

Theory of Higher Objectives of Islamic Law vis-à-vis Islamic Finance

A study of Imam Shatibi's Theory of the Higher Objectives and Intentions of Islamic Law and Its relevance to Islamic Finance

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Thesis Statement

Should our understanding of universals trump our understanding of particulars?

INTRODUCTION

Islamic finance stands at a crossroads. The recent financial crisis has afforded an unprecedented opportunity. The conventional financial system has been shaken to its very core. As the wizards of conventional finance assess the destruction and its causes, Islamic finance too should engage in a bit of self-evaluation. The good news is that the impact on Islamic finance has been minimal and mostly indirect. The concern is that it may have been lucky. Perhaps it is time that Islamic finance practitioners look again at the principles and reassess the practice in light of some of the criticism that it has attracted lately.

One of the primary concerns expressed has been around the issue of preference for contractual form over underlying substance in Islamic finance products. This concern brings us to the challenge of determining the underlying substance. It is the view of the author that this task cannot be accomplished unless a clear methodology is stipulated to achieve it. It is to accomplish this task that the Theory of Higher Objectives of Islamic Law vis-à-vis Islamic Finance becomes relevant.

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The Theory of Higher Objectives of Islamic Law (also referred to “Higher Objectives” in this paper) has been studied as part of *Usul Al-Fiqh* by earlier scholars, though some have argued it to be transformed into an independent discipline.² The focus of this paper is on understanding the Higher Objectives as expounded by the Maliki jurist Abu Ishaq Ibrahim ibn Musa al-Shatibi and exploring its relationship with Islamic finance.

Shatibi was brought up in Granada (Spain), which had become a center of learning. Shatibi’s family was Bannu Lakhm. His *kuniyat* was “Abu Ishaq” and his surnames were “Al-Lakhmi,” “Al-Gharnati,” “Al-Maliki,” and “As-Shatibi.” The date and place of his birth are unknown. However, one of his surnames, As-Shatibi, points to the city of Jatvia, which indicates that he was a descendant of the migrants from that town who settled in Granada. He died in 1388 (8th Shabaa 790 H) in Granada. In Alexandria, Egypt, there is a suburb called Ash Shatibi (or Al Shatby). There is also a particular spot in that suburb a few hundred meters south-southeast of the Bibliotheca Alexandrina, the Library of Alexandria, where it is said that Imam Ash Shatibi is buried.³

A number of scholars other than Shatibi also tried to lay the foundations for the discipline of Higher Objectives of Islamic Law. These include Abu al-Ma’ali al-Juwayni, Abu Hamid al-Ghazali, al-Izz ibn Abd al-Salam, Shihab al-Din al-Qarafi, and Shams al-Din ibn al-Qayyim. However, the influence of Shatibi has been greatest and his book *al-Muwafaqat fi Usul al-Shariah* (Congruences in the Fundamentals of the Revealed Law) became the standard textbook on the Higher Objectives until the twentieth century.⁴

The key contribution of Shatibi’s theory to the evolution of the Higher Objectives could be summed up as moving the theory from “unrestricted interests” to “fundamentals of law,” from “wisdom behind the ruling” to “the basis for the ruling,” and from “uncertainty” to “certainty.” These are very significant positions taken by Shatibi, and the impact of his stance on the evolution of Islamic law is immense. In

² Muhammad Al-Tahir Ibn Ashur, *Ibn Ashur Treatise on Maqasid Al Shari’a*, Herndon, Virginia: International Institute of Islamic Thought, 2006, p. XXII.

³ http://en.wikipedia.org/wiki/Imam_Shatabi; also see Muhammad Khaled Masud, *Shatibi’s Theory of Meaning*, Islamabad: Islamic Research Institute, 1994, pp. 5–6.

⁴ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*, The International Institute of Islamic Thought, 2008, pp. 17–21.

particular, his view on making the Higher Objectives “the basis for ruling” encapsulates a response to our thesis statement quoted above. Application of Shatibi’s theory, as we shall see later in the paper, could have a significant impact on the future development of Islamic finance.

Shatibi’s contribution to the discussion on Higher Objectives has won him a lot of praise. Mustafa Al-Zarqa has these words for Imam Shatibi: “a bright star which illumines and inspires studies on the principles and objectives of Islamic Law, making clear the path ahead and providing authoritative support [for their conclusions].”⁵

PART I: THEORY OF HIGHER OBJECTIVES OF ISLAMIC LAW AND IMAM AL-SHATABI

A. Theory of Higher Objectives

In this part, we will attempt to understand Shatibi’s *methodology* to determine the objectives of *shari‘a*. However, before we attempt to unravel his methodology, we need to understand what is meant by the phrase “objectives of *shari‘a*” or “knowledge of the objectives of *shari‘a*.”

