

An aerial photograph of a large, ribbed dome, likely a mosque, in a vast, arid desert landscape. The dome is covered with numerous pigeons. At the top of the dome is a decorative finial consisting of a crescent moon and star above two spheres. The background shows rolling sand dunes under a clear sky.

# Obligations to Future Generations

*A Shari'ah Perspective*

MUSA FURBER

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### *Summary*

Actions of an earlier generation affect whether later generations will exist at all as well as the quality and type of life they will have. Discussions concerning the obligations earlier generations owe later generations have proven to be useful when thinking about the environment, economics, sustainability, and other issues. Western thinking about obligations to future generations has become very sophisticated since the 1970s. Western ethicists consider it a litmus test for evaluating ethical theories, and expect it to be a main recurring theme in the new century. The Shari'ah already provides the fundamentals for thinking about obligations to future generations. These basic fundamentals are not developed enough to shed light on these issues within the Muslim Community, let alone compete in the open market of ideas. Shari'ah experts will need to develop these fundamentals before a Shari'ah-informed conception of obligations to future generations can be offered.

### *About the Author*

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SINCE THE 1970S, the topic of ethical obligations to future generations has been of interest to philosophers, economists, environmentalists, and others. While the context for application differs for each field, the central issues are the same: whether a current generation has moral obligations to non-contemporaneous future generations, the nature of those obligations, and whether those obligations require an earlier generation to make sacrifices for a future generation. For example, does the present generation have the right to exhaust the planet's resources or render the planet uninhabitable? Do future generations have rights which require the present generation to conserve resources and preserve the environment for future generations? Are there institutions that must be built and passed on? At the heart of the matter is the saving, creation, and distribution of assets and resources. Thus far, the concept of ethical obligations to future generations has been applied primarily in economic and environmental contexts, though it is also relevant to social assets such as culture, institutions, and knowledge.

This paper is divided into three sections. The first section introduces the concept of obligations to future generations and its importance as a tool for ethical reasoning, testing ethical systems, and for policy making; the second presents a summary of how contemporary Muslim authors have dealt with the notion of such obligations; and the third lays the groundwork for a Shari'ah-based framework for addressing them.

Similar to the author's previous pieces on nanotechnology, virtual worlds, and alternative dispute resolution for Muslims in

non-Muslim regions,<sup>1</sup> this paper is exploratory in nature. As such, it does not intend to be exhaustive, but rather aims to introduce a topic and offer preliminary justifications and evidence that will serve as a foundation for further studies.

## Future Generations

**Definition.** *Obligations to future generations* examines moral issues concerning persons who have yet to be born, but may come into existence. The questions it examines include whether future persons are morally significant, whether they have a right to exist, whether we are required to make certain sacrifices for the sake of their welfare, whether concern for future persons can abrogate moral obligations to existing persons,<sup>2</sup> and what sorts of resources and institutions we are obligated to pass to them.<sup>3</sup>

Philosophical concerns for future generations go back to at least Aristotle's theory of distributive justice, which he introduced in Book V of his *Nicomachean Ethics*.<sup>4</sup> In contemporary literature, obligations to future generations are often included within discussions on intergenerational justice, which concerns moral obligations that presently existing moral agents owe to non-contemporaneous past and future generations, in part because of Rawls advocating its inclusion within the domains of justice.<sup>5</sup> As such, it is also present in the ever-increasingly important topics of the environment, ecology, and sustainability.

1. Furber, *Ethical Dimensions of Nanotechnology*; idem, *Ethics & Virtual Worlds*; idem, *Alternative Dispute Resolution*.
2. Surber, "Obligations to Future Generations," 104; Pasek, "Obligations to Future Generations," 514.
3. Rawls, *Theory of Justice*; Bickham, "Future Generations," 169; Gaba, "Environmental Ethics," 249; Tremmel, "Introduction," 12; Gosseries, "Theories of Intergenerational Justice," 63; Gosseries and Meyer, "Introduction," 1-21.
4. Aristotle, *Aristotle in 23 Volumes*, trans. H Rackham, [1131a] 11-12, [1132a] 13-15; Pasek, "Obligations to Future Generations."
5. Bickham, "Future Generations and Contemporary Ethical Theory," 169; Frederickson, "Public Officials," 458.

**Its sudden importance.** The topic of obligations to future generations remained largely overlooked until recently. The most popular explanation for the recent interest is that previous generations lacked the capacity to render extinct or critically impair future generations of man or beast, or to greatly deprive them of resources or well-being. Stephen Bickham, an early contributor to the topic, wrote that “until now there just have not been enough people nor an advanced enough technology to threaten a large environment with permanent destruction or impairment.... We did not have the responsibility for the future that we do now before we had the capacity to destroy it”<sup>6</sup>; that is, technology and population have advanced to where decisions of today result in irreversible changes or damages which will be passed on to persons who are not yet born and did not have any say in the matter. These decisions not only affect the quality of life of future generations, but may also put their very existence at risk.<sup>7</sup>

Evidence of the increased importance of the topic can be seen through the increase in the number of related publications. Interest in obligations to future generations and intergenerational justice has been on the increase since the mid-1960s as part of discussions on the consequences of our rapidly growing human population. In 1980, Ernest Partridge observed that out of a body of approximately 700,000 doctoral dissertations, only one single dissertation included “posterity”, “future generations”, or “unborn generations” in its title. Since then, scores of journal articles, in addition to a number of monographs and edited collections, have been published. Additionally, the topic is brought up frequently in newspapers and in policy making.<sup>8</sup>

**Importance as a policy making tool.** Ethical theories about how to approach obligations to future generations help policy makers with a difficulty inherent to intergenerational policies:

The dilemma presented by an (alleged) obligation to future generations arises when it becomes clear that

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6. Bickham, “Future Generations and Contemporary Ethical Theory,” 170.
  7. Ibid.; Tremmel, “Introduction,” 7.
  8. Partridge, *Responsibilities to Future Generations*, 10; Tremmel, “Introduction,” 1; Gosseries and Meyer, “Introduction.”

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we must, in the present, choose between a policy or course of action which would have beneficial effects for the present generation but harmful effects upon future generations, and one which would sacrifice benefits for present individuals in favor for longer-range goods to be enjoyed by future men.<sup>9</sup>

The concept of obligations to future generations has been used repeatedly in the context of economic and environmental policy. For example, in 1997, UNESCO adopted its “Declaration on the Responsibilities of the Present Generations Towards Future Generations”. The authors of the declaration mention that

responsibilities of the present generations towards future generations have already been referred to in various instruments such as the Convention for the Protection of the World Cultural and Natural Heritage, adopted by the General Conference of UNESCO on 16 November 1972, the United Nations Framework Convention on Climate Change and the Convention on Biological Diversity, adopted in Rio de Janeiro on 5 June 1992, the Rio Declaration on Environment and Development, adopted by the United Nations Conference on Environment and Development on 14 June 1992, the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993, and the United Nations General Assembly resolutions relating to the protection of the global climate for present and future generations adopted since 1990.<sup>10</sup>

The authors listed the responsibilities in a set of twelve articles: needs and interests of future generations; freedom of choice; maintenance and perpetuation of humankind; preservation of life on earth; protection of the environment; human genome and biodiversity; cultural diversity and cultural heritage; common heritage

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9. Surber, “Obligations to Future Generations,” 106.

10. UNESCO, “Declaration on the Responsibilities of Present Generations Towards Future Generations.”

of humankind; peace; development and education; non-discrimination; and implementation.

A moral obligation to future generations needs to clarify who owes what to whom, why this is the case, and how to handle dilemmas. While the authors of this Declaration proclaim their conviction “that there is a moral obligation to formulate behavioral guidelines for the present generations within a broad, future-oriented perspective,” they did not provide evidence for this moral obligation (the “why”). They also did not explain whether this is a moral obligation specific to policy makers, or a general moral obligation extending to all members of each generation (the “who”); nor did they provide a general framework for handling dilemmas (the “how”). In short, it leaves policy implementors unclear about the “who”, “why”, or “how”.

Leaving obligations to future generations in such vague and ambiguous terms runs the risk of policy makers adopting a policy of either extreme preservation or extreme consumption. According to a policy of extreme preservation, present generations minimize consumption in order to save resources for future generations. This is in contrast to a policy of extreme consumption where present generations maximize consumption in order to maximize wealth, either because they do not consider the needs of future generations significant, or because they consider this the best way to build wealth for future generations.<sup>11</sup>

It is beyond the scope of this paper to present a synopsis of the various ethical theories of obligations to future generations, as its intent is to introduce the topic, show its rising importance, and to illustrate a few of the shortcomings presented by an obligation to future generations that is not sufficiently sophisticated.

