

# Before *Maqāṣid*: Uncovering the Vision of Contested Benefits (*maṣāliḥ*) in the Classical Shafi'i School

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## Abstract

This article provides a sketch of the historical antecedent to the 11<sup>th</sup> century theory of *maqāṣid al-sharī'a* (the purposes of the law). I examine the role of human benefit (*maṣlaḥa*) within the classical Shafi'i school, focusing on the 10<sup>th</sup> and 11<sup>th</sup> centuries. I show that Shafi'i law gave consideration of benefit a central role in the interpretation of scripture. This is attested to in both texts of legal theory (*uṣūl al-fiqh*) and substantive law (*furū'*

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Soufi, Youcef. 2021. "Before *Maqāṣid*: Uncovering the Vision of Contested Benefits (*maṣāliḥ*) in the Classical Shafi'i School" *American Journal of Islam and Society* 38, nos. 3-4: 71–102 • doi: 10.35632/ajis.v38i3-4.2990

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*al-fiqh*). Importantly, I also explain how Shafi‘is subjected their claims about benefit to contestation and debate, acknowledging the limits to humans’ ability to apprehend God’s law. In presenting this classical model of benefit in the Shafi‘i school, the essay offers an alternative for reformists who invoke the *maqāṣid al-sharī‘a* today—an alternative that has a deep pedigree within the Islamic tradition and promotes the democratization of debate over the benefits of the law.

## Introduction

The importance of *maqāṣid al-sharī‘a* to Islamic reformist thought is significant.<sup>1</sup> For many reformers, the idea that Islamic law serves foundational ends (like the protection of life, property, religion, lineage, and reason) holds the promise of correcting premodern laws by providing a touchstone from which to judge the validity of all legislation. However, invoking *maqāṣid* has two acknowledged limitations. The first is the *maqāṣid*’s peripheral importance to the discourse of substantive law (*furū‘ al-fiqh*).<sup>2</sup> Al-Ghazali (d. 505/1111) articulated the first version of the *maqāṣid al-sharī‘a* in the late 11<sup>th</sup>/early 12<sup>th</sup> century, long after classical jurists had produced texts addressing standard substantive legal matters.<sup>3</sup> This peripheral status opens reformists up to a critique of failed faithfulness to the legal tradition. The second limitation is the lack of mechanisms in adjudicating conflicting interpretations about the *maqāṣid*.<sup>4</sup> As a consequence of this lack, the *maqāṣid* theory facilitates an authoritarian resolution to legal interpretation where one reading of the *maqāṣid* is given primacy over another. But what if the reformers are looking for tools in the wrong period of Islamic history? What if the classical period in the two centuries prior to al-Ghazali’s formulation of the *maqāṣid* offered them what they needed to rethink the law in ways that do justice to their sensibilities about a merciful God, while overcoming the two critiques I have outlined above?

In this article, I examine the role that human benefit played within the legal thought of the Shafi‘i school in the classical period, particularly the 10<sup>th</sup> and 11<sup>th</sup> centuries CE.<sup>5</sup> I purposely focus on the Shafi‘i

school because Shafi'is have long been considered champions of textual authority over the pragmatic approaches of their predecessors in Iraq and Medina<sup>6</sup>—a view which I seek to complicate. My strategy is to examine texts both of legal theory (*uṣūl al-fiqh*) and substantive law (*furū' al-fiqh*). I make three claims. First, I argue that Shafi'is had a pluralistic view of human benefits which they sought to uncover through engagement with scripture. Second, these human benefits determined how Shafi'is applied the law. And third, Shafi'is saw these benefits as objects of ongoing debate. These debates took place through the medium of books and disputations (*munāzarāt*) between jurists. Thus, the Shafi'is considered that the identification of human benefit should always be provisional and open to critique. Uncovering what I call the “classical model of contestation” over human benefits within the classical Shafi'i school provides contemporary reformers with an alternative approach to the *maqāsid*, one that demands that claims about “benefits” or “objectives” of the law be open to ongoing scrutiny.

To expand upon the classical Shafi'i understanding of benefit, the article is divided into three sections. The first section examines two texts of *uṣūl al-fiqh* to show the distinction between the Ash'ari-Shafi'i and Iraqi Shafi'i understandings of benefit. By focusing on Abu al-Ma'ali al-Juwayni's (d. 478/1085) *al-Burhān fī uṣūl al-fiqh*, I show how the Ash'ari-Shafi'is made the concept of *maṣlaḥa* (benefit) central to their method of deriving legal positions.<sup>7</sup> In contrast, I show that the Iraqi Shafi'is, exemplified in Abu Ishaq al-Shirazi's (d. 476/1083) *Sharḥ al-Luma'*, gave greater preference to a linguistic analysis of scripture and to identifying consistency across similar cases in their legal determinations. Despite these different emphases, the Iraqi Shafi'is agreed with their Ash'ari-Shafi'i counterparts that benefit could be identified in many of the law's causes of legislation (*'ilal*). In section two, I turn to examining Shafi'i substantive law by focusing on the example of the dispensation from facing the *qibla* (prayer direction) during travel.<sup>8</sup> The analysis reveals that Shafi'is made wide use of the benefits they identified in scriptural injunctions to properly apply the law.<sup>9</sup> The third section moves beyond the Shafi'i school to examining juristic debates about the necessity of guardianship in marriage. What the section reveals

is that jurists of all schools clashed over the function of guardianship and subjected their claims to ongoing critique.<sup>10</sup> Thus, this third section exemplifies the “critical search” for benefit in the classical legal schools, providing reformers with a model for the present.

## Human Benefit in 10<sup>th</sup>-11<sup>th</sup> Century Shafi‘i Legal Theory

In this section, I examine al-Juwayni’s *Burhān* and al-Shirazi’s *Sharḥ al-Luma’* in order to show two competing understandings of benefit within Shafi‘i legal theory of the 10<sup>th</sup> and 11<sup>th</sup> centuries. Al-Juwayni’s *Burhān* is a mid- to late-11<sup>th</sup> century text of *uṣūl al-fiqh* that belongs to the Ash‘ari-Shafi‘i tradition. Prior to al-Juwayni, the foremost theorists within this tradition were Abu Ishaq al-Isfarayini (d. 418/1027) and Ibn Furak (d. 406/1015-6).<sup>11</sup> Both al-Isfarayini and Ibn Furak were trained in Shafi‘i substantive law in Iraq. Yet both men also became experts in Ash‘ari *kalām* (theology) under the guidance of their master Abu al-Hasan al-Bahili.<sup>12</sup> The men’s Ash‘arism influenced their *uṣūl al-fiqh* positions. Al-Ash‘ari himself had delved into some questions of *uṣūl al-fiqh*, including for instance the question of whether there is a particular linguistic form in the Arabic language to express a command.<sup>13</sup> But for the most part, it was Abu Bakr al-Baqillani (d. 403/1013), a Maliki jurist, who had developed Ash‘ari thought into a full-blown theory of *uṣūl al-fiqh*. For this reason, al-Baqillani is often referred to by the simple shorthand “*al-Qāḍī*” in the *Burhān*.<sup>14</sup> In general, these Ash‘ari-Shafi‘is were confronted with the need to harmonize the *uṣūl al-fiqh* positions of al-Baqillani with those of the Shafi‘i school, whose elaboration had begun with al-Shafi‘i’s *Risāla* and continued with Ibn Surayj’s learning circle in Iraq.<sup>15</sup> Sometimes these Ash‘ari-Shafi‘is encountered tensions between the two streams of thought. This tension is present within the *Burhān*. ‘Abd al-‘Azim al-Dīb, who edited the *Burhān*, provides a list of instances where al-Juwayni departs from al-Shafi‘i’s positions and a list of instances where he departs from the positions of al-Ash‘ari and al-Baqillani.<sup>16</sup> However, it is well to note that al-Juwayni sometimes struck a path independently of both thinkers: Taj al-Din al-Subki found the *Burhān* remarkable precisely because of its author’s independent

thought.<sup>17</sup> The 10<sup>th</sup>- and 11<sup>th</sup>- century Ash‘ari-Shafi‘i stream of *uṣūl al-fiqh* would in turn have a great influence on subsequent Shafi‘i authors of *uṣūl al-fiqh*, such as Abu Hamid al-Ghazali, Fakhr al-Din al-Razi (d. 606/1209), and Sayf al-Din al-Amidi (d. 631/1233). Al-Juwayni ascribes to his predecessors among the Ash‘ari *uṣūlīs* (writers of *uṣūl al-fiqh*), which he designates as *al-muḥaqqiqūn* (the verifiers),<sup>18</sup> the theory of benefit (*maṣlaḥa*) that concerns us here.

Al-Juwayni presents the Ash‘ari-Shafi‘i theory of benefit in greatest detail in his section on *qiyās* (analogical reasoning).<sup>19</sup> In particular, al-Juwayni ascribes to al-Isfarayini the view that a valid legal cause (‘*illa*) must bring about a benefit (*maṣlaḥa*).<sup>20</sup> Thus, when a jurist is to perform an analogy, he is to examine the law of the original case (*al-aṣl*) and identify what benefit this law serves. If he cannot find a benefit, then he must abstain from effectuating an analogical argument (*qiyās*). Al-Juwayni grounds his theory of benefit in the practice of the early Muslim community. He responds to a hypothetical interlocutor who questions this method, stating that “since the Lawgiver (*al-Shāri‘*) does not bind His law to each and every benefit [that humans can rationally identify], and narrators of the past do not identify the specific presumptive evidence upon which the companions relied,” then how can he rely upon the method of identifying benefit? Al-Juwayni answers by stating that, “In the times of long ago and the eras that followed them, they did not limit themselves to specified ways [of determining benefit], rather they reasoned independently in the manner of one who sees no end to independent opinion (*istarsala istirsāl man lā yarā li-wujūh al-ra’y intihā*), and they saw the ways of reasoning [on benefits] to be without end...when there was a lack of textuality.”<sup>21</sup> Two points are of prime importance already. First, according to this theory, the Lawgiver (i.e., God, but often through the medium of His Prophet) does not always make the benefits of his law explicit. Rather, human beings must find them using their reason. Second, this theory of benefit imagines that there are innumerable human benefits that the law serves which further encourages jurists to explore new benefits that their predecessors have yet to identify.