It is interesting to note that Shatibi did not venture into defining what he means by the term “objectives” in his masterpiece *Al-Muwafaqat*. Perhaps the reason was that he considered it sufficiently clear for someone who has an in-depth understanding of Islamic law. In his own words:

He who wishes to benefit from this book must have a thorough grasp of the science of Islamic Law — both its roots and its branches, both that aspect of it which has been revealed and passed down in textual form, and our understanding and interpretations thereof. Moreover, he must not be disposed to imitation or to clinging obdurately to this or that school.⁶

⁵ Ahmad Raysooni, *Imam Al-Shatibi’s Theory of the Higher Objectives and Intents of Islamic Law*, Herndon, Virginia: International Institute of Islamic Thought, 2005, Introduction, p. xiii.

⁶ *Ibid.*, p. xxi. The author has relied on Ahmad’s translation of the work of Imam Shatibi throughout this paper with minor modifications to ensure a smooth flow of the style of translation with this paper.

Shatibi does, however, allude to a number of Quranic verses to back his statement that the well-being of the creation is at the heart of *shari'a*.⁷ We could, therefore, say that insofar as Shatibi is concerned, the objective of *shari'a* is the “well-being” of people.

Definition of Objectives by Other Scholars

It has been quoted from Sheikh Bakar bin Abdullah Abu Zayed that the purpose of *shari'a* has been revealed to us in the following verse: *Surely Allah enjoins justice, kindness and the doing of good to kith and kin, and forbids all that is shameful, evil and oppressive. He exhorts you so that you may be mindful. (Al-Quran 16: 90.)*⁸

Moroccan scholar Sheikh Allal al-Fasi, after having reviewed a number of verses in the Quran, concluded:

These verses in their totality make quite clear that the purpose for which the prophets and messengers were sent and for which the divine laws were revealed is to guide human beings into that which will ensure their well-being and righteousness, and to enable them to carry out the responsibility which has been laid upon them.⁹

We could extract the following elements from the above definitions of the objectives of *shari'a*:

1. Well-being of people
2. Doing good (justice, kindness, good to kith and kin)
3. Forbidding evil (all that is shameful, evil, and oppressive)

⁷ Abu Ishaq Al Shatibi, *Al-Muwafaqat*, Dar Ibnul Qayyim & Dar Ibn Affan, 2003, vol 2, pp 12–13.

⁸ The English translation of the Quran by Dr. Muhammad Taqi-ud-Din Al-Hilali and Dr. Muhammad Mushin Khan has been used.

⁹ Raysooni, *Imam Al-Shatibi's Theory of the Higher Objectives*, p. xxiii.

Why is the Knowledge of Objectives Necessary?

To answer the question that has been posed, we will backtrack a little and attempt to understand the discipline of *usul al-fiqh* and the place of *maqasid al-shari'a* within this discipline.

As Muslim rule expanded to include communities outside of the Arab world and Muslim jurists faced an increasing number of new issues to opine on, the focus of their discussion slowly shifted from the “immediate question” to the jurisprudence (*usul*). Two cities, Kufah and Medinah, gained prominence as centers of legal learning. Dr. Zafar Ishaq Ansari notes that:

As the doctrine of each center became known to the others, and as intellectual and existential contacts between scholars of different parts of the Dar al-Islam increased, the differing legal doctrines came under growing discussion. These discussions gradually led the lawyers to spell out the principles underlying their doctrines. As a result of these discussions, there appeared a new genre of legal literature — *Ikhtilaf* — and led to an enhancement in juristic consciousness and resulted in the formulation of a clearer and more precise juristic theory.¹⁰

For instance, *istihsan* (juristic preference) came to be associated with the Hanafi school based in Kufah whereas *maslaha mursala* (textually unspecified benefits) came to be identified with the Maliki school in Medinah — tools that are employed to identify *maqasid al-shari'a*.

Ibn Ashur in his treatise on *maqasid al-shari'a* opines that knowledge of *maqasid al-shari'a* is vital for a *mujtahid* who wishes to comprehend *shari'a*.¹¹

Shatibi sums it up nicely when he opines that:

If one reaches a point where he perceives the Lawgiver’s intention as it pertains to every question of the Law and every area thereof, he will have achieved a station which qualifies him to serve as the

¹⁰ Zafar Ishaq Ansari, *The Significance of Shafai’s Criticism of the Medinese School of Law*, Islamic Research Institute, Islamabad, 1994, p. 6.

¹¹ Ibn Ashur, *Ibn Ashur Treatise on Maqasid Al Shari'a*, pp. 7–8.

Prophet's vicegerent in the realms of instruction and the issuance of legal decisions and rulings concerning what God wills.¹²

What Shatibi appears to suggest is that the knowledge of the objectives of *shari'a* is essential for arriving at legal deduction in ascertaining the will of God. And as we have seen from our earlier discussion that "what God wills" is the "well-being of people," we will see more arguments to support this position in other parts of this paper.