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Theories of obligations to future generations have practical value when applied to long-term policies and planning. Due to the increasing importance of intergenerational justice, sustainability, and related issues, ethical and political theories are now

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11. Elver, “Religions, Nature and Technology in the Mediterranean,” 223.

evaluated on their ability to justify and explain these obligations. This has prompted ethicists and political philosophers to develop sophisticated theories of obligations to future generations and intergenerational justice, leading to a growing body of literature. Although a few papers have referred to Islam, there is not yet a compelling Shari‘ah-based argument that justifies or details the contents of either of these two theories.

## Contemporary Muslim Authors and Future Generations

Several contemporary Muslim authors have alluded to the concept of obligations to future generations in their writings, though none of the writings surveyed have provided compelling proof for such an obligation from within the Shari‘ah itself.

In their book, *Environmental Protection in Islam*, Bagader et al. make explicit reference to obligations to future generations to show that the Shari‘ah endorses an obligation to protect the environment. They justify the existence of such an obligation through two arguments: one based upon textual evidence, and another based upon obtaining the ultimate objective of the Shari‘ah.

In the argument based upon textual evidence, the authors explain that humankind has a special relationship to the rest of creation in that Allah has entrusted them with stewardship (*khilāfab*) on the earth; and is, thus, an executor of Allah’s decrees. The authors explain that this stewardship includes duties that are intergenerational as well as interspecific:

All of the resources upon which life depends have been created by God as a trust in our hands. He has ordained sustenance for all people and for all living beings. “And He has set within it mountains standing firm, and blessed it, and ordained in it its diverse sustenance in four days, alike for all that seek [*sawā’an lil-sā’ilin*]” [Q41:10]. Thus, the utilization of these resources is, in Islam, the

right and privilege of all people and all species. Hence, man should take every precaution to ensure the interests and rights of all others since they are equal partners on earth. Similarly, he should not regard such use as restricted to one generation above all other generations. It is rather a joint usufruct in which each generation uses and makes the best use of nature, according to its need, without disrupting or adversely affecting the interests of future generations. Therefore, man should not abuse, misuse, or distort the natural resources as each generation is entitled to benefit from them but is not entitled to 'own' them in an absolute sense.<sup>12</sup>

While the authors consider the interests of future generations significant, they have not justified that the interests of future generations are significant and can override the interests of a former "current" generation. Despite citing Q41:10, this verse is in the form of a declarative sentence informing us that Allah Most High has already decreed sustenance for those who seek it rather than an imperative, and in itself is a verse that does not bear legal or ethical import. Moreover, they have not provided evidence to warrant their treating the declarative as an imperative.

The argument based upon the ultimate objective of the Shari'ah comes when the authors discuss the legislative principles, policies, and institutions of Islamic law which concern environmental protection. The authors write that

the ultimate objective of Islamic law is the universal common good of all created beings, encompassing both our immediate welfare in the present and our ultimate welfare in the hereafter. This objective of the universal common good is a distinctive characteristic of Islamic law. It means that no species or generation may be excluded from consideration in the course of planning and administration, but that each individual Muslim

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12. Bagader et al., *Environmental Protection in Islam*, 2-3; eidem, *Himāyat al-bi'ah fi-l-Islām*, 2-3.

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as well as the Muslim community must honestly strive toward the welfare of the whole.<sup>13</sup>

The authors offer a series of heuristics for deciding policy similar to what one finds in discussions on *maṣāliḥ* (public interests). A summary of their methodology is that: (1) reducing harm has precedence over obtaining good; (2) the interests of the larger group have priority over the interests of the smaller group; (3) priority is given first to necessities (*darūriyyāt*), then needs (*hājīyyāt*), and then supplementary benefits (*taḥsīniyyāt*); (4) consequences which are deemed more likely to occur are given more weight than those less likely to occur; (5) governing authorities must give precedence to the interests of the weak and voiceless; and (6) unintended consequences must be considered.<sup>14</sup>

Unfortunately, there are several problems which prevent this approach from providing practical advice concerning obligations to future generations. Some of these problems include the following:

- No generation knows how many creatures currently exist or will exist in the future (and when). There is no way to avoid excluding a species or generations in one's considerations during planning or administration, so each generation will be limited to using whatever resources are necessary to meet only its barest necessities (*darūriyyāt*) in order to avoid starving the unknown number of future generations.
- If we assume that the combined population of all future generations outnumbers the population of the current generation, then the current generation will (again) be limited to meeting only its barest necessities since anything above this will infringe upon the necessities of the most remote future generations.
- The likelihood of a future generation existing is inverse to its relative distance in time (a closer future generation is more likely to occur than a more remote future genera-

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13. Ibid., 17; eidem, *Ḥimāyat al-bi'ah fi-l-Islām*, 19.

14. Ibid., 20–1; eidem, *Ḥimāyat al-bi'ah fi-l-Islām*, 22–3.

tion). While it makes sense that the necessities (*darūriyyāt*) and needs (*hājīyyāt*) of the adjacent generation take precedence over the supplementary benefits (*tahsīniyyāt*) of the current generation, there must be some point where the existence of a future generation is unlikely enough that its necessities and needs do not take precedence over the current generation's supplementary benefits.

- If the interests of voiceless animals are automatically given precedence over human interests, the interests of a current human generation will always lose out to the interests of current and future non-humans.

These problems are common to consequentialist or teleological conceptions of obligations to future generations, particularly their utilitarian formulation which is so popular in the social sciences and for policymaking.<sup>15</sup>

Several objections have been raised against Utilitarian theories of obligations to future generations. Among the most prominent objections are uncertainty about the total size of the future population, uncertainty about future harms and benefits, whether the goal is to obtain total utility (which leads to Parfit's "repugnant conclusion"<sup>16</sup>) or average utility (which tends to favor present generations over future), and that it does not provide any specific obligations.<sup>17</sup>

In addition to their arguments falling short of providing a compelling justification, the authors' conception of obligations to future generations is limited to the problem of saving natural resources. Their conception does not include intellectual, cultural, social – or even religious – obligations.

While *Environmental Protection in Islam* should be applauded as a great step towards Shari'ah-based environmental protection, it

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15. Frederickson, "Can Public Officials Correctly Be Said to Have Obligations to Future Generations?" 469.

16. Parfit, "Future Generations: Further Problems," 113–72.

17. Surber, "Obligations to Future Generations," 105–10; Bickham, "Future Generations and Contemporary Ethical Theory," 171–2; Pasek, "Obligations to Future Generations," 514–15; see also Narveson, "Utilitarianism and New Generations," 62–72.

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does not justify nor define a sufficiently sophisticated conception of an Islamic obligation to future generations.

In October 1994, the Foundation for International Studies, in conjunction with the Faculty of Theology at the University of Malta, held a three-day conference entitled “Our Responsibilities towards Future Generations: Jewish, Christian and Islamic Perspectives”. The conference papers were later published as *Caring for Future Generations*,<sup>18</sup> which included papers from five participants representing Islamic thought.

Amongst the papers of these five participants, one avoided the issue altogether by translating forty-five Qur’anic verses concerning the environment without explaining their significance or relationship to future generations. The remaining four built their papers around the idea of human stewardship (*khilāfab*). Of these four, two limited their discussion to responsibilities one generation owes to its immediate successor, and two participants addressed the topic of rights owed to future generations. One of these last two participants was Abubakr Ahmed Bagader, one of the authors of *Environmental Protection in Islam*. Although he did not establish a Shari‘ah-based obligation to future generations, he mentioned that there are environmental, societal, and cultural obligations to future generations. The remaining participant did well covering the issue from the perspective of international law and the environment, but her Shari‘ah-perspective merely consisted of paraphrasing sections from Bagader et al.’s work.

Another example from a contemporary Muslim author is *The Environmental Dimensions of Islam*, written by Mawil Izzī Dien, another co-author of *Environmental Protection in Islam*.<sup>19</sup> In it, he speaks of matters related to obligations to future generations and intergenerational justice. When mentioning generation equity (one of the topics within intergenerational justice), his primary justification comes from outside Islamic sources.<sup>20</sup> But later when mentioning global interests, he cites the verse “It is He who has

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18. Agius and Chircop, *Caring for Future Generations: Jewish, Christian and Islamic Perspectives*.

19. Bagader et al., *Environmental Protection in Islam*; eidem, *Himāyat al-bī‘ah fi-l-Islam*.

20. Izzī Dien, *Environmental Dimensions of Islam*, 119.

created for you all things that are on the earth” (Q2:29), explaining:

The generality of this verse indicates that everything on earth is given to all of its occupants to be enjoyed responsibly and respectfully. It is in the public interest that the verse is left open. It is left open so that human beings would not find difficulty in consuming what has been created by God and left at their disposal. That is the main ground for the legal maxim that states “nothing is prohibited, *haram*, except that which is prohibited by a sound and explicit text.” This allowance might be understood to be a permission to justify unlimited human consumption. However, careful scrutiny of the text reveals the exact opposite. The presence of a global environmental interest can be deduced from this verse since the word “you” did not specify one nation or community; the earth with all its interests and benefits was created to be shared by all creatures and by all human communities.<sup>21</sup>

Elsewhere he also cites, “It is God who has made for you the earth...” (Q40:64), explaining that the unqualified pronoun ‘you’ (*lakum*) indicates that “the earth is not created only for one generation of creatures but for every generation: past, present, and future.”<sup>22</sup> This last example from contemporary Muslim authors offers a more compelling argument than those given before, though the only obligation it seems to indicate is saving natural resources for future generations, which leads us back to problems related to uncertainty about how much each generation must save for its successors.