While al-Juwayni focuses his discussion of benefit in the section on *qiyās*, I would argue that the notion of benefit is central to his thinking on the law more generally. For one, it appears in other sections of the

*Burhān*. Thus, al-Juwayni invokes the notion of benefit in relation to the *a contrario* (*dalīl al-khiṭāb*) argument.<sup>22</sup> The *a contrario* argument was commonly tackled in books of *uṣūl al-fiqh*. The argument implies that a statement about a group necessitates the contrary for the opposite group. For instance, if the Prophet stated that *zakāt* is owed on pasture grazing sheep, then it follows that no *zakāt* is owed upon the non-pasture grazing, or stable fed, sheep. The *a contrario* argument was controversial with some jurists for both theological and logical reasons.<sup>23</sup> However, al-Juwayni considers an *a contrario* argument as valid on condition that the jurist's conclusion leads to a benefit. If, however, the ruling does not produce a benefit, then al-Juwayni rejects the argument. The notion of benefit also appears in discussing laws for which no textual basis exists (*maṣlaḥa mursala*).<sup>24</sup>

Further, the importance of benefit to al-Juwayni's reasoning on the law is evident in his scriptural hermeneutics. On the surface, al-Juwayni abides by what had become a standard Shafi'i method of interpreting scripture by dividing an utterance into categories of relative ambiguity. For instance, the meaning of an utterance can be evident or perspicuous to an Arabic speaker (a category of textual clarity referred to as *naṣṣ*).<sup>25</sup> The view that utterances can be perspicuous depends on the further assumption that words have standard meanings. These meanings can be the product of three different histories: 1) a word's original use (*al-waḍ'*);<sup>26</sup> 2) a word's changed meaning over time (*al-'urf*); or 3) a word's technical meaning within scripture (*al-shar'*). While a scriptural source that is *naṣṣ* should not be subject to further discussion, al-Juwayni himself recognizes that most of the law is not perspicuous.<sup>27</sup> Texts often fall within the category of *zāhir* (possessing an "apparent" meaning), in which a *prima facie* meaning could be abandoned upon closer contextual examination. But what should a jurist assume is the right context of interpretation for the Lawgiver's utterances? It is here that al-Juwayni's appeal to benefit matters to textual hermeneutics. If the Lawgiver links rulings to causes that are beneficial to humans, then benefit is one of the proper contexts through which to understand scripture. We can see that al-Juwayni interprets scripture through the lens of benefit in a famous disputation that took place in 1083 in Nishapur between him and

al-Shirazi on the permissibility of forced marriage.<sup>28</sup> In the disputation, al-Juwayni interprets a *ḥadīth* through the lens of *maṣlaḥa*. He rejects his opponent's interpretation of the *ḥadīth* as legitimating the forced marriage of virgin women because he claims that the Prophet's mention of virginity is not a suitable cause, i.e., it produces no benefit for the bride or her family.<sup>29</sup> The disputation is telling of al-Juwayni's view of benefit as the correct lens through which to derive legal opinions more generally.

Al-Juwayni's legal method fits with his Ash'ari theological commitments. The Ash'aris had long argued against the Mu'tazila position that God is constrained to make rules based on an objectively rational view of good and bad (*al-ḥusn wa'l-qubḥ*).<sup>30</sup> Against the Mu'tazila, al-Juwayni argues that right and wrong are culturally relative and that God's omnipotence means that He can impose upon humans any rule He wants.<sup>31</sup> But as Anver Emon has shown, the Ash'aris nonetheless thought that God's *faḍl* (kindness or grace) had created a law that was good for His human creation.<sup>32</sup> We should thus read al-Juwayni's commitment to finding benefit in scripture as part of a more general understanding of divine law.

Before turning to the Iraqi Shafi'is' theory of *uṣūl al-fiqh*, there is a final point in al-Juwayni's exposition that merits attention. Al-Juwayni states that the jurist should not necessarily adopt the first benefit that comes to mind when seeking the legal cause for a law. Instead, the jurist must subject the benefit he identifies to possible impediments (*'awāriḍ*) or invalidators (*mubṭilāt*) that reveal that a purported legal cause is mistaken.<sup>33</sup> Al-Juwayni, like other jurists, had developed a host of technical arguments that could discredit a possible legal cause (*'illa*). For instance, a jurist might critique the presumed legal ruling (*ḥukm*) of a jurist (*man 'al-ḥukm fī al-aṣl*).<sup>34</sup> Alternatively, he might find a counter-example where the ruling is present but where the presumed legal cause is absent, showing that the ruling is not the product of the legal cause (*wujūd al-ḥukm ma'a 'adam al-'illa* or *'adam al-ta'thīr*). Alternatively, he might find that the purported legal cause is present in another case but leads to a different ruling (*wujūd al-'illa ma'a 'adam al-ḥukm* or *al-naqḍ*).<sup>35</sup> A jurist could use these potential invalidators of a legal cause monologically, by thinking up potential problems with it. But he could also do so dialogically with other jurists. Indeed, al-Juwayni also calls these invalidators

objections (*i'tirādāt*), which gestures towards their use by fellow jurists.<sup>36</sup> Jurists' objections to a purported legal cause were typically levelled in disputations.<sup>37</sup>

According to al-Juwayni's student, al-Ghazali, disputations were primarily a means to perform *ijtihād*.<sup>38</sup> Al-Ghazali affirmed two instances in which disputations were obligatory for a jurist tackling questions of controversy (*masā'il al-khilāf*). The first was when a jurist was on the fence about the merits of legal evidence.<sup>39</sup> The disputation became a means to test this evidence. The second was to ensure that there did not exist definitive evidence like a perspicuous text that would make it sinful for the jurist to hold on to a divergent opinion.<sup>40</sup> Critique would reveal whether there was truly definitive evidence for a given question (*mas'ala*). But al-Ghazali also considered numerous reasons why disputations were recommended for a jurist. Included among these reasons was the ability of disputations to allow a jurist to accede to a better position. More generally, al-Ghazali saw the disputation as a recommended means of training a jurist to think more effectively on the law. Al-Ghazali was far from the only jurist of the classical era to see the disputation as an indispensable part of juristic *ijtihād*. Al-Khatib al-Baghdadi states that "the purpose of disputation and debate is to search the truth (*talb al-ḥaqq*)" of God's law.<sup>41</sup> In his summary of al-Baqillani's legal theory, al-Juwayni himself turned to explaining some of the benefits of disputation, which overlapped with those of al-Ghazali;<sup>42</sup> and in his text of *jadāl* (dialectic), *al-Kāfiya*, al-Juwayni affirms that disputation is among the most important of obligations because it helps a fellow jurist turn away from falsehood towards the truth.<sup>43</sup> For this reason, the *Kāfiya* gives sustained attention to the objections against a legal cause.<sup>44</sup> Thus, we should read al-Juwayni's statement about subjecting legal causes to impediments and invalidators by reference to a historical context in which disputations were a standard means of evaluating the evidentiary basis of the law. In other words, further scrutiny, often through critique, was as important to the identification of a legal cause as considerations of benefit.

In sum, the Ash'ari-Shafi'i legal theory saw much of God's law as the product of a multiplicity of benefits whose confirmation depended

on further investigation. On the surface, this view of benefit appears greatly opposed to Iraqi Shafi'i legal theory. Taking al-Shirazi's *Sharḥ al-Luma'* as exemplary of Iraqi Shafi'ism, we can see that Iraqi Shafi'is were cautious about incorporating Ash'ari theology within their legal theory.<sup>45</sup> Instead of deference to Abu Ishaq al-Isfarayini, al-Shirazi shows fidelity to the theoretical positions that Ibn Surayj and his students had developed in Baghdad and neighboring cities from the late ninth century onwards.<sup>46</sup> Although we lack many of the texts that Iraqi Shafi'is composed, this cohort appears to have been less committed to making *maṣlaḥa* a condition for a suitable legal cause.<sup>47</sup> For instance, al-Shirazi's section on *qiyās* identifies several methods of identifying an legal cause (*'illa*), none of which depend upon benefit.<sup>48</sup> Rather, al-Shirazi considers that a jurist should seek out the causes for the law through scriptural sources that either explicitly mention them, with words like "because" (*li*) following an injunction, or else implicitly gesture towards them, for instance by including an attribute (*ṣifa*) that serves to single out the cause of the law.<sup>49</sup> If the jurist cannot find a cause in scripture, then al-Shirazi provides him with one of two means of extracting the cause of a case. First, he can seek to identify an instance where the law is in effect and an analogous instance where the law is not, thus permitting him to identify the variable that is responsible for the law (an operation known as *al-ta'thīr*). For example, the permissibility of grape juice suggests that intoxication is the relevant variable accounting for wine's prohibition.<sup>50</sup> Subsumed under this approach is the process of juristic elimination, *al-taqṣīm*, in which the jurist goes through all the possible variables that could be the cause for a law and eliminates them until only one is left.<sup>51</sup> Second, the jurist can survey several other cases where the same variables are present to determine if one of these variables is associated with the same law.<sup>52</sup> This amounts to an inductive examination of the law (*shahādat al-uṣūl*) to isolate legal causes. But the clearest indication that al-Shirazi rejects incorporating benefit as a means to derive the law is his statement against an anonymous detractor who claims that disputations seek to find *al-aṣḥaḥ* (the most beneficial position). Al-Shirazi responds, "The most beneficial in regards to welfare (*manfa'a*) has no relation to the apprehension of legal proofs of the law (*adillat al-shar'*)."<sup>53</sup> Mariam

Sheibani usefully sums up the *prima facie* position of the Iraqi Shafi‘is, writing that “the anecdotal evidence indicates a strong antipathy towards embedding legal theory in Ash‘arī theology, and more general misgivings about rational theology more broadly.”<sup>54</sup>