B. Shatibi's Theory of Higher Objectives

As discussed earlier, Shatibi notes that the purpose of divine law is to preserve the good of human beings. He quotes a number of Quranic texts to substantiate his claim, such as: "*We have sent you (O Muhammad) not but as a mercy for the 'Alamin (mankind, jinn and all that exists)*" (*Al-Quran: 21:107*), and "*Allah does not want to place you in difficulty, but He wants to purify you, and to complete His favor to you that you may be thankful.*" (*Al-Quran, 5:6.*)

Shatibi divides the Higher Objectives into two categories:

1. The Higher Objectives of the Lawgiver
2. The Human Objectives

Category One: The Higher Objectives of the Lawgiver¹³

Shatibi further broke down the Lawgiver's Higher Objectives as those that are meant for:

1. Establishing the Law;
2. Establishing the Law for People's Understanding;
3. Establishing the Law as a Standard of Conduct; and
4. Bringing Human Beings under the Law's Jurisdiction.

¹² Raysooni, *Imam Al-Shatibi's Theory of the Higher Objectives*, p. 331.

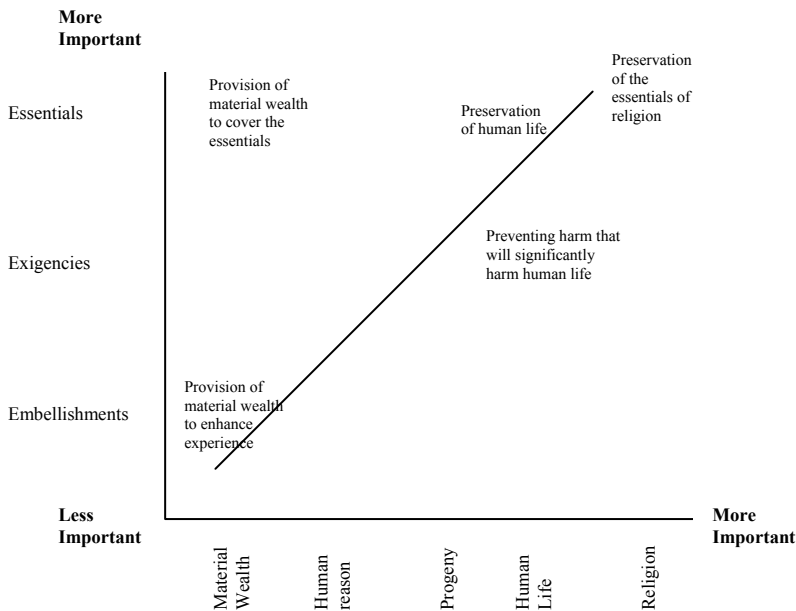
¹³ The author has attempted to provide a brief overview of Shatibi's theory rather than following Shatibi's methodology of arranging the issues in the form of questions.

For the purposes of this study we will focus on the first and fourth Higher Objective.

The Lawgiver's Higher Objectives in Establishing the Law:

- Shatibi explains that the objective of the Lawgiver in establishing the law is to protect essentials, exigencies, or embellishments.
- Essentials (*dharoriyyat*) are things that are necessary for the material or spiritual well being of the human being. The loss of these would corrupt either this life or the life hereafter.
- Exigencies (*hajiyyat*) are things that complement the essentials. Preserving the exigencies relieves people from hardship.
- Embellishments (*tahsiniyyat*) are things that complement the exigencies. Embellishments enhance the experience of those subject to the law (human beings). These are the nice to-haves.
- Shatibi further suggests that an inductive analysis of Islamic law would give us the following five essential objectives/interests of law: religion, human life, progeny, material wealth, and human reason.

Figure 1: A graphic illustration of the Higher Objectives in Establishing the Law



Shatibi goes on to state that exigencies and embellishments are in the service of essential interests. He then fleshes out the meaning of this statement in the form of the following five rules:

1. The essentials are the foundation for exigencies and embellishments.
2. Disorder in relation to the essentials will lead to complete disorder in the latter two.
3. An imbalance in the realm of the exigencies and embellishments does not necessitate an imbalance in the essentials.
4. A complete imbalance in the realm of embellishments or exigencies may lead to a partial imbalance in the realm of essentials.
5. Exigencies and embellishments must be preserved for the sake of the essentials.¹⁴

¹⁴ Raysooni, *Imam Al-Shatibi's Theory of the Higher Objectives*, p. 111.

The above rules clearly lay out another principle that although embellishments may not need to be protected in of themselves, they must be protected for the sake of exigencies and likewise, exigencies should be preserved for the sake of essentials.