Although several contemporary Muslim authors have claimed that Islam includes a concept of obligations to future generations, there is still a need to provide a compelling Shari‘ah-based justification for such obligations and to determine the details of what these obligations entail outside of environmental concerns.

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21. Ibid., 138.

22. Ibid., 75.

## Modern Shari‘ah Reflection

The concept of obligations to future generations has become quite sophisticated and has proven itself to be an important tool for policy makers and ethicists in the West. The following passage from philosopher Dr. Joanna Pasek demonstrates the types of questions being asked about obligations to future generations:

Do “future people” have rights such as fundamental rights to come into existence? Moreover, do they have ‘rights’ such as the right to live in tolerable conditions? Conversely, insofar as it is assumed that the existence and welfare of future people are at least to some extent dependent on the policies that we adopt, do we have any obligations to future generations, and, if we do, what are those obligations? In particular, are we obliged to make certain sacrifices for the sake of their welfare?<sup>23</sup>

Several contemporary Muslim authors have brought this concept of obligations to future generations into their own writings about Islam. Unfortunately, the conceptions used appear to be either loosely based upon the Shari‘ah or an uncritical adoption of the concept as used by non-Muslim ethicists and secular law. While the Shari‘ah does include evidence that future generations are significant and includes basic fundamentals for their consideration, Shari‘ah experts will need to develop them into a coherent framework that can provide sophisticated answers to intergenerational concerns.

The issue of obligations to future generations should be of interest to Muslims since it is they who believe that Islam is the final religion and valid for all times and places, and suitable for all events and contingencies. Allah has declared that everything in the universe has been created for humans to harness. Yet, He has also assigned mankind the role of being His stewards on the planet and His agents of mercy. Furthermore, individual Muslims are charged with looking after the welfare and well-being of their relatives as well as other members of their community.

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23. Pasek, “Obligations to Future Generations,” 514.

The concept of obligations to future generations has already proven itself to be a useful tool for thinking about one's worldly obligations, particularly with respect to economics, the environment, and sustainability. Muslims leaders, policy makers, planners (and individual consumers) should take obligations to future generations into consideration when managing resources and planning for the future of the Muslim community. There is a pressing need for such considerations, as Abdulbar Al-Gain, the president of Meteorology and Environmental Protection Administration (MEPA) of the Kingdom of Saudi Arabia, points out:

Human activities over the last century have so affected natural processes that the very atmosphere upon which life depends has been altered. These impacts are of such a magnitude that Nature itself, as an independent self regulating force has been compromised and will require human intervention; intervention which itself could further alter natural processes....

As Muslims, constituting 20% of the World's population, we must examine these issues carefully because future events in Islamic nations have the potential to create an environmental impact of major magnitude. Most Islamic nations are developing and must expand economically in order to meet basic needs. Should this expansion pass through the same evolutionary cycle as prior industrial development, the environmental impacts could be disastrous.<sup>24</sup>

Nonetheless, there is still a need to introduce the concept to contemporary Shari'ah scholars to ensure that it is used in harmony with the Shari'ah. One reason for this is that the secular ethical formulations mentioned in previous sections concern worldly harms and benefits, whereas the Shari'ah includes an afterworldly dimension. Furthermore, the Shari'ah does not consider all harms and benefits to be of equal importance, but rather gives some priority over others.

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24. Bagader et al., *Environmental Protection in Islam*, viii; eidem, *Ḥimāyat al-bī'ah fī-l-Islām*, vii.

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When assessing new ideas, actions, and circumstances, Muslims consult Islam's sacred doctrine (*'aqidah* or *uṣūl al-dīn*) and praxis (*fiqh* or *furū' al-dīn*) to ensure that life is in harmony with that doctrine and practice. This assessment is usually performed by scholars who have been trained in the traditional corpus of law and the methodologies of jurisprudence (*uṣūl al-fiqh*) for deriving legal rulings from the Qur'an and Prophetic narratives.

Contemporary Shari'ah scholars will need to assess whether the Shari'ah recognizes obligations to future generations, what those obligations are, how to balance intergenerational priorities, and what impact – in light of our newfound ability to affect future generations – this concept has on our Shari'ah discourse.

The remainder of this section will attempt to take initial steps in preparing a foundation for Shari'ah scholars to make this assessment. This will be done by first demonstrating that the Shari'ah considers obligations to future generations significant and what general tools it offers for addressing them. In doing so, it improves upon the foundations Bagader et al. prepared in *Environmental Protection in Islam*.<sup>25</sup> This section will discuss several issues specific to the concept of obligations to future generations to serve as a starting point for Shari'ah experts with the aim of preparing them in their conceptualization of the issue and to provide them with initial starting blocks. Its aim is not, however, to provide a comprehensive and thorough framework.

### OBLIGATIONS TO FUTURE GENERATIONS ARE SIGNIFICANT

Demonstrating that the Shari'ah accounts for obligations to future generations is important. As mentioned earlier, the ability to handle these obligations is considered a litmus test for ethical theories, so one test of the Shari'ah's relevancy today will be in its ability to account for such obligations. This section will demonstrate that the overall objectives of the Shari'ah (*maqāṣid al-sharī'ah*) indicate that future generations of the human species are significant and that current generations do bear obligations towards their welfare. The existence of the human species is included within the ultimate

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25. Ibid.; eidem, *Ḥimāyat al-bi'ah fi-l-Islām*.

objective of the Shari‘ah, and preserving its continued existence is considered a necessity in obtaining well-being. Furthermore, the existence of the human species is a necessary condition for carrying out many of the overall objectives of the Shari‘ah.

Understanding the objectives of Islamic legislation has been a subject of interest since the earliest generations of Muslims. One of the earliest known writings is *Maḥāsīn al-Shari‘ah* by the fourth-century Shāfi‘ī imam Abū Bakr al-Qaffāl al-Kabīr (d. 365AH/975CE). The topic of the objectives of the Shari‘ah was often included within books on the foundations of jurisprudence (*uṣūl al-fiqh*). Our study of objectives goes back to the great Shāfi‘ī scholar Imām ‘Abd al-Malik al-Juwaynī (d. 478AH/1085CE), in particular his framing of the levels of necessity that he established in his *al-Burhān fī uṣūl al-fiqh* on the foundations of jurisprudence, and his *Ghiyāth al-umam*. Al-Juwaynī’s ideas were extended and refined by his student, Imām Abū Ḥāmid al-Ghazālī (d. 505AH/1111CE), who wrote of them in *al-Mustaṣfā fī uṣūl al-fiqh* and *Shifā’ al-ghalīl fī bayān al-shabah wa al-mukhīl wa masālik al-ta‘līl*. Successive generations of scholars of the foundations of jurisprudence also include the topic of objectives in their works, for example: Fakhr al-Dīn al-Rāzī (d. 606AH/1209CE), *al-Maḥṣūl fī uṣūl al-fiqh*; Sayf al-Dīn al-Āmidī (d. 631AH/1233CE), *al-Iḥkām fī uṣūl al-aḥkām*; and Ibn al-Subkī (d. 771AH/1369CE), *Jam‘ al-jawāmi‘*.

Writing about the objectives of the Shari‘ah as an independent topic returned in the seventh century, with the Shāfi‘ī al-‘Izz Ibn ‘Abd al-Salām (d. 660AH/1261CE). Al-‘Izz authored two small works on the *maqāṣid* of prayer and fasting. He also developed a general and comprehensive theory of interests in *Qawā‘id al-aḥkām fī maṣāliḥ al-anām*, which he restated in *al-Qawā‘id al-ṣuḡhrā*. Soon after, Shihāb al-Dīn al-Qarāfi (d. 684AH/1285CE) wrote about objectives in his *al-Furūq*. Ibn Taymiyyah (d. 728AH/1327CE) and his student Ibn Qayyim al-Jawziyyah (d. 748AH/1347CE) made use of objectives in many of their works, especially the latter’s *I‘lām al-muwaqqi‘in*. Abū Ishāq al-Shātibī (d. 790AH/1388CE) wrote extensively on objectives in his *al-Muwāfaqāt*, and it is perhaps the most extensive and well-known premodern treatment of objectives.