However, a closer examination of al-Shirazi’s legal theory indicates that human benefit is inextricable from God’s law.<sup>55</sup> Al-Shirazi states that legal causes are of two types. First, there are legal causes in which the jurist understands the reason for the law (*wajh al-ḥukm*). Al-Shirazi then states: “this is like our saying ‘wine is prohibited because of intoxication (*al-shidda al-muṭriba*)’... we know that intoxication is the cause of the prohibition of wine because it leads to corrupt behavior (*al-fasād*), the abandonment of prayer, and the loss of wealth and life.”<sup>56</sup> In contrast, the second type of legal causes comprises those for which the jurist does not understand the reason for legislation. The example that al-Shirazi gives is that of the impermissibility of usury on wheat, whose legal cause is wheat’s status as an edible (*maṭ‘ūm*). In al-Shirazi’s estimation, God has “hidden [the reason why foodstuff is subject to anti-usury laws] within his knowledge (*ista’tharahu fī ‘ilmihī*).”<sup>57</sup> This division between two types of legal causes shows that al-Shirazi sees some laws as based on rationally recognizable benefits.<sup>58</sup>

Thus, a careful comparison between al-Juwayni and al-Shirazi reveals differences and similarities. First, al-Juwayni posits benefit as a means for the identification of legal causes. In contrast, al-Shirazi uses other means (i.e. a linguistic analysis of scripture, the isolation of possible variables, and an inductive study of the law) to identify legal causes.<sup>59</sup> Nonetheless, both men also understand the law as an interplay between fidelity to scripture and a rational search for human benefit. Both accept that an unambiguous text should be followed even if the benefit is not immediately decipherable. And both consider that benefits inherent in God’s laws often reveal themselves through engagement with scripture. Lastly, we might note that al-Shirazi as much as al-Juwayni gave great importance to subjecting a purported legal cause to critique, dedicating a section of the *Sharḥ* to ten means of showing a legal cause’s incorrectness (*fasād al-‘illa*), and providing an analogous treatment within his book of dialectic, *al-Mulakhkhaṣ fī al-ḥadal*.<sup>60</sup> The two jurists were therefore

part of a culture that subjected legal causes to ongoing contestation. The overlap between the Iraqi and Ash‘ari-Shafi‘i view of benefit in text of legal theory had significant consequences for Shafi‘i substantive law in the 10<sup>th</sup> and 11<sup>th</sup> centuries. As we shall see in the next section, Ash‘ari-Shafi‘is and Iraqi Shafi‘is approached benefit similarly in their substantive legal reasoning.

Before moving to the next section, it is well to ask in what ways the foregoing review of Shafi‘i legal theory provides us with a different model than that of the *maqāshid*. To start, we can agree with Mohammad Hashim Kamali that the model of *uṣūl al-fiqh* and that of the *maqāshid* both lead to similar regard to human benefit. As Kamali notes, the difference between the two is procedural.<sup>61</sup> Whereas the *maqāshid* begins by insisting on protecting or securing a benefit, the 10<sup>th</sup>- and 11<sup>th</sup>-century Shafi‘i model insists on fidelity to textuality first, and then demands that jurists seek out the benefit inherent in the command.<sup>62</sup> But there are also two points of departure already apparent between this model and the approach of the *maqāshid*. The first is the emphasis on the *search* for human benefits. In this model, there is no attempt to pin down a list of objectives or ends that the law serves because the jurists are continually discovering the benefits of God’s law through engagement with the text. The second is the need for communal critique over these purported benefits. The identification of a benefit for the Shafi‘is is not enough to secure that benefit’s validity; a jurist must allow his legal cause to be subject to objections (*i‘tirādāt*). In short, the model of the classical tradition demands a “critical search” for benefit in the process of uncovering God’s law. The next section shows how this search shaped Shafi‘i substantive legal interpretation. I leave the matter of critique to the third and final section of the article.

## The Search for Benefit in Substantive Law: The Case of the *Qibla* in Times of Travel

The standard narrative of Islamic legal history might make us skeptical that Shafi‘i substantive law in the 10<sup>th</sup> and 11<sup>th</sup> centuries actually paid mind to human benefit, regardless of what we find in books of legal

theory. The Shafi‘is have long been seen as the paradigmatic textualist school of law. This reputation is partly the result of their rejection of “juristic preference (*istiḥsān*)” and the “practice of the people of Medina (*‘amal ahl al-Madīna*)”—mechanisms associated primarily with the Hanafis and the Malikis. It is also partly an effect of the influence of al-Shafi‘i in strengthening the textual basis of the law across legal schools.<sup>63</sup> As Mohammad Fadel noted over two decades ago, it is a truism in the historiography that al-Shafi‘i is responsible for critiquing and pushing the pragmatic Medinan and Iraqi jurists to adopt methodologies that championed textual proofs for their legal positions.<sup>64</sup> At first blush, the insistence on the textual grounding of the law appears contrary to notions of human benefit. It is tantamount to saying that humans must follow whatever they find in the text rather than what is best for individual flourishing or social harmony. Yet, in line with the legal theories of al-Shirazi and al-Juwayni, the reality is that the focus on textuality did not obviate juristic attention to human benefit so much as displace it onto the text itself. What mattered to Shafi‘is was to understand why the lawgiver gave the rules that he did. In other words, textuality became the site in which the search for benefit took place. This, in turn, came to shape the application of the law.

We can see the attention to discovering human benefits in scriptural injunctions when we focus on actual debates of substantive law within the Shafi‘i school of the 10<sup>th</sup> and 11<sup>th</sup> centuries. The example that I examine is the debate over the abandonment of the *qibla* (the proper prayer direction, i.e. facing Mecca) in times of travel. The Shafi‘is had always affirmed that there are only two instances in which Muslims might pray in a direction other than the *qibla*. One of these instances is the optional prayers on a mount during travel (*al-nawāfil ‘alā al-rawāḥil*). An initial glance at any Shafi‘i law manual might mislead the researcher into thinking that the obligation is strictly rooted in textuality. Thus, Abu al-Tayyib al-Tabari (d. 450/1058), judge and head (*ra’īs*) of the Shafi‘is in Baghdad in the middle of the 11<sup>th</sup> century, grounds the dispensation from facing the *qibla* in the Qur’anic verse: “To God belongs the East and the West, so wherever you turn, there is the face of God” (2:215). Al-Tabari references Ibn ‘Umar who said that the verse “was revealed concerning the

optional prayer in travel, which is prayed wherever your camel turns.”<sup>65</sup> Al-Tabari then quotes a series of *ḥadīths*. Among them: “Ibn ‘Umar used to pray during travel upon a mount, saying that the Prophet did this”; ‘Abd Allah b. ‘Amir b. Rabi‘i’s father said that “he saw the Prophet pray upon a mount wherever it turned”; and “The Prophet used to pray on his mount towards the East, but if he wished to pray the obligatory prayers (*al-maktūba*), he descended and faced the *qibla*.”<sup>66</sup> In short, as we would expect, the Shafi‘i position rigorously depends on textuality.

But upon closer examination, one finds that the Shafi‘i position also depended upon what they understood to be the Lawgiver’s intended meaning (*ma‘nā*) behind his scriptural injunctions or his Prophet’s actions. Abu al-Hasan al-Mawardi (d. 450/1058), al-Tabari’s contemporary, writes in *al-Ḥāwī al-kabīr* that were a person prohibited from praying on a mount it would lead to one of two unfavorable outcomes: either an abandonment of prayer, which would negatively affect their devotion to God, or an abandonment of their travel, which would impact their worldly prosperity.<sup>67</sup> Similarly, al-Shirazi, who was al-Tabari’s star student, states that the function of the permission to pray away from the *qibla* is to permit people to travel (*lā yanqati‘ al-nās ‘an al-sayr*).<sup>68</sup> Later, al-Shirazi notes that the dispensation also allows people to fulfill righteous deeds (*ḥattā lā yanqati‘ ‘an al-ṣalat fī al-safar*). When we turn to al-Juwayni’s *Nihāyat al-maṭlab* we find that al-Juwayni expresses the same point of view: “Perhaps the intended meaning (*al-ma‘nā*) that legitimates the optional prayers on a mount is that people cannot do without travel and, since the successful one is avaricious with his time and does not spend it without thought, if we did not allow the optional prayers to be performed on a mount, people would either be cut off from their livelihood (*la-inqāṭa‘a al-nās ‘an ma‘ashihim*) or they would abandon their prayers if they gave preference to travel.” Al-Juwayni ascribes this same view to al-Qaffal al-Marwazi (d. 417/1026) and al-Qaffal’s teacher, Abu Zayd al-Marwazi (d. 372/982), both of whom are associated with the development of Shafi‘i substantive law in the North Eastern Persian province of Khurasan.<sup>69</sup> Across the different branches of the Shafi‘i school we see a concern with human benefit through balancing between individuals’ worldly prosperity and their spiritual growth. Importantly, nothing in the

textual evidence quoted above references spiritual and worldly ends as the legal cause for the abandonment of the *qibla*. At most, one would identify from the three quoted *ḥadīths* that the legal cause is travel. This suggests that Shafi‘is approached the text with an eye to the benefit it secured.

At first blush, we might wonder if the Shafi‘is were merely curious about the purpose behind God’s commands. Put otherwise, are the benefits they identified mere afterthoughts to satiate the mind rather than an intrinsic part of legal derivation? If so, then their exegesis about the reasons for abandoning the *qibla* would be irrelevant to the actual *fatwās* they gave to their lay Muslim petitioners. Yet, when we examine how jurists elaborated the law on the *qibla* to a variety of circumstances, it becomes evident that the benefit they identified determined the proper application of the law. In particular, we find that the extent to which a traveler experiences hardship (*mashaqqā*) determines how and when the Shafi‘is interpret the permission to pray away from the *qibla*. Thus, if a person is on a boat or on a mount that is large enough for her to turn towards the *qibla* “without any harm” to herself, she should do so.<sup>70</sup> For smaller mounts, the Shafi‘is likewise used the notion of harm to make distinctions between prayers performed while a person is moving (*sā‘ir<sup>an</sup>*) and those performed while she is standing still (*wāqif<sup>an</sup>*).<sup>71</sup> Thus if a worshipper seeks to pray while her mount is in motion, the Shafi‘is did not require the worshipper to face the *qibla* since this would disturb her travel. If, however, the person prayed while standing still, then they made a further distinction. If this worshipper is part of a caravan (*qitār*), then she should pray wherever she is facing because it would disturb the group, particularly if they sought to resume travelling during her prayer.<sup>72</sup> Likewise, if the person is alone but on an obstinate mount, then she should pray where she is facing. Only if the person is travelling alone with a mount that is pliable enough to move with ease should she worry about turning towards the *qibla*. Finally, the Shafi‘is also contended that a person walking should be able to pray in the direction of her travels, but she should turn her head towards the *qibla* when starting the prayer (*takbīrat al-iḥrām*), when bowing (*rukū‘*), and when prostrating (*sujūd*), because in none of these instances is it difficult for her to do so. In short, the application of the law could not be disconnected from the benefit it aimed to serve.