The Lawgiver's Higher Objectives in Bringing Human Beings under the Law's Jurisdiction

The focus of this Objective is on the fact that human beings should subject themselves to the objectives of the Lawgiver and not to their own objectives. Shatibi explains this as follows:

Once this has been determined, it becomes the basis for a number of rules. The first of these is that every action which is based on the mere fulfillment of one's own desires and without regard for what God has commanded prohibited, or left open to human choice, is invalid without exception. The reason for this is that for every action, there must be a person, a force, a law or the like which moves one to action. Hence, if the intention to obey the Lawgiver plays no role in one's performance of a given action, then it is nothing but a response to one's desires and lusts, and any action which meets this description is, without exception, unacceptable. By the same token, it may be said that every action which is a response to what God has commanded, prohibited, or left open to human choice is acceptable and right. If, on the other hand, an action represents a mixture of the two — in other words, it if is in part a response to a divine command and in part a response to one's own desires — then the ruling on it will vary accordingly, being based on whatever of the two motives is predominant and prior...¹⁵

The following quote from Shatibi will flesh out his view of the first and fourth Higher Objective:

The first sub-classification (Higher Objective) refers to the establishment of a system which is capable of bringing happiness in both this worlds and the next to those who adhere to it, while the fourth sub-classification (Higher Objective) refers to the fact

¹⁵ Ibid., pp. 121–122.

that the Lawgiver calls upon His servants to place themselves in subjection to this system, and not their whims and desires.¹⁶

Category Two: Human Objectives

Here Shatibi takes us back to the discussion on actions and intentions and emphasizes the point that actions and intentions cannot be separated. He then proceeds to suggest that “The Lawgiver’s aim for human beings is for their intention in what they do to be in agreement with His intention in laying down legislation.”¹⁷ In other words, “Whoever seeks, through the obligations imposed by the Law, to achieve objectives other than those for which the Law was laid down, has violated the Law, and the action of whoever violates the Law, insofar as it is a violation, is invalid.”¹⁸

Shatibi goes on to discuss the topic of legal artifices (*hiyal*) under Human Objectives. Shatibi divides *hiyal* into three categories:

1. Prohibited: Gift of property for a limited period to avoid *zakat*.
2. Permissible: To tell a lie to save one’s life.
3. Unclear: This is the category where the intent of the Lawgiver is not very clear, and deferred payment sale with excess could be one of them.¹⁹

The gist of Shatibi’s view appears to be the need to ascertain the intent of the Lawgiver in every case. If the intent is preserved then the *hila* would be considered acceptable and vice versa. Shatibi proceeds to emphasize that:

Actions performed in accordance with the law are not intended for their own sake, but for the sake of their objectives. These objectives constitute the meaning of such actions and the interests for the sake of which they are required by the Law. Hence,

¹⁶ Ibid., p. 120.

¹⁷ Ibid., p. 129.

¹⁸ Ibid., p. 130.

¹⁹ Abu Ishaq Al Shatibi, *Al-Muwafaqat*, Dar Ibnul Qayyim & Dar Ibn Affan, 2003, vol. 3, pp. 124–125.

whoever performs such actions with some other intent is not conducting himself in a legitimate manner.²⁰

We will come back to this later in the paper, but Shatibi makes it clear that one's actions must follow the intention of the Lawgiver. This makes it extremely important for us to understand what the intention of the Lawgiver is.

C. How May the Intent of the Lawgiver Be Known?

So far, we have discussed *what* needs to be established. We now proceed to investigate *how* do we establish that? This, in fact, is the most complex issue in the entire discussion, that is, deciphering the intent of the Lawgiver. How does one say that God intends X and not Y? For instance, the Lawgiver commands us to do justice.²¹ While in some cases, such as most criminal cases where scriptures are more prescriptive, it will be relatively straightforward to implement the command to do justice, it will be complex in certain other matters such as “a just economic policy,” where *shari‘a* has left a lot of room for *ijtihad*. This is precisely the task of a jurist.

In discussing the tools to determine the intent of the Lawgiver, Shatibi lists the following tools that he considers necessary to determine the real intent of the Lawgiver:

1. Legal Commands and Prohibitions: Between *Ta’lil* and Literalism
2. Induction
3. Knowledge of Arabic language
4. Primary and Secondary Objectives of the Law
5. Silence on the part of the Lawgiver

For the purposes of this paper, we will focus on the first two tools.

²⁰ Raysooni, *Imam Al-Shatibi's Theory of the Higher Objectives*, p. 133.

²¹ “Be just: That is nearer to piety.” (Al-Quran 5:8.)

