

Maqasid al-Shari'ah- The Higher Objectives of the Shari'ah: Meaning, Genesis and Typology

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Abstract

Maqasid al-Shari'ah the theme relating the letter of the Divine law with the spirit and the universal objectives of the law; what is now rightly being called as “the Philosophy of Islamic Law”¹ is the focus of this paper. From the very onset of the Islamic civilization the understanding of the Islamic sacred texts based upon the objectives, philosophy, purposes and spirit of the *Shari'ah*, and the early generation seems to be quite assertive about it, as observed by Hashim Kamali, “the precedent of the leading Companions indicated that they saw the *Shari'ah* both as a set of rules and a value system in which the specific rules reflected overriding values.”² The paper aims to put forward the definitions of *maqasid al-Shari'ah* etymologically as well as a subject. It is followed by discovering the genesis of *maqasidi* theme from the sacred texts and Prophetic life and how these principles were understood and practiced by the Rightly Guided Caliphs, particularly ‘Umar ibn al-Khattab, who is considered as *imam al-maqasid*, who saw the unprecedented social challenges during his tenure as the caliph. The paper concludes by considering the various typologies from classical scholarship down to modern scholarship.

The Meaning of *Maqasid* and *Shari'ah*

The word *Maqasid* is the plural form of Arabic word *maqsud*. Etymologically, the word *maqsud* has a diversity of meanings:

1. Credence, aim, clarity of the way, in the Qur'an God says:

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And upon Allah is the responsibility to explain the straight path (*qasd al- sabeel*), but there are ways that turn aside. And had He willed, He would have guided you all.³

2. Moderation and the absence of extremities:

And be moderate (*uqsidu*) in your walking and lower your voice.⁴

The Apostle of God, Muhammad ﷺ has been recorded on the authority of Abu Hurayrah to have said:

The deeds of anyone of you will not save you (from the Fire).” They said, “Even you, o Allah’s Messenger? He said, “No, even I unless and until Allah protects me with His Grace and His Mercy. Therefore do good deeds properly, sincerely and moderately, and worship Allah in the forenoon and in the afternoon and during a part of the night, and *Qasd* (always adopt a middle, moderate, regular course) whereby you will reach your *al-Qasd* (target i.e. paradise).⁵

Shari’ah is a derivative from the root *sha-ra-a’*. Literally, *Shari’ah* is defined as the path towards the origin of water or the way towards the happiness⁶. It is the way, with all its lucidity and spaciousness, which guides humanity towards life.⁷ It is also defined in terms of clarity of the way, which is to be followed.⁸ In the strict Qura’nic sense, the term *Shari’ah* is meant as the law and the way of the Divine commandments, Qur’an puts it:

To each among you, We have prescribed a law (*Shari’ah*) and a clear way (*Minhaj*).⁹

And:

Then, we have put you (O Messenger) on a way of (our) commandments (*Shari’ah*); so follow you that and follow not the desires of those who know not.¹⁰

Technically, *Shari’ah* is the way towards the fulfilment of the Divine commandments against the whimsical desires, God says:

Then We put you (O Muhammad ﷺ) on a (plain) way of (Our) commandments. So follow that and follow not the desires of those who know not.¹¹

As a technical term, it is also meant as the canon law of Islam, which is *t'abbudi* in its nature, i.e. man has to submit to it without any criticism of it; it is not to be penetrated by the human intelligence.¹²

Tariq Ramadan discerns the meaning of the *Shari'ah* beyond legal delineations as the way of life and death, he articulates:

The *Shari'ah* is the expression of individual and collective faithfulness, in time, for those who are trying in awareness to draw near to the ideal of source that is God...the *shahadah* translates the idea of “being Muslim” and the *Shari'ah* shows us “how to be and remain Muslim.”¹³

Shari'ah is also interpreted as the paradigm through which a special world view transpires out, which gives birth to a civilization sans the prejudices of race, color, language or topography and converges the masses on the basis of creed and values.¹⁴ Ibn Taymiyyah (d. 718/1327) deciphers the meaning of *Shari'ah* in terms of Divine pronouncements for thought and action. *Shari'ah*, he says, is conditioned with submission before the Lord and following His Apostle and the people of authority.¹⁵

Taking care of range of the meanings attached to the term *Shari'ah*, Yusuf al-Qaradawi attempts at putting forward an apt description of *Shari'ah*. He states:

The Arabic word *Sharia* means whatever God has established for His worshippers to perform as an act of faith, or whatever he has laid down as a part of religion such as fasting, prayer, pilgrimage, regular charity, and other good deeds. The root of this word originally meant to “explain” or to “clarify” and is related to the word for a place where there is a spring that provides abundant

water year around. The word Sharia, and closely related words, occur only five times in the Holy Qur'an. In one place a closely related word is used in the sense of set or determine.