The Shafi'is argued against Malik, who contended that the dispensation from facing the *qibla* was only sanctioned for long travels.<sup>73</sup> Since the Shafi'is considered the material and spiritual benefit of abandoning the *qibla* to be present in short travels too, they permitted it. Likewise, benefit was the basis for disagreement on the application of the law within their own ranks. The Shafi'i Abu Sa'id al-Istakhri allowed those staying in their location of residence (*al-hādir*) to pray their optional prayers facing away from the *qibla*.<sup>74</sup> But most Shafi'is rejected al-Istakhri's position, feeling that it was undercut by the lack of precedent on the part of the Prophet combined with the relative ease of prayer while not travelling. Their invocation of both Prophetic practice and ease is telling of the Shafi'i attempts to stay true to the precedent laid out in text and to the benefit that they identified by engaging with the text.

There are four conclusions from the foregoing. First, we see that the Shafi'is read scripture through the prism of benefit. There is no significant difference in this regard between the Shafi'is of Iraq and the Ash'ari-Shafi'i position of al-Juwayni. Second, the Shafi'is used the identified benefit to determine the law's application in a variety of instances. Third, we see in debates with Malik and al-Istakhri that jurists argued over how this benefit can best be secured. Note that the example of the *qibla* pertains to ritual law. In theory, ritual law (*al-ibāda*) is that realm of Islamic law whose *raison d'être* is least amenable to human rationality, since jurists have often pointed to how its rules are seemingly arbitrary. For instance, there is no reason that the dawn prayer should consist of two cycles and the dusk prayer should be four. Yet the jurists did not shy away from identifying benefit even on matters of ritual law.

Of course, the case of the abandoned *qibla* in optional prayers on travel is but one example, and may appear limited in scope. Certainly, there are laws for which the Shafi'is did not provide a benefit. For instance, if Shafi'is believed that permitting one to provide an expiation before breaking an oath (*taqdīm al-kafāra 'alā al-hinth*) was beneficial to human beings, they did not share how in their books of substantive law.<sup>75</sup> Nonetheless, the commitment to identifying human benefits is rife throughout much of Shafi'i substantive law. For instance, al-Shirazi affirms that a wife who does not receive her entitled financial maintenance from her husband for three

days can demand the dissolution of her marriage (*al-khiyār*).<sup>76</sup> Al-Shirazi's position is based on his concern for the woman's physical needs, stating that the "body cannot survive" without the food and shelter owed to her.<sup>77</sup> Similarly, al-Shirazi affirms that a Muslim leader must undertake a minimum of one yearly military expedition on neighboring enemies to prevent foreign armies from "coveting Muslim lands."<sup>78</sup> And finally, Ibn Surayj considers that an intoxicated person's pronouncement of divorce or the manumission of a slave should be considered valid in order to discourage individuals from becoming intoxicated and performing harmful deeds.<sup>79</sup> In all these instances, different social and religious benefits constitute the prism through which the law is understood and applied. In the next section, I will examine a case that is controversial in modern times, with the hopes of showing how debate over the alleged benefits of the law was essential to the classical tradition. In doing so, I uncover in classical legal practice a model of legal engagement that affirms the need for continued contestation over human benefit.

## Contestation Over Purported Benefits: The Case of Marriage Guardianship

I have shown al-Juwayni and al-Shirazi's commitment to subjecting purported benefits to the objections of fellow jurists. My aim in this section is to examine through example how contestation over benefit took shape in the classical period. But before doing so, I wish to return to our earlier discussion on disputation. There, I highlighted that disputations played a central role in a jurist's process of *ijtihād*. Jurists employed the method of disputation (*munāzara*) to test each other's legal positions. I want to expand on this discussion here and to place particular emphasis on the role that epistemological uncertainty played in making critique a necessary feature of classical Islamic law. To begin, the practice of disputation emerged sometime in the mid- to late-8<sup>th</sup>-century Iraq and thus we have many reports of al-Shafi'i debating with the leading Hanafi scholar of the time, Muhammad b. Hasan al-Shaybani.<sup>80</sup> Reports also speak of al-Shafi'i's commitment to finding the truth through debate.<sup>81</sup> But by the early 10<sup>th</sup> century, the jurists spoke of the purpose of disputations through the

prism of their disagreements over juristic infallibility (*taṣwīb*).<sup>82</sup> Those that considered that God's law was to be found in one among the many contested positions of jurists (*al-ḥaqq fī qawl wāḥid*) affirmed that disputations served to find the truth of God's law.<sup>83</sup> Al-Juwayni and al-Shirazi both saw disputations as a means to find this truth.<sup>84</sup> In contrast, those that saw all juristic positions to be a correct rendering of God's law primarily saw disputations as a means to improve one's reasoning on a legal question. Al-Ghazali, whose ideas we have examined above, was part of this camp.<sup>85</sup> Despite their differences, both camps agreed that disputations were to be limited to legal questions where the evidence of the jurist was epistemically uncertain. Al-Shirazi sometimes uses the term "*adilla khafiyya*" and Abu Muzzafar al-Sam'ani (d. 489/1096) uses the term "*ghāmida*," both of which invoke the idea that the evidence for the law is "hidden" and must be drawn out through close examination.<sup>86</sup> This view of the law as uncertain accords with Aron Zysow's well-known evaluation of Sunni legal theory as accepting the uncertainty of most legal evidence.<sup>87</sup> Thus, disputations were particularly important because the law was an exceedingly tentative enterprise where, for most rulings, no one knew God's law with certainty. By subjecting evidence to critique through disputation, a jurist could hope to confirm or reject the evidence's soundness. We must keep this in mind as we now turn to examining the contestation over the identification of benefit.

Although we possess very few transcripts of disputations, we can see the importance of contestation over benefit in classical law by examining how these debates took place in books of substantive law. Because of its salience to contemporary Muslim reformist thought, let us turn to jurists' debates over marriage guardianship. Marriage guardianship is among the controversial laws of Islam today. Marriage guardianship typically involves a man, primarily a bride's father, acting as guardian (*al-walī*) for a woman whose marriage he contracts.<sup>88</sup> The notion of guardianship can be problematic in modern times because it denies women independence in their marital affairs in two respects. First, some legal schools allowed a guardian to prevent a woman from marrying a man if he was deemed beneath her social status.<sup>89</sup> Moreover, the schools also assumed that a guardian could coerce some categories of women (namely minors or

virgins) into an unwanted marriage.<sup>90</sup> For some Muslims, the premodern doctrine of guardianship should be followed faithfully today. For others, it is gender-biased and must be reformed or abandoned completely.<sup>91</sup> But I will here suggest that there is a third possibility where the debates of jurists on the topic of guardianship should be approached as the beginning of a conversation where nothing is settled and every position is open to revision and critique. The rigor of this specific conversation has been historically limited because of the exclusion of the insights of women and because, as we shall see, misogynistic statements about women abound within it. Nonetheless, reformists can find inspiration today from the classical jurists' aspiration to critical rigor, despite their coming short of it.

Al-Mawardi's *Hāwī* offers a summary of several classical jurists' positions on the necessity of guardianship to a marriage contract. Al-Mawardi begins by presenting the Shafi'i position that guardianship is a necessity. Shafi'is presented several scriptural texts in favor of the necessity of guardianship, including the Qur'anic verse "Do not prevent women from marrying their spouses" (2:232), which they reasoned would be a nonsensical command if women could act as their own guardians.<sup>92</sup> Other *ḥadīths* are far more direct in their wording, stating that "there is no marriage except with a *walī* (guardian)."<sup>93</sup> But the Shafi'is also spoke explicitly about the reasons for their position. The function of guardianship for the Shafi'is was twofold. First, it offered protection to a family against shame and dishonor (*al-ʿār wa'l-shanār*).<sup>94</sup> The Shafi'is worried about allowing a woman to marry a man of lower status.<sup>95</sup> Marrying a man of lower status meant placing the woman under the authority of someone beneath her and it also meant her children would inherit their father's lower lineage.<sup>96</sup> The second function of guardianship was to protect a woman from a difficult and therefore harmful marriage (*al-iḍrār*).<sup>97</sup> One might ask why women were not themselves free to make decisions about personal harm and family honor. The answer is that some Shafi'is believed women were incapable of making right marriage choices. Al-Shirazi states that a woman is of "deficient intellectual capacities" (*nuqṣān ʿaqlihā*) and can therefore easily be tricked (*surʿat inkhidāʾihā*).<sup>98</sup> Al-Shirazi relies on his distrust of women's capacities

to support the need for male authority. In contrast, al-Juwayni denied that women lacked the intelligence to make sound decisions.<sup>99</sup> For him, guardianship's benefit was to give families a stake in a decision that would affect them as much as the bride. Already, we see that the Shafi'is contested benefits in justifying the law.