1. Legal Commands and Prohibitions: Between Ta'lil and Literalism

The discussion of do's and dont's. It would be appropriate here to first discuss Shatibi's view on *ta'lil*. Ahmad notes that:

Shatibi ... holds that the validity of interpreting Islamic Law in terms of its concern for human interests is a certainty which admits of no doubt, and that this truth applies to the entire Law with the exception of those rulings having to do with acts of worship, which need to be accepted with unquestioning submission and devotion without regard for what underlies them by way of bases or wise purpose. Hence, the foundation for dealing with rulings such as these is to refrain from *ta'lil*, even though they most certainly do have a basis in both logic and human interest which is known to God Almighty.²²

What concerns us is the first part of the above statement, attributed to Shatibi. While the claim that Shatibi makes with respect to "concern for human interest" is a subject that has been debated and discussed among earlier scholars and can be the subject of further investigation, we will limit ourselves to what Shatibi has to say about the topic under discussion (i.e., that all actions have an underlying intent except acts of worship, which also has an objective but we leave that to God Almighty). Shatibi further states that:

If the '*illah* is known, it should be heeded, for whenever it is known, it will be possible to determine what is required by the command or prohibition in question, as well as what is, and is not, its intent. If, on the other hand, the '*illah* is not known, one must cease making definitive pronouncements to the effect that the Lawgiver intends this or that...²³

In our quest for '*illah* Shatibi warns us of a danger that will become more relevant when we will discuss the interaction of these objectives and intent with finance and economics. He points out that our investigation of '*illa* must not lead us to disregard the apparent meaning:

²² Raysooni, *Imam Al-Shatibi's Theory of the Higher Objectives*, p. 174.

²³ *Ibid.*, p. 270.

Slavish, excessive adherence to texts' apparent meaning is a far cry from faithfulness to the Lawgiver's intention; however, disregard for these meanings is likewise a type of immoderation. Thus, if one conducts himself in accordance with what he understands to be the basis for this or that command or prohibition, he will be proceeding along the right path and be in harmony with the Lawgiver's intention in every respect.²⁴

It appears from the above discussion that Shatibi clearly advocates a substance-based approach, and hence the focus on *'illa*, which also conforms to the apparent legal norms.

Shatibi's focus on substance and form will be instructive as we review arguments for and against compliance with form in addition to substance in the third part of the paper.

2. Induction (*istiqra'*)

The principles and rules of Islamic jurisprudence (*usul al-fiqh*) have been largely established through a process of induction from applied legal rulings. Ibn Ashur notes in his treatise on *maqasid al-shari'a* that "This is because the systematic compilation of the science of *usul al-fiqh* (Islamic jurisprudence) was completed only nearly two centuries after the codification of *fiqh*."²⁵

Shatibi does not refer to the methodology of induction as a formal tool to ascertain the objectives of the Lawgiver. However, he does use it extensively in his works. 'Abd Allah Darraz in his study of *al-mufaqaat* notes:

[Shatibi] investigates speculative evidence on the level of its signification, its text, or both, as well as its rational aspects. In so doing, he joins strength to strength, continuing with the inductive process until he arrives at what may be considered definitive certainty on the subject at hand. This is a unique feature of this book in its reasoning and argumentation. It is moreover, a successful method by means of which he achieves what he has set

²⁴ Ibid., p. 270.

²⁵ Ibn Ashur, *Ibn Ashur Treatise on Maqasid Al Shari'a*, p. XVII.

out to do in all but the rarest instances, may God have abundant mercy upon him.²⁶

The following paragraph from *Al-Muwafaqat* illustrates the use of induction in Shatibi's works:

When the secret which had been so well concealed manifested itself, and when God in His Bounty granted me access and guidance to that which He willed to reveal thereof, I continued to record its wonders and gather together its scattered pieces from the most specific to the most general, citing the evidence thereof from the sources of Islamic rulings with attention to every detail. In so doing, I relied upon all-inclusive inferences rather than limiting myself to isolated particulars, demonstrating the textual and rational foundations [of Islamic rulings] to the extent that I was enabled by grace to elucidate the objectives of the Qur'an and the *sunna*.²⁷

Shatibi, in summary, made substantial contribution to the development of the Theory of Higher Objectives. Before Shatibi the Higher Objectives were considered "unrestricted interests." Even al-Ghazali referred to them as the "illusionary interest" (*al masalih al-mawhumah*). However, Shatibi brought them into the realm of "fundamentals of law." He argued his case by referring to a number of Quranic verses that we have referred to in section A of this part.

Shatibi further argued that the Higher Objectives should be the "bases for the ruling" rather than simply the "wisdom for the ruling" when he stated and as quoted above "in so doing, I relied upon all-inclusive inferences rather than limiting myself to isolated particulars."

Shatibi's third contribution to the theory of Higher Objectives is his case for "certainty" of Higher Objectives, which were considered "uncertain" before him. To support his case he argued for the "certainty" of the inductive process that he used to conclude the Higher Objectives.²⁸

²⁶ Raysooni, *Imam Al-Shatibi's Theory of the Higher Objectives*, pp. 281–282.

²⁷ Shatibi, *Al-Muwafaqat*, vol. 1, p. 9.

²⁸ Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*, pp. 17–21.

See also http://en.wikipedia.org/wiki/Imam_Shatabi.

This very brief discussion allows us a peek into the methodology advocated by Shatibi to understand the *intent*²⁹ of the Lawgiver.