Interest in objectives of Shari‘ah has not waned and it was singled out as a topic in numerous works since the beginning

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of the twentieth century. Notable examples include al-Ṭāhir al-Jazā'irī (d. 1338AH/1919CE), *Maqāṣid al-Sharī'ah*; and 'Allāl al-Fāsī (d. 1394AH/1974CE), *Maqāṣid al-Sharī'ah al-Islāmiyyah wa makārimuhā*. The most notable and significant contribution comes from Muḥammad al-Ṭāhir ibn 'Āshūr (d. 1393AH/1973CE).

In *Maqāṣid al-Sharī'ah al-Islāmiyyah*, Ibn 'Āshūr defines the general objectives of the Shari'ah as

the deeper meanings (*ma'ānī*) and inner aspects of wisdom (*ḥikam*) considered by the Lawgiver (*Shāri'*) in all or most of the areas and circumstances of legislation (*ahwāl al-tashrī'*). They are not confined to a particular type of the Shari'ah commands.<sup>26</sup>

He explains the ultimate objective of the Shari'ah in several different ways, including that it is:

...to preserve the social order of the community and ensure its healthy progress by promoting the well-being and righteousness (*ṣalāḥ*) of that which prevails in it, namely, the human species. The well-being and virtue of human beings consist of the soundness of their intellect, the righteousness of their deeds as well as the goodness of the things of the world where they live that are put at their disposal.<sup>27</sup>

...to achieve righteousness and goodness (*ṣalāḥ*) in the world and remove corruption from it. This can happen only by setting humankind's affairs to right and removing the corruption that it produces. That is, since the human being is the predominant creature (*muhaymin*) in this world, its righteousness and the orderly functioning of its affairs depend on the righteousness and virtue of the human beings [*sic*]. Accordingly, we find that Islam has dealt with setting to right the condition of mankind by tackling the affairs of

26. Ibn 'Āshūr, *Treatise on Maqāṣid al-Sharī'ah*, 71; idem, *Maqāṣid al-Sharī'ah al-Islāmiyyah*, 49.

27. Ibid., 91; idem, *Maqāṣid al-Sharī'ah al-Islāmiyyah*, 60.

both the individual and the community.<sup>28</sup>

...preserving the order of the world and regulating the conduct of human beings in it by preventing them from inflicting corruption and destruction upon one another.<sup>29</sup>

Each of these formulations includes the concept of obtaining the well-being of the human species, which entails the existence of that species. Other objectives of the Shari‘ah require the existence of the human species, for example: the idea that the Shari‘ah is suitable for all human beings in all times and places;<sup>30</sup> that its legislation must be implemented in the Muslim Community and that its members abide by it;<sup>31</sup> the preservation and spread of Islam, ensuring its continuity and existence, increasing the number of its scholars;<sup>32</sup> and protecting the wealth of the Muslim community.<sup>33</sup> Each of these objectives requires the existence of the human species in order for the objective to be coherent or obtainable. Furthermore, the latter two objectives include a degree of futurity and continuity – as do other objectives where something is being preserved (“*hifzī*”-objectives). This shows that the Shari‘ah considers current and future generations of the human species to be significant.

While Ibn ‘Āshūr does not list the existence of the human species as a specific objective, he does show that the Shari‘ah considers it necessary to preserve the ongoing existence of the species. During his discussion of the five universal categories which are necessary to preserve in order to obtain well-being (the *darūriyyāt*, that is: necessities), Ibn ‘Āshūr writes the following concerning preservation of life (*hifz al-nafs*) and preservation of lineage (*hifz al-nasl*):

The preservation of human souls (*hifz al-nufūs*) means to protect human lives from being ruined either individually or collectively. This is because that [*sic*] society

28. Ibid., 94; idem, *Maqāsid al-Shari‘ah al-Islāmiyyah*, 62.

29. Ibid., 115; idem, *Maqāsid al-Shari‘ah al-Islāmiyyah*, 75.

30. Ibid., 141; idem, *Maqāsid al-Shari‘ah al-Islāmiyyah*, 91

31. Ibid., 199; idem, *Maqāsid al-Shari‘ah al-Islāmiyyah*, 119.

32. Ibid., 120, 130, 319; idem, *Maqāsid al-Shari‘ah al-Islāmiyyah*, 78, 84, 192.

33. Ibid., 121, 277–80; idem, *Maqāsid al-Shari‘ah al-Islāmiyyah*, 78, 167–8.

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or the human world (*‘ālam*) comprises the individuals of the human species, and every single soul has its specific characteristics that are essential for the existence and survival of the human world. I do not mean by this the protection of human life merely by just retribution (*qiṣāṣ*), as has been upheld by the jurists. On the contrary, we find that just retribution is the weakest means for protecting human souls, because it consists of only a partial remedy for the loss [after it has occurred]. [Rather,] the most important way to protect human life is to prevent harm and ruin before they happen, such as combating and eradicating epidemics. For this reason, ‘Umar ibn al-Khaṭṭāb did not allow the Muslim army to enter Syria when the plague struck the city of Amuās.<sup>34</sup>

It is important to note that Ibn ‘Āshūr considers the preservation of life to include the life of the group of individuals (i.e. the species) – a life which spans the generations of its individual members – to be a necessity.

Concerning preservation of lineage, he writes:

If it is interpreted as preventing the breakdown and cessation (*ta‘tīl*) of procreation, then it is evident that it belongs to the *ḍarūrī* category, for it is by procreation that the individuals of the human species are replaced. Thus, if progeny in this sense is stopped, this will lead to the decline and disappearance of the species, as Lot said to his people: “[and you discontinue the path to procreation (*wa-taqṭa‘ūna al-sabīl*)]” (Q29:29), according to one interpretation. In this sense, there should not be any doubt about considering it among the fundamental universals, for it is in fact equivalent to the protection of human souls.<sup>35</sup>

34. Ibid., 120; idem, *Maqāṣid al-Sharī‘ah al-Islāmiyyah*, 78. The phrases “[after it has occurred]” and “[Rather]” were either omitted in the translation or incorrectly translated.

35. Ibid., 123; idem, *Maqāṣid al-Sharī‘ah al-Islāmiyyah*, 79. The quotation from the Quran has been adjusted to agree with the author’s original text and to convey his indicated interpretation.

Here, again, he considers perpetuating the species and avoiding its extinction to be a necessity.

We thus see that the overall objectives of the Shari‘ah consider significant the existence and welfare of current and future generations of the human species.

While Ibn ‘Āshūr observes that the Shari‘ah pays little attention to the five universal categories which must be preserved in order to obtain well-being, since mankind has taken their own precautions long ago and it has become ingrained in their nature,<sup>36</sup> it is not difficult to find numerous examples of rulings that show how the Shari‘ah promotes and safeguards the continuation of the human species.

For example, the Shari‘ah restricts sexual unions to heterosexual relationships, which are the only ones capable of reproduction. The Shari‘ah (Q4:23–4) declares that it is unlawful to marry immediate blood relatives (thus excluding one’s mother, grandmother, aunt, sister, daughter, or granddaughter)<sup>37</sup> and that it is recommended to marry someone who is not a near relative (thus excluding one’s first cousin).<sup>38</sup> Imām al-Shāfi‘ī stated that “it is recommended that one not marry from amongst his near relatives since in most cases the child will be an idiot.”<sup>39</sup> We now understand that successive interbreeding increases the likelihood of the offspring being affected by recessive or deleterious genetic traits, so proscribing procreation between near relatives is a means to avoiding these negative consequences which could jeopardize the species and its chances for survival.

The Shari‘ah also restricts sexual unions to those where a formal, long-term relationship exists between both parties.<sup>40</sup> It also prescribes rules concerning support obligations (e.g. that husbands must provide for wives, fathers must provide for children, children must provide for elderly parents, slave owners must provide for their slaves, animal owners must provide for their animals).<sup>41</sup> All of these rulings ensure that the material and educational needs of the

36. Ibid.; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 80.

37. Al-Anṣārī and al-Jamal, *Hāshiyat al-Jamal ‘alā Sharḥ al-Manhaj*, 4:176–78.

38. Ibid. 4:119.

39. Ibid.

40. Ibn ‘Āshūr, *Treatise on Maqāṣid al-Shari‘ah*, 257, 260–5; idem, 154, 155.

41. Ibid.

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younger generation are met, both of which contribute to the survival of the human species.

Now that it has been established that the Shari‘ah does consider future generations significant and does assert that prior generations have obligations towards later ones, it is appropriate to examine what tools the Shari‘ah offers for thinking about obligations to future generations and to then move on to specific issues related to the subject.

### WHAT GENERAL TOOLS DOES THE SHARI‘AH OFFER FOR THINKING ABOUT FUTURE GENERATIONS?

The Shari‘ah includes several tools which are useful for thinking about issues that are temporally related, including obligations to future generations; the most important being those tools falling under the general topic of taking consequences into consideration (*i‘tibār al-ma’ālāt*).