The contestation over the function of guardianship is more pronounced still when one examines jurists' positions outside of the Shafi'i school. Abu Hanifa adopted a position diametrically opposed to the Shafi'is by denying the necessity of guardianship. He claimed that so long as the bride possesses the maturity and rational capacities (i.e. adulthood and sanity) that make her independent in financial matters, she is free to contract her own marriage.<sup>100</sup> Abu Hanifa's position suggests there is no benefit in preventing adult and sane women from representing themselves during a marriage contract. Abu Bakr al-Jassas (d. 370/981) would later argue that since men who can manage their financial affairs are not in need of guardianship in marriage, neither are women.<sup>101</sup> I should specify that the Hanafis did not reject guardianship: they recommended that a bride have a guardian. They considered that a guardian protected a woman from social accusations of impudence (*tansib ilā al-waqāḥa*).<sup>102</sup> Thus, Hanafis recognized that even as a woman had the right to contract her own marriage, she could face social criticism for doing so. In their eyes, guardianship protected her as much as her kin. But they departed from the Shafi'is in their rejection of the alleged intellectual deficiencies of women. For instance, Burhan al-Din al-Marghinani states that a woman's intellect is complete upon attaining the age of maturity.<sup>103</sup>

Malik, for his part, reasoned that a distinction ought to be made between a woman of high and low status.<sup>104</sup> He deemed that a woman of high status needs a guardian to ensure the family's honor is maintained. In contrast, a woman of low status is free to contract her own marriage. Malik's reasoning is consistent with the Shafi'i and Hanafi view that guardianship aims to uphold a family's honor. Malik reasoned that if a family has little to no honor to uphold, then there is no harm in allowing a woman to contract her own marriage. Al-Mawardi answers Malik by stating that no matter how low a woman's status is, there can always be those of lower status, and it therefore becomes necessary to protect

her and her family from these individuals. Finally, Dawud al-Zahiri subscribed to the view that a virgin woman requires a guardian but that a non-virgin woman does not. He reasons on the basis of a virgin's lack of experience with men—sexual experience, but also more generally, relationship experience. Virginity here acts a legal means to distinguish between those who are likely to make sound marital choices from those who need the direction of their fathers or another man in a protective role.<sup>105</sup> However, al-Mawardi argues that guardianship is still needed after a woman gains sexual experience. In fact, he claims that it is needed even more. Al-Mawardi claims that sexual experience leads women to making unsound marital choices by placing too much emphasis on sexual desires in choosing a spouse. Al-Mawardi here falls into a similar line of misogynistic reasoning as al-Shirazi does when he claims that women possess deficient rational capacities.

In sum, jurists identified three functions of marriage guardianship. The first is the protection of a woman and her family's honor against marrying someone of lower status. The second is the protection of a woman from a difficult marriage to someone with physical and moral defects. The third is the protection of a woman from slanderous accusations of being impudent. However, the jurists disagreed about whether these three aims raised guardianship to the level of a requirement for marriage contracts. The Shafi'is made guardianship a requirement by appealing to women's deficient rational capacities, their ease in being tricked, and their propensity to allow sexual desire to mislead them. The Hanafis allowed a woman to represent herself because an adult woman possesses full intellectual capacities. Dawud allowed a non-virgin woman to dispense with guardianship because she had enough relationship experience to make sound choices. Malik allowed a woman of low status to represent herself because her choice had little impact on her kin's status. This overview of debates on the benefit of guardianship extends my initial conclusions about the Shafi'is' search for the benefits of God's injunctions to other legal schools. Texts are interpreted, qualified, and applied based on understandings of the beneficial function they aim to promote. But more importantly, the overview also shows that the purported benefit of scripture is the object of constant debate.

Each jurist is impelled to respond to the claims of his peers within and outside of a school about the function of the law. This need for debate was entrenched within a classical legal culture that saw critique as the means to ensure that the arguments jurists invoked for their legal positions were as strong as possible.

It is easy to see how the classical model of contestation over the benefit of the law allows contemporary Muslims to continue to engage critically with the law of guardianship today. For instance, dismissing al-Shirazi's claims about women's lesser intellectual capacities, al-Mawardi's claims about women's sexual appetites, or Dawud al-Zahiri's claims about virgins' lack of sufficient experience to make healthy relationship choices bolsters the position that the guardianship of men over women in marriage is unnecessary. To say this is less to reject the textual basis of the law than to interpret and apply it correctly. Likewise, many Muslims might find family honor a strange concept within their socio-cultural environment, which would then undercut their need for the institution of guardianship completely. Indeed, there is precedent for this cultural relativism: the leader of the Shafi'is of Khurasan, al-Qaffal al-Marwazi, claimed that only Arab families cared about lineage in determining the status of a spouse and that, therefore, lineage considerations did not apply to non-Arabs.<sup>106</sup> Alternatively, some Muslims might critique the assumption that only a woman and her family is affected by the status of her spouse. Again, there is precedent here too: al-Juwayni's father, Abu Muhammad al-Juwayni, contended that a man's status is also diminished by a lowly spouse.<sup>107</sup> And, if both men and women are affected by the status of their spouse, then guardianship of men over women makes little sense. Of course, it may be the case that some Muslims today prefer bypassing the classical discussions on guardianship altogether. In particular, some might deny that Muslims should engage at all with men who belittled women. Does not engaging with them give more credibility to their claims than they deserve? Moreover, such engagement risks bolstering a power relationship where Muslim women can only speak because of the recognition of men. The conferring of recognition from those in power, although often needed to effect community change, can also be deeply painful for those on the

margins of power. Thus, some might prefer to go back to the Qur'an or to the Qur'an and *sunna* to start a new conversation about the norms that should govern the Muslim community.

Nonetheless, even if some choose to jettison the substance of classical juristic thought completely, they might wish to consider the *model* of contestation over the benefits of the law in their community dialogues. This is because this model presupposes that 1) no human has full insight into the purpose of God's laws and 2) the worth of a position only emerges through debate. This model is presupposed in al-Juwayni's legal theory, which outlines that the innumerable benefits of God's law must be discovered through both textual engagement and through the subjection of legal causes to potential invalidation. But it is also presupposed more generally in the epistemological uncertainty that legitimated disputation. In turn, two consequences follow from this model of contestation for Muslims today. The first is that any community dialogue must move beyond textuality to asking what if any benefit do the texts gesture towards. The second is that any critique that deepens Muslim understandings of the benefit of God's law should be welcome. Of course, historically, Shafi'is like al-Shirazi were adamantly opposed to the participation of lay Muslims in the process of legal derivation, claiming that lay Muslims did not possess the necessary training to engage with legal evidence (*adilla*).<sup>108</sup> But it seems to me that there is a tension between simultaneously upholding the practice of critique as a means to find the benefits of God's law and excluding lay Muslims from this practice. For instance, lay Muslims have as much if not greater insight than male mosque leaders into whether upholding notions of family honor protects or harms them. Thus, the model of contestation over human benefit among 11<sup>th</sup> century Shafi'is can be invoked to legitimate the participation of lay Muslims in the critical search over the alleged benefits of scriptural injunctions.<sup>109</sup> Put otherwise, this model offers support for the democratization of critique within Muslim communities.

A final thought: we might wonder if the contestation over benefit was more a product of inter-school rivalry than a commitment to allowing one's position to be subject to critique. Indeed, this article has focused on an era where intellectual and political rivalries between legal schools

could be intense.<sup>110</sup> But at the very least, we can say that jurists presented contestation as a good to each other and to their students. Al-Juwayni and al-Shirazi called disputation praiseworthy or good debate (*al-jadal al-ḥasan* or *al-jadal al-maḥmūd*) so long as the jurist sincerely debated for the sake of God.<sup>111</sup> Considering their discourses about disputation and legal uncertainty, we have reason to believe that jurists did not merely seek to defend their positions by appealing to and contesting benefit, but were also seeking to better understand the law.<sup>112</sup>

## Conclusion

In this article, I have sought to uncover the understanding of human benefit within the classical Shafi‘i school. I have focused on the Shafi‘i school precisely because it is often identified as the paradigmatic textualist school. I have sought to push back against the view that the Shafi‘is’ fidelity to textuality made them less concerned with upholding human goods. I have contended that the Ash‘ari-Shafi‘i theory of the law renders human benefit the proper interpretative lens through which to understand the function of the lawgiver’s statements (*ma‘nā*) in all instances except the very rare instances of perspicuous texts (*naṣṣ*). Few laws are simply the product of the Lawgiver’s arbitrary commands. I have also shown how this model of benefit overlaps with Iraqi legal theory, which also recognized that legal causes often reveal a benefit that humans can rationally apprehend (*wajh al-ḥukm*). Through the example of abandoning the *qibla* during travel, I showed that Shafi‘i substantive law functioned through a search for the benefit behind scriptural injunctions. This search ended up determining the application of the law. But I also showed that this model was one in which jurists considered ongoing contestation over the purported benefits of laws as necessary. The example of marriage guardianship revealed that Muslims disagreed with and debated each other over the benefits of guardianship. No jurist was given free rein to claim that a law served human benefit. Rather, all jurists were expected to defend their positions through debate.

I now want to return to the question of the relationship between the classical model of human benefit and reformist calls to use “the model

of the *maqāṣid al-sharī‘a*” to reinterpret the law today. Clearly, the two models have much in common. Like the classical jurists, proponents of the *maqāṣid* model also claim that the law is meant to serve human benefit by protecting a series of human goods. Historically, these goods were enumerated as life, religion, property, lineage, and reason. However, it is evident from al-Ghazali’s examples that he recognized a whole host of benefits reflected in the legal causes (*‘ilal*) of his Shafi‘i school.<sup>113</sup> Likewise, Muslim reformers from the last century, such as Ibn ‘Ashur, ‘Allal al-Fasi, and Jasser Auda have interpreted the tradition of *maqāṣid* more broadly by asserting that there can be more than the traditional five or six ends that the *sharī‘a* defends.<sup>114</sup> In effect, this broadening of the number of *maqāṣid* resembles more al-Juwayni and the Shafi‘i-Ash‘ari theory of *maṣlaḥa* than it does al-Ghazali’s discussion of the *maqāṣid* in the *Mustaṣfā*. Thus, in some ways, uncovering the classical model of benefit serves to further justify the method of reformers by showing its deep pedigree within Islamic law. In other words, behind alleged fidelity to textuality lay a deep engagement with how the law fulfils human goods.