PART II: MUSLIM ECONOMISTS AND THE OBJECTIVES OF ISLAMIC FINANCE

In Part I we completed our brief discussion of “*What needs to be established?*” And “*How do we establish that?*”

In Part II we will consider if we can establish general economic objectives to guide us in interpreting *ahkam* (legal rules) relevant to economics and finance.

Views of Contemporary Muslim Economists

Nejatullah Siddiqui comments in his book *Riba, Bank Interest and the Rationale of Its Prohibition*.³⁰

There is no disputing the point that all Islamic provisions relating to economic affairs are directed at justice and growth. The conception of growth in Islam is, however, broader and more comprehensive than the narrowly conceived ‘economic growth’ in capitalism. As implied by the verses of Qur’an,³¹ it refers to an all rounded human personality and a society free of corruption. *Maslaha* and the protection of life, religion, reason, progeny and property, as also preservation of dignity and freedom, are rightly

²⁹ We find that the classical text uses a number of terms to refer to objectives. Some scholars have used it interchangeably and others have ascribed specific meaning. It is not possible for us to discuss the various uses of the terms ‘*illah*’ (underlying reason), *hikmah* (wise purpose), and *qasad* (meaning) in this short paper but it makes a very interesting study.

³⁰ Nejatullah Siddiqui, *Riba, Bank Interest and the Rationale of Its Prohibition*, Jeddah: Islamic Research and Training Institute, 2004, p. 22.

³¹ “Even as We have sent unto you a messenger from among you, who recites unto you Our revelations and causes you to grow in purity, and teaches you the Scripture and wisdom, and teaches you that which you know not. (2:151); Allah verily has shown grace to the believers by sending unto them a messenger of their own who recites unto them His revelations, and causes them to grow in purity, and teaches them the Scripture and wisdom; although before (he came to them) they were in flagrant error.” (Al-Quran 3:164)

seen as corollaries to the broader goals of justice and growth. These are the principles scholars discover by analyzing the textual provisions, these are what Quran and *sunna* declare to be the objectives and these are what the legislators are supposed to keep in view while making new laws to handle new situations.”

It thus appears that the primary objective, so far as Siddiqui is concerned, of Islamic economic teachings is “*justice and growth*.”

Umer Chapra, on the other hand, has preferred to refer to broad principles in characterizing an Islamic economic system. Chapra argues for:

a socially agreed filter mechanism to enable them [Muslim countries] to distinguish the *efficient and the equitable use of scarce resources* from the inefficient and the inequitable; (b) a motivating system to induce individuals to use these resources in conformity with the dictates of such a filter mechanism; and (c) a socio-economic restructuring that would reinforce the above two elements in bringing about the kind of reallocation and distribution of resources that *hayat tayyibah* (i.e., “the good life”) demands.³²

In addition to focusing on efficient and equitable use of scarce resources, Chapra in one of his articles emphasizes “justice” as one of the cornerstones of an Islamic economic system.³³

Irfan Ul Haq notes that “One of the central aims of Islam is to establish an ethical, egalitarian and just social order.” He further states that “Islam’s economic doctrines and methodology, as will be seen, lie squarely within the domain of social economics.”³⁴ Masudul Alam Chowdhury surveys the definition of social economics to suggest:

Walras viewed social economics as a field of inquiry intermediate between social ethics and economics. In this sense, social economics is a rational socioeconomic study of the application of religious thought to the economic, political and social domain,

³² M. Umer Chapra, *Islam and the Economic Challenge*, Herndon, Virginia: International Institute of Islamic Thought, 1992, p. 342.

³³ M. Umer Chapra, “Islamic Economic Thought and the New Global Economy,” *Islamic Economic Studies* 9(1), September 2001, pp.1–16.

³⁴ Irfan Ul Haq, *Economic Doctrines of Islam*, Herndon, Virginia: The International Institute of Islamic Thought, 1996, pp. 81–82.

calling for applied judgments and reforms. Tawney believed that social economics as the means of studying society should be guided by a just appreciation of spiritual ends in order to use its material resources to promote the dignity and refinement of the individual human beings who compose it.³⁵

Irfan Ul Haq further goes on to provide us with “Foundational Principles” of an Islamic economy. The gist of his view is that an Islamic economy is based on the principles of equitability and justice.³⁶

Khurshid Ahmad appears to agree with the other economists when he suggests that the Islamic concept of development has a comprehensive character and includes moral, spiritual and material aspects. Economic development is a multi-dimensional activity, focused on man, purporting to generate a quantitative and qualitative impact with optimal utilization and equitable use and distribution of resources on the basis of right and justice.³⁷

Synthesis of Objectives of an Islamic Economic System

A quick review of the above suggests that, by and large, Islamic economists suggest the following objectives for an Islamic economic system:

1. Comprehensive welfare of human beings is the primary objective of an Islamic economic system.
2. This welfare can be brought about through efficient and equitable use and distribution of resources.
3. This use and distribution of resources must be in line with the principles of justice.