“He has *set* and explained for you some of the religion in which He instructed Noah, what We revealed to you (Muhammad), and in which we instructed Abraham, Moses and Jesus...”¹⁶

God uses the same word when he criticizes the idol worshippers for choosing the laws of their religion by themselves and asks rhetorically, “Or do they have partners (of God) who have *set* them something in religion that God did not allow?”¹⁷ These verses were both revealed in Makkah. Sometimes the word *Shari'ah* means “path” or “way”. It occurs in this sense in the verse, “Now have We set you on a *clear path* of our command...”¹⁸ This verse was revealed at Makkah before any legislation, which is confined to the Madinan verses, was sent down; it contains the only mention of the word *Shari'ah* in the Holy Qur'an. The *Shari'ah* is the totality of firm judgments revealed by God in the Qur'an and *Sunnah*, and whatever is derived from these judgments through jurisprudence.¹⁹

To the Muslims, *Shari'ah* is the all-embracing system of law with its origin in Divine, quintessentially religious and moral in its scope. *Shari'ah* epitomizes a system of law with comprehensive principles and procedures to deal with the realities and developments of the society. It exhibits a scheme of law taking care of dynamic human needs, spiritual and material.

***Maqasid al-Shari'ah* as a Legal Science**

Maqasid al-Shari'ah is a possessive construction generally meant and translated as ‘The higher Objectives of Islamic law’ and is a frequently used term in the works of elite legal scholarship, classical and modern, either as a mere concept or as a well-developed theory. A pertinent definition of *maqasid al-Shari'ah* is almost inexistent in medieval legal scholarship. Prof. Kamali and al-Khadimi claims that nobody among the early authorities, like al-

Ghazali (d. 505/1111) and al-Izz ibn ‘abd al-Salam (d.660/1261), attempted a definition of *maqasid al-Shariah*.²⁰ The most probable reason for not defining the term *maqasid al-Shari’ah* being the clarity of term to the scholars and students alike as these works are meant specifically for the legal experts and students.²¹

However, in the modern legal scholarship many, among them the Tunisian Muhammad al-Tahir ibn Ashur (d. 1973C.E), the Moroccan Allal al-Fasi (1974C.E), Wahbah al-Zuhayli and Ahmad al-Raysuni, have endeavored to define the term *maqasid al-Shari’ah*. Ibn Ashur observes:

The meanings and the wise purpose on the part of the Lawgiver which can be discerned in most or all of the situations to which the law applies such that they can be seen not to apply exclusively to a particular type of ruling. Included here are the occasions for the law’s establishment, its overall aims, and the meanings can be discerned throughout the law. It likewise includes objectives which are not observable in all types of rulings, although they are observable in many of them.²²

He adds:

The ways in which the Lawgiver achieves beneficial human objectives or preserves people’s general interests through their private conduct, that is, through the specific acts they engage in. Such specific objectives include very wise purpose reflected in rulings governing people’s behavior, such an ensuring trustworthy conduct through contacts having to do with pledges or security, consolidating domestic and family order through marriage contracts, and preventing long term harm by allowing for legitimacy of divorce.²³

While commenting upon the general objectives of Islamic Law, he continues:

From a comprehensive thematic analysis of the textual sources of the *Shari'ah* pertaining to the objectives of legislation, we can draw the following conclusions. Both its general rules and proofs indicate that the all-purpose principle (*maqsad 'amm*) of Islamic legislation is to preserve the social order of the community and insure its healthy progress by promoting the well-being and righteousness (*salah*) 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.²⁴

Ascertaining the meanings of *maqasid al-Shari'ah*, Allal al-Fasi writes:

