy)
 - Human interest/benefit (*maṣālih*) = Worship is facilitated
 - Divine wisdom (*ḥikmah*) = Remove hardships
 - Overarching objective (*maqṣid*) = Preserve/establish religion

al-Shāṭibī's Maqāṣid

- The essential (*Darūrī*) *maqāṣid* are
 - The preservation of religion (*dīn*), human life (*nafs*), progeny (*naṣl*), material wealth (*māl*), and intellect ('*aql*)
 - R>L> rest
 - If these are assuredly at-risk; *al-darūraṭ tubiḥu al-maḥzūrāt* can be invoked
- Secondary objectives (*ḥajī & taḥsīnī*) can be
 - Inferred because they “are carried with the primary explicit ones whenever they strengthen, reinforce and support”
 - Determined by reasoning about benefits/harms ~ *maṣlahah mursalah*




Are human interests preserved and/or facilitated?

Are interests at-risk? Does hardship predominate?

Actual or Proposed State of Affairs

To accurately answer these questions:

- Data from both scripture and society are needed
- Presential and attained knowledge need to come together



Insights into the Materials: Islamic Law in Islamic Bioethics Discourse

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- Sachedina, A. *No Harm, No Harassment: Major Principles of Health Care Ethics in Islam*. Religion and Ethical Praxis. 2006; 265-289.
- Padela, A., 2022. *Maqasidi Models for an "Islamic" Medical Ethics: Problem-Solving or Confusing at the Bedside?* American Journal of Islam and Society, 39(1-2), 72–114.
- Qureshi, J. *The Tools of the Islamic Ethico-Legal Tradition*. Interfaces and Discourses: A Multidisciplinary Conference on Islamic Theology, Law and Biomedicine. April 16, 2016. Chicago, IL