In this part, we have established that a majority of Islamic economists share certain key economic objectives, which revolve around the concept of the “welfare of human beings.” As such these

³⁵ Masdul Alam Chaudhry, “The Micro-Economic Foundations of Islamic Economics,” *The American Journal of Islamic Social Sciences* 3, 1986, p. 236.

³⁶ Irfan Ul Haq, *Economic Doctrines of Islam*, p. 84.

³⁷ Khurshid Ahmad, “Economic Development in an Islamic Framework,” in *Studies in Islamic Economics*, Markfield, Leicester: The Islamic Foundation, 1980, pp. 179–180.

economic objectives are in line with the objective of Islamic law, which as we have seen earlier, is the well-being of people.

PART III: HIGHER OBJECTIVES AND ISLAMIC FINANCE

In our discussion, so far, we have addressed the following questions:

- What needs to be established?
- How do we establish that?
- What are the common economic objectives that are to be established?

In this part, we will leverage part of the earlier discussion to discuss an objective-oriented interpretation of Islamic law. We will then review some of the current practices in the Islamic finance industry to see what lessons could be learned by the Islamic finance industry from the methodology of interpretation advocated by Shatibi.

A. Toward a *Maqasid*-based *Ijtihad*

Ibn al-Qayyim al-Jawziyyah notes that:

The basis of the *shari'a* is wisdom and welfare of the people in this world as well as the Hereafter. This welfare lies in complete justice, mercy, well-being and wisdom. Anything that departs from justice to oppression, from mercy to harshness, from welfare to misery and from wisdom to folly, has nothing to do with the *shari'a*.³⁸

However, the Islamic concept of welfare is not limited to what humans know as good. The God Almighty says “*It may be that you dislike a thing which is good for you and that you like a thing which is bad for you. Allah knows but you do not know.*” (Al-Quran 2:216.) This is because human knowledge is limited “*And of knowledge, you (mankind) have been given very little*” (Al-Quran 17:85). Imam Ghazali refers to this when he says:

³⁸ Chapra, *Islam and the Economic Challenge*, p. 1.

As for *maslaha*, is essentially an expression for the acquisition of *manfa'ah* (benefit) or the repulsion of *madarraah* (injury, harm), but that is not what we mean by it, because acquisition of *manfa'ah* and the repulsion of *madarraah* represent human goals, that is, the welfare of humans through the attainment of these goals. What we mean by *maslaha*, however, is the preservation of the ends of the *shari'a*.³⁹

Nyazee makes the following observations on the above definition:

1. That the pursuit of human goals and the principle of utility based on human reason is not what is meant by *maslaha*.
2. That *maslaha* is the securing of goals or values that the Lawgiver has determined for the *shari'a*.
3. That the goals determined for the *shari'a* by the Lawgiver may or may not coincide with values determined by human reason. Thus, reasoning based upon the principles of utility or on economic analysis may sometimes be acceptable to the *shari'a*, but it may be rejected at other times when there is a clash of values.⁴⁰

Nyazee further argues that the larger doctrine of *maslaha* requires that during the use or employment of rational sources (*qiyas, istihsan* etc.) to discover the law, each derived law must be checked against the purposes of Islamic law or the *maqasid al-shari'a*. If there is some compatibility between the derived law and the purposes then the law is valid, otherwise it may be rejected. His view appears to be in line with what we have quoted from Shatibi earlier. However, this then begs an answer to our thesis statement “*Should our understanding of universals trump our understanding of particulars?*” Perhaps we could quote from Shatibi when he stated that:

If one reaches a point where he perceives the Lawgiver’s intention as it pertain to every question of the Law and every area thereof, he will have achieved a station which qualifies him to serve as the

³⁹ Imran Ahsan Khan Nyazee, *Islamic Jurisprudence*, Henrdon, Virginia: International Institute of Islamic Thought, 2000, p. 196.

⁴⁰ *Ibid.*, pp. 196–197.

Prophet's vicegerent in the realms of instruction and the issuance of legal decisions and rulings concerning what God wills.⁴¹

Clearly, in present times, there is a lot to learn from Shatibi, and Islamic finance would be one area that could benefit from Shatibi's insights.

B. Current Practices in Islamic Finance and Objectives of *Shari'a*

Islamic finance has come a long way from the nascent concept that it was a few decades ago. It has grown in size and sophistication. Islamic financial institutions have clearly fared the recent financial crisis better than others. This can partly be explained due to some of the inherent differences between Islamic and conventional finance. Some of the more salient differences include prohibition of interest, sale of debt, and speculation; emphasis on equity participation and risk sharing; and a linkage to the real economy. While the principles remain unchanged, application of these principles has been severely tested.