According to Muslim jurists, the Shari‘ah is founded upon this concept of taking consequences into consideration. Discussions on the topic are found primarily in books of principles of legal methodology (*uṣūl al-fiqh*), legal rulings (*fiqh*), and piety (*taṣawwuf*). One of the most fundamental discussions on the topic is found in al-Shāṭibī’s *al-Muwāfaqāt*, which includes a section concerning the need for expert jurists (*mujtahids*) to reflect upon consequences. Al-Shāṭibī considers reflecting upon consequences to be a general basis for the topics within legal methodology of prohibiting anything which has the potential of leading to that which is prohibited (*sadd al-dharā’i’*), juristic preference (*istiḥsān*), and consideration of public interests (*i‘tibār al-maṣāliḥ*). Al-Shāṭibī writes:

§10. Examining the consequences of actions is consistent with the objectives of the Shari‘ah, whether the actions concerned are in accordance with or contrary to the Shari‘ah. Therefore, the *mujtahid* does not judge an action performed by a legally responsible individual, whether it is one of commission or omission, until he has examined the action’s resultant consequences. An action might be considered lawful because of the benefit

it obtains or harm it prevents, however, the action has a consequence contrary to the objective of the law. [Similarly, an action] might be unlawful because of its resultant harm or the benefit it blocks, however the action has a consequence contrary to this reason. For the first case, if he had given a categorical opinion that the action is lawful, then obtaining its inherent benefit might lead to an equal or greater harm [than the original benefit of the action] – which bars giving the opinion that it is categorically lawful. Similarly, for the second case, if he had given a categorical opinion that the action is unlawful, then warding off the action’s inherent harm might lead to an equal or greater harm – so it is not valid to give the opinion that it is categorically unlawful.<sup>42</sup>

After providing evidence in support of taking consequences into consideration from the Qur‘an, including what Allah Most High says:

- “O men! serve your Lord who created you and those before you so that you may guard [against evil]”(Q2:21),
- “O you who believe! fasting is prescribed for you, as it was prescribed for those before you, so that you may guard [against evil]”(Q2:183),
- “And do not swallow up your property among yourselves by false means, neither seek to gain access thereby to the judges, so that you may swallow up a part of the property of men wrongfully while you know”(Q2:188),
- “And do not abuse those whom they call upon besides Allah, lest exceeding the limits they should abuse Allah out of ignorance”(Q6:108),
- “[We sent] apostles as the givers of good news and as warners, so that people should not have a plea against Allah after the [coming of] apostles”(Q4:165),
- “Fighting is enjoined on you, and it is an object of dislike to you; and it may be that you dislike a thing while it is

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42. Al-Shāṭibī, *al-Muwāfaqāt fi uṣūl al-Sharī‘ah*, 4:194–5.

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good for you, and it may be that you love a thing while it is evil for you, and Allah knows, while you do not know”(Q2:216), and

- “And there is life for you in [the law of] reciprocal retribution”(Q2:179),

al-Shāṭibī then gives evidence from judgements made by the Prophet ﷺ, including:

- His refusal to execute an overt hypocrite whose collaboration with the enemy had led to the death of numerous people, explaining his action by saying, “Leave him lest people say that Muhammad kills his Companions.”<sup>43</sup>
- His explaining to Aishah that he would have rebuilt the Ka‘bah according to the foundation set by Abraham (may peace be upon him) “...if not for your people so recently being non-believers”.<sup>44</sup> When asked about rebuilding the Ka‘bah, Imām Mālik (may Allah grant him His Mercy) replied according to this hadith, saying: “Do not do it, lest people tamper [play games] with Allah’s house.”<sup>45</sup>
- When a bedouin urinated in the mosque, he told his Companions to leave him be until he had finished lest they startle him, which might lead to soiling a larger area.<sup>46</sup>
- His prohibition from taking on too many acts of devotion out of fear that one will find them difficult to maintain and leave the original devotion in its entirety.<sup>47</sup>

He then explains that this latter evidence

...concerns establishing the particular underlying cause (*taḥqīq al-manāṭ*) from these texts which include the

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43. Al-Bukhārī, *al-Ṣaḥīḥ*, 3330; Muslim, *Ṣaḥīḥ Muslim*, 2584.

44. Mālik ibn Anas, *Muwatta’ al-Imām Mālik*, 1:363 (807).

45. Al-Shāṭibī, *al-Muwāfaqāt fī uṣūl al-Sharī‘ah*, 4:197.

46. Al-Bukhārī, *al-Ṣaḥīḥ*, 219; Muslim, *Ṣaḥīḥ Muslim*, 284.

47. For example, see the hadiths mentioned in Chapter 14, entitled “Moderation in Worship” of Imām al-Nawawī’s *Riyāḍ al-ṣāliḥīn min kalām Sayyid al-Mursalīn*.

concept [of examining consequences]: where the action is initially lawful, but it is prohibited because of a resultant harm, or initially unlawful and its prohibition is removed because of the benefit in doing so.<sup>48</sup>

Al-Shāṭibī observes that the evidence in support of *sadd al-dharā'i'* (the prohibition of anything which has the potential of leading to that which is prohibited) and removing difficulties (*raf' al-ḥaraj*) demonstrate a similar pattern. With *sadd al-dharā'i'*, an initially lawful action becomes unlawful because it leads to unlawful consequences; whereas with removing difficulties, an initially unlawful action becomes lawful because of its consequences.

However, there are two obvious difficulties in applying the current Shari'ah conception of taking consequences into account to the topic of obligations to future generations.

The first difficulty is that al-Shāṭibī's discussion and evidence concern consequences that apply to individuals and are direct and relatively near in time, whereas obligations to future generations concern consequences which apply to groups and may be indirect, span generations, or even be delayed.

It is possible to make a case that the Shari'ah acknowledges the notion of such obligations by demonstrating reasoning and rulings consistent with the notion. Examples where concern for future generations plays a role can be found in events from the life of the Prophet ﷺ. For example, when asked about the most difficult suffering he had ever endured, the Prophet ﷺ described the events which had occurred on the Day of 'Aqabah. Upon reaching Qarn al-Tha'ālib, the angel of the mountain said that he was his to command, and offered to bring the two great mountains of Mecca down upon them and destroy them. The Prophet ﷺ replied, "I hope that, from amongst their progeny, Allah will bring forth those who worship Allah alone and associate no partners with Him."<sup>49</sup>

More vivid examples come from decisions made by the Rightly Guided Caliphs (may Allah be pleased with them). While Abū Bakr (may Allah be pleased with him) was caliph, a large number of

48. Al-Shāṭibī, *al-Muwāfaqāt fī uṣūl al-Shari'ah*, 4:196–8.

49. Al-Bukhārī, *al-Ṣaḥīḥ*, 3059.

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bearers of the Qur'an died during the Wars of Apostasy and there was fear that more deaths would jeopardize the possibility that future generations would receive the Qur'an in its entirety and without alteration. After consulting with other Companions (may Allah be pleased with them one and all), Abū Bakr commissioned a committee to compile the Qur'an into a single document. This was met with universal approval of the Companions (may Allah be pleased with them).<sup>50</sup>

During the caliphate of 'Umar ibn al-Khaṭṭāb (may Allah be pleased with him), 'Umar ordered that certain lands captured in Iraq not be distributed as normal spoils of war. One of the narrations explaining his reasoning indicates that the land should be put in the service of its inhabitants since distributing it amongst those present would bar future generations of its benefit: "Indeed, if you were to divide it amongst those who were present, nothing would be left for their successors."<sup>51</sup>

In 638CE, Jerusalem announced that it would surrender, but only to Caliph 'Umar himself. The Caliph travelled to Jerusalem. While there, he visited the Church of the Holy Sepulcher and the time for prayer entered. The Patriarch invited 'Umar to perform his prayer within the church, but 'Umar refused out of concern that Muslims would later occupy the church. Instead, he prayed on the steps and wrote an edict that Muslims were not to use the location for prayer nor for making the call to prayer.<sup>52</sup>

When Islam had spread, some Muslims became confused about certain variations in the recitation of the Qur'an. This prompted some to worry that transmission of the Qur'an to future generations was in jeopardy, so Caliph 'Uthman (may Allah be pleased with him) ordered that copies of the Qur'an be sent to various parts of the Muslim world, each accompanied by a Companion to serve as its teacher and explicator, and that all other written copies were to be destroyed. This was done out of concern that future generations would become confused about the Qur'an, and the decision was met with universal approval of the Companions (may Allah be

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50. See al-Suyūṭī, *al-Itqān fī 'ulūm al-Qur'ān*, 1:57–60, for a full discussion on how the Qur'an was recorded.