But I have also emphasized that contestation over benefit is far more prominent in the classical model than the contemporary *maqāṣid* model. The classical tradition showed great concern with the limits of human rationality in understanding God’s law. The recognition of the limits of human understanding of the law led to the continued contestation over alleged benefits of the law in disputations and books. Moreover, the jurists did not see this contestation to be bound to a time period. Rather, contestation was an extension of the obligation of *ijtihād*, which demanded that each individual capable of understanding the proofs (*adilla*) of God’s law determine for herself the strongest legal positions.<sup>115</sup> Today, the classical model not only offers legitimacy to engaging scripture through the prism of human benefit (or its cognates, “wisdoms” and “purposes”) but it also offers a means for Muslims to rethink how community dialogue over the purpose of the law should take place. According to this model, any critical insight into the benefit of the law facilitates the duty of *ijtihād*. In effect, the classical model legitimates the democratization of Muslim voices today and the necessity of ongoing critique.

## Endnotes

- 1 Examples in the twentieth century include Muhammad al-Ṭahir Ibn ‘Ashur, *Maqāšid al-Sharī‘a al-Islāmiyya*, ed. Muhammad al-Ṭahir al-Missawi (Amman: al-Basha‘ir li’l-Intaj al-‘Ilmi, 1998); ‘Allal al-Fasi, *Maqāšid al-Sharī‘a al-Islāmiyya wa-Makārim-uhā*, 5<sup>th</sup> ed. (Tunis: Dar al-Gharb al-Islami, 1993); Rashid al-Ghannushi, *al-Ḥurriyāt al-‘Āmma fi al-Dawlat al-Islāmiyya* (Beirut: Markaz Dirasat al-Wahdah al-‘Arabiyya, 1993), 39; and Tariq Ramadan, *Radical Reform: Islamic Ethics and Liberation* (Oxford: Oxford University Press, 2009), 59.
- 2 Mohammad Hashim Kamali, “Goals and Purposes of *Maqāšid al-Sharī‘a*: Methodological Perspectives” in *The Higher Objectives of Islamic Law: The Promises and Challenges of Maqāšid al-Sharī‘a*, ed. Idris Nassery et al. (Lanham: Lexington Books, 2018), 8; Jasser Auda, *Maqāšid al-Sharī‘a: A Beginner’s Guide* (Herndon: IIT, 2008), 18.
- 3 This peripheral status is amplified by the modest role that al-Ghazali initially conferred to the *maqāšid al-sharī‘a*: the *maqāšid* was not first formulated as a theory of the law in its entirety. Rather, al-Ghazali conceived of it as a theory for when the text is silent (*mašlaḥa mursala*); see Abu Hamid al-Ghazali, *al-Mustasfā min ‘Ilm al-Uṣūl*, 2 vols. (Beirut: Dar al-Nafā‘is, 2011), 1:478.
- 4 The idea that the law must conform to general principles like the preservation of life or religion leaves unanswered “who should determine what are the *maqāšid*” and “who should determine when they are violated?” See Ayesha Chaudhury, “How Objective Are the Objectives (*Maqāšid*)? Examining Evolving Notions of the Sharī‘ah through the Lens of Lineage (*Nasl*),” in *The Higher Objectives of Islamic Law: The Promises and Challenges of Maqāšid al-Sharī‘a*, ed. Idris Nassery et al. (Lanham: Lexington Books, 2018), 264-265.
- 5 The relationship between *mašlaḥa* and the *maqāšid* is frequently noted in secondary literature. See Adis Duderija, “Contemporary Reformist Muslim Thought and Maqāšid cum Mašlaḥa Approaches to Islamic Law: An Introduction,” in *Maqāšid al-Sharī‘a and Contemporary Reformist Muslim Thought: An Examination*, ed. Adis Duderija (New York: Palgrave Macmillan, 2014), 2-3.
- 6 Joseph Schacht, *The Origins of Muhammadan Jurisprudence*, Reprinted ed. (Oxford: Clarendon Press, 1975), 11; Ahmed El-Shamsy, *The Canonization of Islamic Law: A Social and Intellectual History* (Cambridge: Cambridge University Press, 2013), 69-70.
- 7 Al-Juwayni, *al-Burhān*, ed. ‘Abd al-‘Azim al-Dib, 2 vols. (np. 1979), 2:798-790. Juwayni attributes the position to al-Isfarayini, whose works on *uṣūl al-fiqh* have not survived, *ibid.*, 2:802; For the *uṣūl* of the other significant Shafī‘i of the era, see Abu Bakr ibn Furak, *Kitāb al-Ḥudūd fi Uṣūl al-Fiqh*, ed. Abdel Haleem, *BSOAS* 54 no.1 (1991).
- 8 Al-Juwayni, *al-Burhān*, 2:802-804.

- 9 Al-Juwayni justifies the dispensation by reference to two human benefits, namely peoples' livelihoods and their pious pursuits. Al-Juwayni, *Nihāyat al-Maṭlab*, ed. 'Abd al-'Azim al-Dīb, 20 vols. (Jedda: Dar al-Minhaj, 2017), 2:71.
- 10 E.g. al-Subki, *Ṭabaqāt al-Shāfi'iyya al-Kubrā*, 10 vols. (Cairo: 'Isa al-Babi al-Halabi, 1964), 4:254, where al-Juwayni and Abu Ishaq al-Shirazi debate over the suitability of virginity as a legal cause ('illa) for forced marriage.
- 11 Abu Ishaq al-Shirazi, *Ṭabaqāt al-Fuqahā'*, ed. Ihsan 'Abbas (Beirut: Dar al-Ra'id al-'Arabi, 1970), 126-127.
- 12 Al-Subki, *Ṭabaqāt*, 4:127-135, 4:256-262.
- 13 al-Juwayni, *al-Burhān*, 1:212; Ibn Furak conserves some of al-Ash'ari's positions in his *Mujarrad Maqālāt al-Shaykh Abī al-Ḥasan al-Ash'arī*, ed. Daniel Gimaret (Beirut: Dar al-Mashriq, 1987), 293.
- 14 E.g. al-Juwayni, *al-Burhān*, 1:219.
- 15 Joseph Lowry, *Early Islamic Legal Theory: The Risāla of Muḥammad ibn Idrīs al-Shāfi'ī* (Leiden: Brill, 2007), 13. On Ibn Surayj, see Wael B. Hallaq, "Was Al-Shafi'i the Master Architect of Islamic Jurisprudence?," *International Journal of Middle East Studies* 25, no. 4 (1993), 587-605; Christopher Melchert, *The Formation of the Sunni Schools of Law, 9th-10th Centuries C.E.* (Leiden: Brill, 1997), 125-28; al-Shīrāzī, *Ṭabaqāt al-Fuqahā'*, 112; al-Subki, *Ṭabaqāt al-Shāfi'iyya*, 3:21-39.
- 16 al-Juwayni, *al-Burhān*, 2:1443-1448.
- 17 Al-Subki, *Ṭabaqāt*, 5:192.
- 18 Al-Juwayni, *al-Burhān*, 2:798-790.
- 19 Al-Juwayni's *Kitāb al-Talkhīṣ* indicates that al-Baqillani did not subscribe to the view that a precondition for the precondition for the correct legal cause is benefit (*maṣlaḥa*), which suggests that the theory originated with the Shafi'is of the Ash'ari stream; *al-Talkhīṣ fī uṣūl al-fiqh*, ed. Muḥammad Hasan Isma'il Shafi'ī, 3 vols. (Beirut: Dar al-Kutub al-'Ilmiyya, 2003), 3:247-254.
- 20 Al-Juwayni uses the technical language of *ikhāla* (suggestiveness) and *munāsaba* (suitability) to distinguish a legal cause that is beneficial from one that is not. For secondary literature on *maṣlaḥa*'s use in finding the *ratio legis* of a case, see Felicitas Opwis, *Maṣlaḥah and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century* (Leiden: Brill, 2010), 142; Aron Zysow, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory* (Atlanta: Lockwood, 2013), 207.
- 21 Al-Juwayni, *al-Burhān*, 2:803-804.
- 22 *Ibid.*, 1:466-467.
- 23 Felicitas Opwis, "Shifting Legal Authority from the Ruler to the 'Ulama': Rationalizing the Punishment for Drinking Wine During the Saljuq Period," *Der Islam* 86, no. 1 (2011): 65-92 at 79-80.

- 24 Al-Juwayni presents three opinions on the topic, at *al-Burhān*, 2:1113-1114; see also al-Ghazali, *al-Mankhūl min Ta'liqāt al-Uṣūl*, ed. Muhammad Hasan Hitu (Damascus: n.p. 1970), 354.
- 25 Al-Juwayni, *al-Burhān*, 1:236.
- 26 On the theory of *waḍ'*, see Bernard Weiss, "Ilm al-waḍ': An Introductory Account of a Later Muslim Philological Science," *Arabica* 34, no. 3 (1987): 339-356; Muhammad Yunus Ali, *Medieval Islamic Pragmatics: Sunni Legal Theorists' Models of Textual Communication* (London: Routledge, 2000), 15-18.
- 27 On the general theory of hermeneutics of jurists, see David Vishanoff, *The Formation of Islamic Hermeneutics How Sunni Legal Theorists Imagined a Revealed Law* (New Haven: American Oriental Society, 2011).
- 28 The disputation is reported in al-Subki, *Ṭabaqāt*, 5:214-18. For more on this disputation, see Youcef Soufi, "Pious Critique: Abū Ishāq al-Shīrāzī and the 11th Century Practice of Juristic Disputation (*Munāẓara*)" (Ph.D. dissertation, University of Toronto, 2017), 197-229; and Sohaira Siddiqui, "Jadal and Qiyās in the Fifth/Eleventh Century: Two Debates between al-Juwaynī and al-Shīrāzī," *Journal of American Oriental Society* 139, no. 4 (2019): 923-44.
- 29 Al-Subki, *Ṭabaqāt*, 5:217.
- 30 Al-Juwayni, *al-Burhān*, 1:10.
- 31 *Ibid.*, 1:12.
- 32 Anver Emon, *Natural Law Theories in Islam* (Oxford: OUP, 2010), 132, 133. See also Zysow's analysis of *lutf* among Mu'tazili thinkers in Aron Zysow, "Two Theories of the Obligation to Obey God's Commands," in *The Law Applied: Contextualizing the Islamic Shari'a*, ed. Peri Bearman, Wolfhart Heinrichs, Bernard G. Weiss (London: I.B. Tauris, 2008), 397-331 at 408.
- 33 Al-Juwayni, *al-Burhān*, 2:802.
- 34 *Ibid.*, 2:943.
- 35 *Ibid.*, 2:1011.
- 36 *Ibid.*, 2:965; see also al-Ghazali, *al-Mankhūl*, 401.
- 37 For more on the practice of *munāẓara*, see George Makdisi, *The Rise of Colleges* (Edinburgh: Edinburgh University Press, 1981), 128-140.
- 38 Al-Ghazali, *al-Mustaṣfā*, 2:901-902. See also al-Baṣri, *al-Mu'tamad fī uṣūl al-fiqh*, 2 vols. (Beirut: Dar al-Kutub al-'Ilmiyya, 1983), 2:384; and al-Jassas, *al-Fuṣūl fī al-uṣūl*, ed. Muḥammad Tamir, 2 vols. (Beirut: Dar al-Kutub al-'Ilmiyya, 2010), 2:423. For al-Ghazali's critique of the disputation, see al-Ghazali, *Iḥyā' 'Ulūm al-Dīn*, ed. Muhammad Dali Balta, 4 vols. (Beirut: al-Maktaba al-'Asriyya, 2015), 1:60-68.
- 39 Al-Ghazali, *al-Mustaṣfā*, 2:901.
- 40 *Ibid.*