Practical complications in achieving equity participation and risk sharing in any meaningful way continue to dwarf Islamic finance practitioners. Products such as *tawarruq* have severed the link between real and financial economy and *shari'a* compliant wrappers, albeit less widely accepted, make sale of debt and speculation possible. Given where we are in terms of financial crisis, it is entirely possible that some of these products would be scaled back partly because the conventional market for these products has dried up. However, it does draw our attention to the process through which these products are filtered.

While some of the Islamic economists have argued that each Islamic finance product must fulfill the requirements of the Higher Objectives of Islamic law, it is understandable that in the absence of having these objectives formulated in a pragmatic economic framework, individual scholars faced with the task would choose to rely on their understanding of "general need" rather than goals that have not been defined. It is this challenge to which Zarqa had alluded to in the following words:

⁴¹ Raysooni, *Imam Al-Shatibi's Theory of the Higher Objectives*, p. 331.

Specifying a reasonable well-defined social welfare function in Islam is a matter of momentous significance to society, policy-makers, and especially to Muslim economists and jurists . . . to define this welfare from an Islamic viewpoint must be the *sine qua non* for making practical Islamic recommendations on any social or economic issue.⁴²

Zarqa further notes that “Muslim jurists have a central role to play in defining in collaboration with other social scientists, including economists — details of a social welfare function relevant to present-day society.”⁴³

The task that Zarqa identifies is not straightforward by any means. However, if we consider our discussion in the earlier part, we know that it is the well-being of human beings that is clearly the objective of *shari‘a*, even if, at times, we fail to understand the apparent logic. Let’s consider this larger goal (substance) within the known prescription of *shari‘a* (form) as we have seen Shatibi to advocate:

Slavish, excessive adherence to texts’ apparent meaning is a far cry from faithfulness to the Lawgiver’s intention; however, disregard for these meanings is likewise a type of immoderation.⁴⁴

Clearly, while Shatibi emphasizes the absolute importance of the substance of a transaction he does not discount the importance of the form. This indeed, is the nature of every legal system. Now, if we were to take the substance of Islamic finance, which we have argued is the welfare of human beings, and combine that with the contractual architecture of Islamic law, we have a strong compass to direct the future growth of Islamic finance.

The big challenge here, however, is the definition of “economic welfare.” The author thinks that economic welfare may be defined with the help of the fundamental concepts of economics guided by the traditional legal theory of Islamic law and that of *maqasid al-shari‘a*. In Part I.B of our paper we discussed the order of priority in the objectives of *shari‘a*, which is protection of religion, human life,

⁴² Anas Zarqa, “Islamic Economics: An Approach to Human Welfare,” in *Studies in Islamic Economics*, Markfield, Leicester: The Islamic Foundation, 1980, pp. 16–17.

⁴³ Ibid, p. 17.

⁴⁴ Raysooni, *Imam Al-Shatibi’s Theory of the Higher Objectives*, p. 270.

progeny, human reason, and material wealth. Accordingly, resources in an Islamic economy must protect human life over material wealth. Similar inferences could be drawn to identify other goals of an Islamic economic system down to more micro details.⁴⁵ In terms of current practices in Islamic finance, this could mean that products that are geared to providing solutions in healthcare and education could be accorded a higher priority as compared to products that simply provide access to something “nice to have.”

On the other spectrum let’s consider an existing concept to test our compass. The *shari’a* compliant wrapper (“SCW”) had been at the head of the last tide in product development in Islamic finance. Let’s consider a SCW that provides exposure to the default risk of a conventional loan portfolio to see if this structure will pass the dual filter of *substance* (read “welfare”) and *form* that we have discussed. While the structure of this SCW may comply with the formal requirements of Islamic contract law, its substance appears to contradict the welfare intended by the Lawgiver when He prohibited interest.

Admittedly, the above is a very simplistic analysis of a much more complex situation. There would be instances when the intention of the Lawgiver would not be as clear as it is in the case just cited. In those cases, where the intention of the Lawgiver is not clear, we will have to revert to general principles arrived at by induction to guide our understanding of economic welfare intended by the Lawgiver.

The above discussion also holds an answer to our Thesis Statement “*Should our understanding of universals trump our understanding of particulars?*” Shatibi clearly, in his quote above, advocates balancing both form and substance in pursuit of the objectives of *shari’a*.

Islamic finance has, so far, navigated the challenges of competing with conventional financial industry reasonably well. It now faces the most daunting task of securing its fundamental distinguishing characteristics that have been discussed earlier. It would do well to listen to the likes of Shatibi while exploring new products as it aims higher.

⁴⁵ Please further see Imran Ahsan Khan Nyazee, *Theories of Islamic Law—The Methodology of Ijtihad*, Herndon, Virginia: International Institute of Islamic Thought, 1994, pp. 263–264.

There has come to you from God a light, and a Book Manifest whereby God guides whosoever follows His good pleasure in the ways of peace, and brings them forth from the shadows into the light by His leave; and he guides them to a straight path. (5: 15–16)