51. Al-Bayhaqī, *al-Sunan al-kubrā*, 9:134 (18832).

52. Ibn Khaldūn, *Kitāb al-'ibar*, 2:706.

pleased with them one and all) – even though the action required some of them to give up copies they had written and explicated with their own hands.

These last examples offer evidence which is admissible in legal rulings and show instances where an immediate worldly benefit is left for the sake of benefitting future generations in this world or the Afterlife. They also show far-reaching consequences are significant, and that the Rightly Guided Caliphs did give special consideration to future generations of both Muslims and non-Muslims.

The second difficulty was mentioned earlier while discussing problems with relying upon *i'tibār al-maṣāliḥ* (consideration of public interests) to account for obligations to future generations.<sup>53</sup> During that discussion, it was mentioned that while it makes sense that the necessities (*darūriyyāt*) and needs (*ḥājjiyyāt*) of the adjacent generation take precedence over the supplementary benefits (*taḥsiniyyāt*) of the current generation, there must be some point where the existence of a future generation is unlikely enough that its necessities and needs do not take precedence over the current generation's supplementary benefits.

Before consequence-consideration (*i'tibār al-ma'ālāt*), in its various forms,<sup>54</sup> can be applied to the topic of obligations to future generations, experts on the methodologies of jurisprudence (*uṣūl al-fiqh*) will need to extend it (and its various forms) to account for the issues introduced when long-term or delayed consequences are considered significant. It will also be necessary for them to identify the means through which consequences are known.

In his *Maqāṣid al-Shari'ah bi ab'ād jadidah*, Dr. Abdelmajid Najar suggests employing the following to discover an action's potential consequences:

- Surveying previous instances in which the ruling's application has resulted in consequences contrary to its objective and applying statistical techniques to identify the factors which contributed to the undesired consequence.<sup>55</sup>

53. See page 8.

54. As mentioned above, these forms include: prohibiting anything which has the potential of leading to that which is prohibited (*sadd al-dharā'i'*), juristic preference (*istiḥsān*), and consideration of public interests (*i'tibār al-maṣāliḥ*).

55. Al-Najjār, *Maqāṣid al-Shari'ah bi ab'ād jadidah*, 276–7.

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- Predicting the likely outcomes of applying a particular ruling.<sup>56</sup>
- Sciences which study human nature and how individuals and groups respond to given circumstances, such as psychology and sociology.<sup>57</sup>
- Predicting how local custom and norms influence the likely outcome.<sup>58</sup>
- The actor's intention as evinced through explicit or contextual evidence (e.g. temporary marriage, asking about murder).<sup>59</sup>

While this list should not be taken as definitive and final, it does suggest that identifying and meting out obligations to future generations will require input from both experts of Shari'ah and experts of other subjects.

## DEVELOPING A FRAMEWORK FOR DISCUSSING FUTURE GENERATIONS

Shari'ah experts need to settle several issues before they can build a viable framework for addressing obligations to future generations. These issues include: who owes the obligations, to whom they are owed, what those obligations are, how to decide dilemmas, and how far those obligations extend.

Islamic law recognizes two categories of obligations with respect to the number of individuals involved: individual or personal obligations (*farḍ al-ʿayn*) and communal or collective obligations (*farḍ al-kifāyah*). An individual or personal obligation is one which must be fulfilled by the specific individual himself, whereas a communal or collective obligation is one which must be fulfilled by a sufficient number of individuals in order to lift responsibility from all other legally responsible members of the group.

Ibn ʿAshūr describes obligations within the context of the overall objectives of the Shari'ah:

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56. Ibid., 278.

57. Ibid., 278–80.

58. Ibid., 280–1.

59. Ibid., 281–2.

Thus, activities whose benefits can be achieved only when carried out by everyone, such as protection of life (*hifz al-nafs*), have been made the personal obligation of every individual.

On the other hand, actions whose benefits can be achieved when carried out by an individual or group of individuals, such as rescuing a drowning person or extinguishing a fire that is destroying homes, have been considered a matter of collective obligations (*kifāyah*).<sup>60</sup>

It seems that obligations to future generations fit well within the category of communal obligations since the various individual obligations owed to future generations can be fulfilled by individuals or segments of the total population, and do not require active participation from each individual member of the entire group.

It is necessary to define the scope to whom these obligations are owed: do obligations to future generations include obligations to all types of creatures, to all humans, or just some humans?

As mentioned earlier, some contemporary Muslim authors argue that obligations to future generations include the future generations of all created things (humans, animals, other animate and inanimate objects), regardless of species and time. The reasoning given does not appear sufficient to justify that humans have a direct obligation to non-human entities.

According to Ibn ‘Āshūr’s various definitions of the ultimate objective of the Shari‘ah, we find that it is “preserving the order of the world and regulating the conduct of human beings in it by preventing them from inflicting corruption and destruction upon one another”,<sup>61</sup> that “[t]he well-being and virtue of human beings consist of ... the goodness of the things of the world where they live that are put at their disposal”,<sup>62</sup> and that “its righteousness and the orderly functioning of its affairs depends on the righteousness and virtue of the human beings”.<sup>63</sup> Following this, it is sufficient to con-

60. Ibn ‘Āshūr, *Treatise on Maqāṣid al-Shari‘ah*, 110; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 72.

61. Ibid., 116; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 75.

62. Ibid., 91; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 60.

63. Ibid., 94; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 62.

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centrate on the fulfillment of our obligations to future generations of humans since the interests of non-human future generations will be met through fulfilling whatever obligations are owed to future generations of humans.

But is it owed to all future generations of humans? According to the Shari‘ah, preservation of human life is restricted to life which the Shari‘ah holds sacrosanct (*al-nufūs al-muḥtaramah* or *al-ma‘šūm al-dam*). While this category excludes some human beings (for example: a Muslim convicted of a crime which carries a death penalty and those at war with Islam), the category applies to existent human beings and it makes little sense when applied to potential human beings. Instead, it makes more sense to assume that obligations to future humans are inclusive of all potential human beings. This is supported by the Prophetic report that “every newborn child is born in a state of *fiṭrah*. Then his parents make him a Jew, a Christian, or a Zoroastrian.”<sup>64</sup> It also agrees with the actions of the Prophet ﷺ on the Day of ‘Aqabah, as mentioned above.<sup>65</sup>

### PROPOSED CONTENT OF THE OBLIGATIONS

While most discussions about obligations to future generations occur within the context of economics, the environment, and sustainability, many Western ethicists argue that the content of these obligations include things such as institutions, knowledge, and culture, as well as physical resources.<sup>66</sup> Many theories of obligations to future generations have difficulty identifying specific content for these obligations since interests, values, and tastes vary from people to people and age to age. Identifying specific obligations is a prerequisite to fulfilling them to future generations.

Several potential obligations to future generations can be found within the general categories of benefits the Shari‘ah considers necessary to preserve and amongst the individual objectives of the Shari‘ah, since both embody that which the Shari‘ah values.

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64. Al-Bukhārī, *al-Ṣaḥīḥ*, 1385; Muslim, *Ṣaḥīḥ Muslim*, 6926.

65. See page 23.

66. Bickham, “Future Generations and Contemporary Ethical Theory,” 169; Gaba, “Environmental Ethics,” 277–9; Tremmel, “Introduction,” 12; Gosseries, “Theories of Intergenerational Justice,” 63.

The general categories of benefits which contribute to the well-being of the Islamic Community are divided into three: indispensable (*ḍarūriyyāt*), needed (*hājjiyyāt*), and complementary (*taḥsiniyyāt*). Many potential obligations to future generations can be found within the categories of indispensable benefits. Ibn ‘Ashūr explains that indispensable benefits are

things whose realization is essential for the community both collectively and individually. The social order of the community will not function properly if there is any defect in these *maṣāliḥ*. Indeed, any defect and loss in them will result in the corruption and disintegration of the whole community. I do not mean by this its total destruction and extinction, for that is a fate that even the most idolatrous and barbaric peoples are spared. Rather, I mean that the community will degenerate into bestiality, thus failing to live up to what the Lawgiver wanted it to be. Yet, some forms of degeneration might lead to the long-term disappearance of the community either because of mutual destruction among its members or by falling under the domination of enemies if it is the target of hostile nations.<sup>67</sup>

A basic list of necessities includes the preservation of religion, life, the intellect, property, and lineage (or progeny).<sup>68</sup> If we think of these in terms of future generations, we can rephrase this list as obligations to preserve Islam and to safeguard possibilities for life, the intellect, wealth, and reproduction. While this list does give us something, it does not add anything lacking in the writings of Western ethicists other than preservation of Islam, nor does it give us anything resembling specific obligations. Furthermore, it runs the risk of reducing Shari‘ah-based obligations to a triviality, just as Gaba observed concerning environmental obligations that “[i]f such obligations ignore the quality of life and become merely an obligation to ensure a world in which humans are capable of exist-

67. Ibn ‘Ashūr, *Treatise on Maqāṣid al-Shari‘ah*, 118; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 76.

68. Ibid., 118, 121; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 76–80.

ing, then surely the obligation has been reduced to triviality.”<sup>69</sup> Something of more substance and practical value can be found among the overall objectives of the Shari‘ah as these objectives are timeless and immutable, and their obtainment leads to the greatest possible well-being for all of creation.