- 41 Al-Baghdadi, *Kitāb al-Faqih wa'l-mutafaqqih* (Riyadh: Dar Ibn Ḥazm, 2014), 282.
- 42 Al-Juwayni, *al-Talkhīṣ fi Uṣūl al-Fiqh*, 3:325. Abu Bakr al-Baḳillani, *al-Taqrīb wa'l-Irshād (al-Ṣaghīr)*, 3 vols., ed. Zunayd (Beirut: Mu'assasat al-Risala, 1997), 1:287
- 43 Al-Juwayni, *al-Kāfiya*, ed. Fawqiyya Husayn Muhammad (Cairo: 'Isa al-Babi al-Halabi, 1979), 24.
- 44 Our transcripts from al-Juwayni's disputations with al-Shirazi also show the two jurists providing objections to their respective legal causes. Al-Subki, *al-Ṭabaqāt*, 5:209; 5:214.
- 45 Al-Shirazi typically gives preference to the views of leading Iraqi Shafi'is in substantive law over those of al-Baḳillani, Ibn Furak, or Abu Ishaq al-Isfarayini. However, on questions of epistemology, al-Shirazi tends to more easily incorporate al-Baḳillani's thought. See al-Shirazi, *Sharḥ al-Luma'*, 146-149. For the relationship of al-Shirazi to Ash'arism, see Éric Chaumont, "Encore au sujet de l'aś'arisme d'abū iṣḥāq al-Širāzī," *Studia Islamica* 74 (1991): 167-177.
- 46 Youcef Soufi, "Why Study Uṣūl al-Fiqh?": The Problem of *Taqlid* and Tough Cases in 4th-5th /10th-11th Century Iraq" *Islamic Law and Society* 28, no. 1-2 (2021): 1-31 at 6-7; Ahmed El Shamsy, "Bridging the Gap: Two Early Texts of Islamic Legal Theory," *Journal of the American Oriental Society* 137:3 (2017), 505–15.
- 47 A cursory examination of al-Shirazi's *Ṭabaqāt*, 108-127 reveals that this cohort composed several texts of *uṣūl al-fiqh*. Ahmed El-Shamsy has studied introductions to *furū'* texts among this cohort in order to analyze their *uṣūl al-fiqh* positions; see El-Shamsy, "The Wisdom of God's Law: Two Theories" in *Islamic Law in Theory: Studies on Jurisprudence in Honor of Bernard Weiss* (Leiden: Brill: 2014), 19-37.
- 48 Al-Shirazi, *Sharḥ al-Luma'*, 2:844-846.
- 49 Al-Shirazi divides *ijtihād* into *al-qiyās al-jallī*, which requires no *ijtihād* because the legal cause is identified through a definitive proof (*al-qaṭ'*) and *al-qiyās al-khafī*, which can be discovered either through a textual source or through extraction (*istinbāt*). See al-Shirazi, *Sharḥ al-Luma'*, 2:801-806.
- 50 Ibid., 2:858-860.
- 51 Ibid., 2:860.
- 52 Ibid., 2:860-863.
- 53 Ibid., 2:1055.
- 54 Mariam Sheibani, "Islamic Law in an Age of Crisis and Consolidation: 'Izz al-Dīn ibn 'Abd al-Salām (577-660/1187-1262) and the Ethical Turn in Medieval Islamic Law" (Ph.D. diss., University of Chicago, 2018), 274.
- 55 Mariam Sheibani's dissertation usefully places Juwayni's Ash'ari theory of *maṣlaḥa* within a framework that identifies four stages of evolution. She credits Juwayni and the Khorasanians with introducing *maṣlaḥa* into Shāfi'i legal hermeneutics.
- 56 Al-Shirazi, *Sharḥ al-Luma'*, 2:843.

- 57 Ibid., 2:799.
- 58 Moreover, in another passage of the *Sharḥ al-Luma'* (2:789), al-Shirazi notes the opinion that all of God's law serves to benefit human beings (*al-aḥkām innamā shuri'at li-maṣlahat al-mukallaḥīn*), a claim he does not deny. Chaumont notes other instances where al-Shirazi seems likewise on the fence regarding whether the law is ultimately for human benefit or not; see Eric Chaumont, "La notion de *wajh al-ḥikmah* dans Les *uṣūl al-fiqh* d'Abū Ishāq al-shīrāzī (m. 476/1083)" in *Islamic Law in Theory: Studies on Jurisprudence in Honor of Bernard Weiss* (Leiden: Brill, 2014), 39-53 at 47.
- 59 Ahmad El Shamsy has made a similar point in "The Wisdom of God's Law."
- 60 Al-Shirazi, *Sharḥ al-Luma'*, 2:871
- 61 Kamali, "Goals and Purposes," 7, 11-12.
- 62 Kamali notes that *uṣūl al-fiqh's* emphasis on textuality can be problematic in modern times because the importance of benefit can often be lost. I agree with this assessment but would argue that this is the product of a modern assumption that textuality is more often perspicuous than jurists of the past actually believed. This then leads to claims that the text must be applied, according to the slogan, "there is no *ijtihād* if there is a text" (*lā ijtihād bi-naṣṣ*).
- 63 Murteza Bedir, "An Early Response to Shāfi'ī: 'Īsā b. Abān on the Prophetic Report (*khabar*)," *Islamic Law and Society* 9, no. 3 (2002): 285-311; Sherman Jackson, "Setting the Record Straight: Ibn al-Labbād's 'Refutation of al-Shāfi'ī,'" *Journal of Islamic Studies* 11, no. 2 (2000): 121-146.
- 64 Mohammad Fadel, "'*Istiḥsān* is Nine-Tenths of the Law': The Puzzling Relationship of *Uṣūl* to *Furū'* in the Mālikī Madhhab," in *Studies in Islamic Legal Theory*, ed. Weiss, 161-76 at 161-162. On the influence of al-Shāfi'ī on the other legal schools, see Umar Faruq Abd-Allah Wymann-Landgraf, *Malik and Medina: Islamic Legal Reasoning in the Formative Period* (Leiden: Brill, 2013).
- 65 Abu al-Tayyib al-Tabari, *al-Ta'liq al-Kubra fī al-Furū': Min Bāb mā Yuḥsid al-Mā' Ḥattā Nihāyat Bāb Istiqbāl al-Qibla*, ed. 'Ubayd b. Salim al-'Umari (PhD diss., Islamic University of Medina, 1998-1999), 748.
- 66 Ibid., 749.
- 67 Abu al-Hasan al-Mawardi, *al-Hāwī al-Kabīr fī Fiqh Madhhab al-Imām al-Shāfi'ī: Wa-Huwa Sharḥ Mukhtaṣar al-Muzanī*, ed. 'Ali Muhammad Mu'awwaḍ and 'Adil 'Abd al-Mawjud, 18 vols. (Beirut: Dar al-Kutub al-Ilmiyya, 1994), 2:73.
- 68 Abu Ishāq al-Shirazi, *al-Muhadhdhab fī Fiqh al-Shāfi'ī*, ed. Zunayd, 6 vols. (Damascus: Dar al-Qalam, 1992), 1:231-233.
- 69 Historians of the Shāfi'ī school spoke about the formation of distinct Iraqi and Khurasanian branches of Shāfi'ism. See Muḥyi al-Din al-Nawawī, *al-Majmū': Sharḥ al-Muhadhdhab*, ed. Zakariyya Yusuf, 17 vols. (Cairo: Matba'at al-'Asima, 1966), 1:107.