As mentioned earlier, the overall objectives of the Islamic legislation are the meanings and inner aspects of wisdom considered by the Lawgiver which can be discerned in most or all of the areas to which Islam as a whole applies such that they can be seen not to apply exclusively to a particular type of ruling.<sup>70</sup> Ibn ‘Āshūr states that the overall objectives of the Shari‘ah are built upon mankind’s primordial state (*fiṭrah*),<sup>71</sup> and that the ultimate objective of human action (*tashrī‘*) is the preservation of the order of the world (*niẓām al-‘ālam*) and regulating human conduct in a manner that protects it from inflicting harm and destruction upon one another.<sup>72</sup> Lesser general objectives include: removing decadence and declaring it corrupt, and affirming the sound practices people already follow,<sup>73</sup> and also the implementation of, and adherence to Islamic legislation within the Islamic Community.<sup>74</sup>

Other general objectives include that there be equality amongst members of the Islamic Community in their personal affairs,<sup>75</sup> clarifying the categories of rights and the categories of people who are entitled to them,<sup>76</sup> and removing rights from those who have proven to be ineligible.<sup>77</sup>

More specific objectives fall within the following categories:

### 1. *Interpersonal relationships*

Clarifying the formation and proper functioning of the family,<sup>78</sup>

69. Gaba, “Environmental Ethics,” 281.

70. Ibn ‘Āshūr, *Treatise on Maqāṣid al-Shari‘ah*, 71; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 49.

71. Ibid., 78–86; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 54–55.

72. Ibid., 115; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 75.

73. Ibid., 165–6; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 99.

74. Ibid., 199; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 119.

75. Ibid., 154; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 126.

76. Ibid., 238; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 146.

77. Ibid., 245; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 150.

78. Ibid., 247; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 151.

limiting marriage to particular heterosexual unions,<sup>79</sup> restricting lineage to that where parentage is not open to doubt,<sup>80</sup> and clarifying the ways to dissolve unions and contracts which prove to be detrimental.<sup>81</sup>

### 2. *Financial transactions*

Circulation of wealth through the largest number of individuals possible,<sup>82</sup> increasing the use of gold and silver as the basis for transactions,<sup>83</sup> transparency and clarity of ownership,<sup>84</sup> preservation of wealth and property both for individuals and the Islamic Community as a whole,<sup>85</sup> establishing individual and joint ownership which is both private and valid and not open to dispute,<sup>86</sup> establishing means of earning which are valid and not open to dispute,<sup>87</sup> transactions which are just and fair,<sup>88</sup> facilitating labor contracts that are fair and equitable,<sup>89</sup> and facilitating and increasing acts of charity and generosity within proper limits.<sup>90</sup>

### 3. *Religious affairs*

The establishment of bodies which are responsible for looking after the public affairs of the Islamic Community, administering justice and ensuring that Islamic legislation is being implemented,<sup>91</sup> and other religious matters, including that the Shari‘ah be conveyed, and that its knowledge be preserved, spread, and its scholars increased and multiplied.<sup>92</sup>

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79. Ibid., 252; idem, *Maqāshid al-Shari‘ah al-Islāmiyyah*, 154.

80. Ibid., 260; idem, *Maqāshid al-Shari‘ah al-Islāmiyyah*, 158.

81. Ibid., 266; idem, *Maqāshid al-Shari‘ah al-Islāmiyyah*, 162.

82. Ibid., 285; idem, *Maqāshid al-Shari‘ah al-Islāmiyyah*, 172.

83. Ibid., 295; idem, *Maqāshid al-Shari‘ah al-Islāmiyyah*, 178.

84. Ibid.; idem, *Maqāshid al-Shari‘ah al-Islāmiyyah*, 178.

85. Ibid.; idem, *Maqāshid al-Shari‘ah al-Islāmiyyah*, 178.

86. Ibid., 297; idem, *Maqāshid al-Shari‘ah al-Islāmiyyah*, 179.

87. Ibid.; idem.

88. Ibid., 298–9; idem, *Maqāshid al-Shari‘ah al-Islāmiyyah*, 180.

89. Ibid., 303–7; idem, *Maqāshid al-Shari‘ah al-Islāmiyyah*, 183–6.

90. Ibid., 308–16; idem, *Maqāshid al-Shari‘ah al-Islāmiyyah*, 186–91.

91. Ibid., 317; idem, *Maqāshid al-Shari‘ah al-Islāmiyyah*, 191.

92. Ibid., 318–19; idem, *Maqāshid al-Shari‘ah al-Islāmiyyah*, 192.

#### 4. *Justice and retribution*

Establishing judges to assist in making manifest the right and removing wrong and injustice,<sup>93</sup> returning rights to their genuine claimants<sup>94</sup> without delay,<sup>95</sup> acknowledging witnesses and documentary evidence to clarify and establish rights,<sup>96</sup> and preserving social order through punishments which serve as retribution for the offense, assuage personal grievances of the victim, and deter repeat offense.<sup>97</sup>

In addition to the above, it was demonstrated earlier<sup>98</sup> that the objectives of the Shari'ah include the continual existence of the human species.

The list here is based upon the work of Ibn 'Ashūr. These objectives, along with the various bodies and institutions which are needed for their implementation, are all candidates for the list of Shari'ah-sanctioned obligations to future generations. However, more details about each objective and its implementation will be needed in order to create a practical plan that will work towards their eventual fulfillment.

Here we will mention a few details concerning the groups of objectives which are among the most central to an Islamic conception of obligations to future generations. The first group includes objectives concerned with preserving, spreading, and implementing the Shari'ah. The second group includes objectives concerned with protecting the wealth of the Islamic Community.

#### 5. *Spreading and implementing the Shari'ah*

One of the highest objectives of the Shari'ah is that it be spread. This objective is closely followed by the objectives that it be implemented, applied, and preserved. Its implementation and applications are assisted by the important objectives of disseminating Islamic knowledge, and increasing its scholars and teachers.<sup>99</sup>

93. Ibid., 320-1; idem, *Maqāṣid al-Shari'ah al-Islāmiyyah*, 193-4.

94. Ibid., 322; idem, *Maqāṣid al-Shari'ah al-Islāmiyyah*, 195.

95. Ibid., 330; idem, *Maqāṣid al-Shari'ah al-Islāmiyyah*, 200.

96. Ibid., 334-5; idem, *Maqāṣid al-Shari'ah al-Islāmiyyah*, 203-4.

97. Ibid., 336-40; idem, *Maqāṣid al-Shari'ah al-Islāmiyyah*, 205-6.

98. See page 17.

99. Ibn 'Ashūr, *Treatise on Maqāṣid al-Shari'ah*, 318-19; idem, *Maqāṣid al-Shari'ah al-Islāmiyyah*, 192.

The preservation and spread of the Shari‘ah requires removing everything that undermines the certain and definitive (*qat‘i*) foundations of the religion, defending Islam’s reputation, and protecting its territory, and by supplying and maintaining the means for present and future generations to learn Islam;<sup>100</sup> it also includes preventing fragmentation of the Community, protecting religion from disappearing, protecting Muslim sovereignty and lands, protecting the Two Sacred Sanctuaries of Mecca and Medina from falling under non-Muslim control, protecting the Qur’an from disappearance or distortion via the disappearance of those who have memorized it or its written copies, protecting the knowledge of the Sunnah from the introduction of fabricated reports – and anything else whose goodness or evil affects the whole Muslim Community or any of its members.<sup>101</sup>

The application of Shari‘ah within the Islamic Community requires the existence of a system of Islamic governance, which is comprised of rulers, judges, advisors for legal issues, police, and [market] regulators.<sup>102</sup>

Muftis and other Shari‘ah experts who influence practice and policy will need to take into account how their opinions affect future generations, particularly when responding to temporary exigencies. A succeeding generation will inherit the social ills of the previous generation; excusing current ills or preventing them from being rectified means that the problems will increase and eventually become accepted as norms. Empirical studies indicate that people hold a preference for their current situation, suggesting the possibility that “future generations will be biased to accept the world they inherit.”<sup>103</sup> Additional empirical studies suggest that “the behavior of a previous generation influences the behavior of a present generation towards future generations, in the allocation of both benefits...and burdens.”<sup>104</sup> Taken together, these studies emphasize the need for scholars to examine the consequences their decisions will have, and to avoid decisions that will set future generations on a downward spiral.