- 70 Al-Shirazi, *al-Muhadhdhab*, 1:231.
- 71 Al-Shirazi, *al-Muhadhdhab*, 1:232; al-Mawardi, *al-Hāwī*, 2:73; al-Tabari, *al-Ta'liqa*.
- 72 Al-Shirazi, *al-Muhadhdhab*, 1:232; al-Mawardi, *al-Hāwī*, 2:75; al-Tabari, *al-Ta'liqa*, 751.
- 73 Al-Shirazi, *al-Muhadhdhab*, 1:334. The Shafi'is themselves invoked the length of travels as a condition for other legal questions. For instance, they claimed that one could shorten and combine prayers only in travel that was the equivalent of a two-day journey.
- 74 Al-Tabari, *al-Ta'liqa*, 1:750; al-Shirazi, 1:233; al-Juwayni, *Nihayat*, 2:72.
- 75 Al-Shirazi, *al-Muhadhdhab*, 4:527; Abu al-Muhasin al-Ruyani, *Baḥr*, 10:393-97; Abu al-Husayn al-'Imrani, *al-Bayān fī Madhhab al-Imām al-Shāfi'ī*, ed. Qasim al-Nuri, 14 vols. (Beirut: Dar al-Minhaj, 2000), 10:585-89.
- 76 Al-Shirazi, *al-Muhadhdhab*, 4:614; al-Shafi'i, *Kitāb al-Umm*, ed. Rif'at Fawzi 'Abd al-Muttalib, 11 vols. (Mansoura: Dar al-Wafa' li'l-Ṭiba'a wa'l-Nashr wa'l-Tawzi', 2008), 6:235.
- 77 Al-Shirazi, *al-Muhadhdhab*, 4:615.
- 78 Ibid., 5:228.
- 79 Ibid., 4:279.
- 80 For a collection of al-Shafi'i's disputations, see Fakhr al-Razi, *Manāqib al-Imām al-Shāfi'ī*, ed. Muhammad Majazi al-Saqqa (Cairo: Maktabat al-Kulliyat al-Azhariyya, 1986), 271-296.
- 81 Al-Baghdadi, *al-Faqih*, 252.
- 82 For a discussion on *taṣwīb*, see Aron Zysow, "Mu'tazilism and Māturīdism in Ḥanafī Legal Theory," in *Studies in Islamic Legal Theory*, ed. Weiss, 235-65.
- 83 Abu Ya'la b. al-Farra', *al-'Udda fī uṣūl al-fiqh*, ed. Muḥammad 'Abd al-Qadir 'Aṭa, 2 vols. (Beirut: Dar al-Kutub al-'Ilmiyya, 2002), 2:427; al-Baghdadi, *al-Faqih*, 286.
- 84 Al-Juwayni, *al-Kāfiya*, 24; al-Shirazi, *Sharḥ*, 2:1054. Al-Juwaynī himself championed an intermediate position between fallibilists and infallibilists, stating that while God's law is singular, jurists are correct insofar as they are tasked with engaging in *ijtihād* (i.e. attempting to find God's law), rather than with actually finding God's law; al-Juwaynī, *Kitāb al-Ijtihād*, in *al-Burhān*, 2:1323-1325. Al-Juwaynī's position mirrored that of Ibn Surayj, which al-Shīrāzī saw as a third position in the debate on juristic infallibility; see al-Shīrāzī, *Sharḥ*, 1049-1050.
- 85 Al-Ghazālī, *al-Mustaṣfā*, 2:892; al-Jassas, *al-Fuṣūl*, 2:400; Abu al-Husayn al-Basri, *al-Mu'tamad fī Uṣūl al-Fiqh* (Beirut: Dār al-Kutub al-'Ilmiyya, 1983), 2:370, 384.
- 86 Al-Shirazi, *Sharḥ*, 2:1063-1064; Abu al-Muzzafar al-Sam'ani, *Qawāṭi' al-Adilla fī al-Uṣūl*, ed. Muhammad Isma'il al-Shafi'i, 2 vols. (Beirut: Dar al-Kutub al-'Ilmiyya, 1997), 2:308.

- 87 For discussions on uncertainty in the law, see Zysow, *Economy of Certainty*, 1.
- 88 Kecia Ali, "Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines," in *The Islamic Marriage Contract: Case Studies in Islamic Family Law*, ed. Asifa Quraishi and Frank E. Vogel (Cambridge: Harvard University Press, 2008), 11-45.
- 89 Ayesha Chaudhry contends that contemporary Muslims inhabit a cosmology that assumes the equality of men and women before God. She contends that premodern jurists did not share this view, seeing God, men, and women in a hierarchical relationship: see her *Domestic Violence and the Islamic Tradition* (Oxford: Oxford University Press, 2014), 10.
- 90 Depending on the school, a woman who was a minor (largely, though not entirely determined by puberty) or a virgin could be forced into marriage. The Shafi'i limited coercion in marriage to a woman's father or grandfather. A son who was still a minor could also be forced into marriage; see Ali, "Marriage in the Classical Islamic Jurisprudence," 32.
- 91 Although dealing with the topic of domestic abuse, Chaudhry's typology of traditionalists, neotraditionalist, progressives, and reformers provides a sense of the different ways in which problematic gender laws are treated in Muslim communities today.
- 92 Al-Mawardi, *al-Ḥāwī*, 9:39; al-Shafi'i, *al-Umm*, 6:31-33.
- 93 Al-Mawardi, *al-Ḥāwī*, 9:40.
- 94 Abu al-Mahasin al-Ruyani, *Baḥr al-Madḥhab fī Furū' al-Madḥhab al-Shāfi'ī*, ed. Tariq Fathi al-Sayyid, 14 vols. (Dar al-Kutub al-'Ilmiyya, 2009), 9:99.
- 95 For a list of considerations for status, see al-Mawardi, *al-Ḥāwī*, 9:101-106; al-Shirazi, *al-Muḥadḥḥab*, 4:131-133. Al-Tabari lists Abu 'Ali b. Abi Hurayra as the Shafi'i scholar who posited five of the most common measures of *kafā'a*; al-Tabari, *al-Ta'liq al-Kubrā fī al-Furū': Kitāb al-Nikāh ilā Qism al-Nushūz*, ed. Yusuf b. 'Abd al-Latif 'Abd Allah al-'Aqil (PhD diss., Islamic University of Medina, 2005), 249. For the Hanafi position on *kafā'a*, see Abu Bakr al-Jassas, *Sharḥ*, 4:251-254.
- 96 Mohammad Fadel, "Reinterpreting the Guardian's Role in the Islamic Contract of Marriage: The Case of the Maliki School," *The Journal of Islamic Law* 3 (1998): 1-26; al-Mawardi, *al-Ḥāwī*, 9:101-102.
- 97 For example, al-Juwayni, *Nihāyat*, 12:152-53
- 98 Al-Shirazi, *al-Muḥadḥḥab*, 4:118.
- 99 Al-Juwayni, *Nihāyat*, 12 92.
- 100 Al-Mawardi, *al-Ḥāwī*, 9:38. Al-Shaybani, *Kitāb al-Hujja 'alā Ahl al-Madīna*, ed. Mahdi Hasan al-Kilani al-Qadiri, 4 vols. (Beirut: 'Alam al-Kutub, 1983 (rep. from the Hyderabad, 1965 edition)), 3:115. Abu al-Barakat al-Nasafi, *Kanz al-Daqā'iq*, ed. Sa'id Bakdash (Beirut: Dar al-Basha'ir al-Islami, 2011) 254; al-Quduri, *Mukhtaṣar al-Qudūrī*, ed. Kamil al-'Awida (Beirut: Dar al-Kutub al-'Ilmiyya, 1997), 147.

- 101 Abu Bakr al-Jassas, *Sharḥ al-Taḥāwī*, 4: 273-274. But Abu Hanifa also believed that families had a right to uphold their honor and for that reason, he believed they could object to a marriage after the fact if the husband was of lower status, and could petition a court for the separation of the couple.
- 102 Burhan al-Din al-Marghinani, *al-Hidāya Sharḥ Bidāyat al-Mubtadī*, 2 vols. (Beirut: Dar al-Arqam ibn Abi al-Arqam, n.d.), 1:231.
- 103 Ibid.
- 104 Al-Mawardi, *al-Ḥāwī*, 9:44. Sahnun, *al-Mudawwana al-Kubrā*, 16 vols. (Cairo: Matba‘ al-Sa‘ada, 1904-1905), 4:20.
- 105 Al-Mawardi, *al-Ḥāwī*, 9:44.
- 106 Al-Baghawi writes: “The Shaykh al-Qaffal said, may God have mercy on him: ‘Lineage is considered for the Arabs, but not the non-Arabs [*al-naṣab yura‘a fī al-‘Arab dūn al-‘Ajam*]’”; Abu Muhammad al-Baghawi, *al-Tahdhīb fī Fiqh al-Imām al-Shāfi‘ī*, eds. ‘Adil al-Mawjud and ‘Ali Mu‘awwad, 8 vols. (Beirut: Dar al-Kutub al-‘Ilmiyya, 1997), 5:298. Al-Rafi‘i notes that al-Qaffal was not alone in this view; Abu al-Qasim al-Rafi‘i, *al-‘Azīz: Sharḥ al-Wajīz*, eds. ‘Adil al-Mawjud and ‘Ali Mu‘awwad, 13 vols. (Beirut: Dar al-Kutub al-‘Ilmiyya, 1997), 7:575.
- 107 Al-Juwayni, *Nihāyat al-Maṭlab*, 12:158.
- 108 Al-Shirazi, *Sharḥ*, 2:1011.
- 109 Al-Shirazi recognized that benefits are accessible to all rational minds; al-Shirazi, *Sharḥ*, 2:1055.
- 110 Richard Bulliet, *The Patricians of Nishapur: A Study in Medieval Islamic Social History* (Cambridge: Harvard University Press, 1972), 31-32; Sohaira Siddiqui, *Law and Politics under the ‘Abbasids: An Intellectual Portrait of al-Juwaynī* (Cambridge: Cambridge University Press, 2019), 57.
- 111 Al-Juwayni, *al-Kāfiya*, 22-24; al-Shirazi, *Ṭabaqāt al-Fuqahā’*, 112.
- 112 Al-Shirazi, *Sharḥ*, 2:1054.
- 113 Al-Ghazali, *al-Mustasfā*, 1:478-479.
- 114 Ibn ‘Ashur, *Maqāṣid*, 411-519; al-Fasi, *Māqāṣid*, 225; Auda, *Maqasid*, 8-9; On Ibn ‘Ashur, see Felicitas Opwis, “Ibn ‘Āshūr’s Interpretation of the Purposes of the Law (*Maqāṣid al-Sharī‘a*): An Islamic Modernist Approach to Legal Change,” in ed. Idris Nassery et al. (Lanham: Lexington Books, 2018), 111-130.
- 115 On the obligation of *ijtihād*, see al-Shirazi, *Sharḥ*, 2:1012-1013; al-Sam‘ani, *Qawāṭi’*, 2:341; al-Juwaynī, *Kitāb al-Ijtihād*, 2:1339-1341.