100. Ibid., 120; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 78.

101. Ibid., 130–1; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 84.

102. Ibid., 201; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 120.

103. Gaba, “Environmental Ethics,” 265.

104. Wade-Benzoni, “A Golden Rule Over Time,” 1011–28.

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While the Shari‘ah is built upon mercy and ease, this mercy and ease are manifested in that individual rulings are easy with respect to the most common situations; difficult rulings are eased in light of hardships experienced by individuals or the Islamic Community; and individual rulings are built upon wisdom, discernible underlying causes (*ratio legis*), consistency, and clear delineation. The combined means of manifesting mercy and ease leave legally responsible individuals without any excuse for failing to abide by its rules.<sup>105</sup> While the Shari‘ah acknowledges mercy and ease, it is always within limits which do not lead to circumventing or rendering inoperable the overall objectives.<sup>106</sup> Obligations to future generations suggest that Muslim leaders rethink the intergenerational consequences of limiting the very parts of the Shari‘ah which safeguard these objectives and offer corrective measures, and to endeavor in implementing means which gently rectify the shortcomings of our current generation and improve what we pass on to the next generation.

Furthermore, legal maxims concerning necessity (e.g. “necessity renders permissible what otherwise would be impermissible”, “necessity is limited to what is needed”) are often cited to justify our generation’s actions. Does use of this principle obligate our generation to do something to relieve future generations from the same necessity so that it is not passed on to them? For example, Muslims in a new land with nothing to eat except swine are permitted to eat swine to preserve life. Are they not also required to do something to rectify the situation and ensure that future generations do not suffer the same need? There are numerous cases where this principle is used (e.g. ubiquitous usury), yet nothing significant is done to remove the situation which prompted its invocation.

### 6. *Preserving the wealth of the Islamic Community*

Preservation of the Islamic Community’s wealth (*tharwat al-ummah*) involves preserving its wealth from destruction and from going outside the Islamic Community without compensation, and preserving individual constituents of that wealth from being

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105. Ibn ‘Āshūr, *Treatise on Maqāṣid al-Shari‘ah*, 202–7; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 120–2.

106. Ibid., 200; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 119.

destroyed without compensation.<sup>107</sup> Wealth of the Islamic Community is comprised of those things which people as individuals and as groups find useful in obtaining benefits and warding off harms, in all circumstances, times and occasions, whether used directly or as a means.<sup>108</sup>

Ibn ‘Āshūr gives five characteristics for an item to be considered wealth: that it can be stored, is in demand, can be circulated, is of limited quantity, and has been obtained.<sup>109</sup> He explains that if the quantity is not finite and limited, it will not be sought out as private property nor stored, so it will not be considered wealth. Following this reasoning, he excludes oceans, sands, rivers, and forests as wealth. He does note that rivers and forests constitute a means to wealth because of fertility and the job opportunities they provide, and he does include mines as wealth since what is extracted from them is of limited quantity because of the excessive costs of its extraction.<sup>110</sup> Today it may be more appropriate to treat all of the world’s natural resources as wealth – especially the basic natural resources we depend upon to sustain life.

It is important to note that although the overall objectives of the Shari‘ah affirm that owners of private wealth are free to dispose of their wealth as they see fit, an exception is made for wealth which is needed by a segment of the Islamic Community (such as foodstuffs and materials needed to defend the Community). Even though such properties remain private wealth, the Shari‘ah’s conception of economic justice requires that its disposal be within the boundaries of obtaining public interests and warding off public misfortunes.<sup>111</sup>

Protecting the wealth of the Islamic Community for future generations will require that we assess the habits of a current gen-

107. Ibid., 121; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 78. It is important to note that some *maqāṣid* and rulings have priority over others; and that compensation includes both material and immaterial. Disaster relief which serves to preserve human life can take priority over preservation of the Ummah’s wealth. Developmental aid can benefit the Ummah by increasing its image, opportunities, and security.

108. Ibid., 279; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 168.

109. Ibid., 279–80; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 168. Concerning “limited quantity,” the original translation incorrectly rendered «محدود المقدار» as “measurable”.

110. Ibid., 280; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 169.

111. Ibid., 299; idem, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, 180.

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eration. When a cultural habit is found to include a significant harm for the Islamic Community, it becomes necessary to evaluate the habit according to the Shari'ah worldview to determine whether it should be considered unlawful.<sup>112</sup> Habits which involve resource consumption or affect the environment will have an impact on future generations since these habits do not only influence what future generations can do, but also influence the possibility of their very existence. Such an assessment is in line with the overall principle of affirming good habits and changing bad habits<sup>113</sup> and the Shari'ah's definition of economic justice, and so provides a means to protecting the wealth of the Islamic Community, which is a duty incumbent upon those responsible for looking after the affairs of the Islamic Community.<sup>114</sup>

In particular, there is a pressing need to assess the current generation's preoccupation with the acquisition of disposable consumer goods and services which not only removes wealth from the Islamic Community, but also reduces the resources that will be available to future generations, changing the environment that will be passed down to them.

### RESOURCES AND SUSTAINABILITY

Some obligations to future generations concern resources which are non-renewable, difficult to renew at a pace commensurate to their depletion, or cannot be sustained if their quantity drops below a particular threshold.

It is important to ensure that each generation preserves what is owed to those of the future since securing and protecting the prerequisites for life are an essential part of a viable framework of obligations to future generations.

In extreme cases involving non-renewable resources or where depletion exceeds the rate of renewal, it will be necessary to determine how far these obligations to future generations extend so we can determine how much we must save for later generations. Knowing how much to save is dependent upon knowing something

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112. Ibid., 138; idem, *Maqāshid al-Shari'ah al-Islāmiyyah*, 89.

113. Ibid., 165–6; idem, *Maqāshid al-Shari'ah al-Islāmiyyah*, 99.

114. Ibid., 296; idem, *Maqāshid al-Shari'ah al-Islāmiyyah*, 178.

about the population of each generation to whom one owes obligations. Problems with this have already been discussed during the presentation of previous Muslim authors and the inherent problem of applying consequentialist theories to obligations to future generations.<sup>115</sup>

Nonetheless, in cases involving non-renewable resources or where consumption exceeds production, we must weigh our obligation to future generations against the wants and luxuries of the current generation. This requires that we have a method covering how the various harms and benefits will be ranked, measured, and prioritized; as well as guidelines for public policy and enforcement.

While literature on sustainability, sustainable development, and food security do address many of these issues, the scope here must be expanded since a Shari‘ah-based obligation to future generations must include Islamic knowledge and institutes particular to Islam. Furthermore, an Islamic obligation to future generations must turn to the Shari‘ah as a basis for how the various harms and benefits will be ranked, measured, and prioritized, and for its guidelines for public policy and enforcement.

Once we have a clearer understanding of Shari‘ah-based obligations to future generations, Shari‘ah legal specialists will be able to use classic models like al-Shātibī’s consideration of consequences in *al-Muwāfaqāt* (mentioned earlier) to develop guidelines that muftis, policy makers, and individual Muslims can follow to ensure we fulfill our obligations to future generations.

## Conclusion

This paper introduced the concept of ethical obligations to future generations, a concept which has grown in importance and sophistication since the 1970s. The first section of the paper defined the concept and explained its importance to ethicists and policy makers. The second section provided a survey of how contemporary Muslim

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115. See page 8.

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authors have approached obligations to future generations. Unfortunately, none of them offered a Shari‘ah-based conception that provided practical solutions or was capable of competing with contemporary reasoning in the international marketplace of ideas. The third section attempted to address this need by first demonstrating that obligations to future generations exist within the overall objectives of the Shari‘ah and then presenting a potential foundation for a Shari‘ah-based framework for thinking about such obligations. This framework used the overall objectives of the Shari‘ah to define the various values, knowledge, and culture that need to be passed on. Whereas Western conceptions of these obligations have difficulty identifying interests on the grounds that values and interests change from generation to generation, the overall objectives of the Shari‘ah are constant and immutable. Shari‘ah experts can further develop this framework into a viable alternative to Western models that can be used in a manner harmonious to the Shari‘ah and pleasing to Allah Most High.

And Allah Most High knows best.

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Actions of an earlier generation affect whether later generations will exist at all as well as the quality and type of life they will have. Discussions concerning the obligations earlier generations owe later generations have proven to be useful when thinking about the environment, economics, sustainability, and other issues. Western thinking about obligations to future generations has become very sophisticated since the 1970s. Western ethicists consider it a litmus test for evaluating ethical theories, and expect it to be a main recurring theme in the new century. The Shari'ah already provides the fundamentals for thinking about obligations to future generations. These basic fundamentals are not developed enough to shed light on these issues within the Muslim Community, let alone compete in the open market of ideas. Shari'ah experts will need to develop these fundamentals before a Shari'ah-informed conception of obligations to future generations can be offered.

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