The general higher objectives of Islamic Law is to populate and to civilize the earth and preserve the order of peaceful coexistence therein; to ensure the earth's ongoing well-being and usefulness through the piety of those who have been placed there as God's vicegerent; to ensure that people conduct themselves justly, with moral probity and with integrity in thought and action, and that they reform that which needs reform on earth, tap its resources, and plan for good of all.²⁵

Whereas, taking full consideration of the definitions and niceties discussed by Muhammad al-Tahir ibn Ashur and Allal al-Fassi, Ahmad al-Ruysuni explains *maqasid al-Shari'ah* as:

The purposes which the law was established to fulfill for the benefit of humankind.²⁶

Adding more details and classifications to the definition of *maqasid al-Shari'ah*, al-Raysuni compartmentalizes *Maqasid al-Shari'ah* into three categories:

- (i) General Objectives
- (ii) Specific Objectives
- (iii) Particular Objectives

General objectives, he asserts, are those having universality in their nature, are achieved in all or many areas of legislation. These objectives being universal or broader in their implications are more important than other two types of objectives. By Specific objectives, he means, the objectives to be achieved in a restricted number of areas of Islamic Law. He explains Particular objectives as the objectives intended in particular rulings, be it in command, prohibition, recommendation, and permission, undesirable or something as a condition.²⁷

Yusuf al-Qardawi aptly puts it:

Maqasid al-Shariah consists of attraction of benefits (*al-masalih*) to the people and repelling of harm and corruption (*al-madarwalmafasid*) from them.²⁸

Muhammad al-Zuhayli in his detailed exposition of *Maqasid al-Shari'ah* writes:

The ultimate goals, aims, consequences and meanings which the *Shari'ah* has upheld and established through its laws and consistently seeks to realize, materialize and achieve them at all times and places.²⁹

Wahbah al-Zuhayli while discovering the gist of the definitions of *Maqasid al-Shari'ah* expounds:

The higher objectives of Islamic Law are the law's meanings and objectives as manifested in most or all of its rulings; or, they may be said to be the purpose of the Law and the hidden wisdom which the Lawgiver has placed within each of its rulings.³⁰

Maqsid al-Shari'ah- Typologies:

Traditionally, *maqsid al-Shari'ah* are categorized into three types based upon their significance and indispensability about genuine public welfare as *al-darurat* (the essentials), *al-hajiyat* (the needs) and *al-tahsiniyat/al-tazyenat* (the embellishments)³¹. The traditional typology proposed by Imam al-Haramayn al-Juwayni, developed by his pupil al-Ghazali and accepted and promoted by al-Shatibi; most of the modern scholarship developed their schemata of *maqsid* typology upon one proposed by al-Ghazali. Gemal el-din 'Atiyyah proposed a more elaborated and comprehensive categorization of *maqsid al-Shari'ah* with respect to challenges of modern civilization³². Primarily, he categorizes the objectives (*al-maqasid*) into two themes of objectives of law (*maqasid al-Shari'*) and objectives of creation (*maqasid al-khalq*). These two themes are further sub-categorized into six objectives as:

1. The Objectives of Law:
 - i. The Particular objectives of the Law *maqasid al-Shari'ah al-juzi'yah*.
 - ii. The Special objectives of the Law *maqasid al-Shari'ah al-khassah*.
 - iii. The Universal Objectives of the Law *maqasid al-Shari'ah al-kuliyyah*.
2. The Objectives of the creation:
 - i. Primary Objectives of the Creation
 - ii. Secondary objectives of the Creation
 - iii. Human Objectives of the Creation

With this basic typology, he moves on from the concept of five universals to four realms of the application of *maqasid al-Shari'ah*, with total of twenty four objectives to be accomplished by *Shari'ah* at four different levels of action within human society. The four major dominions are that of individual, family, *ummah*

and humanity. The classification of objectives under these four realms is proposed as:

1. The *maqasid* as they pertain to an Individual:
 - i. The preservation of human life.
 - ii. The consideration for mind.
 - iii. The preservation of personal piety.
 - iv. The preservation of honor.
 - v. The preservation of wealth.

2. The *maqasid* as they pertain to the family:
 - i. The ordering relations between sexes.
 - ii. The preservation of progeny.
 - iii. The achievement harmony, affection and compassion.
 - iv. The preservation of family lineage.
 - v. The preservation of personal piety within family.
 - vi. The ordering of the institutional aspect of the family.
 - vii. The ordering of the financial aspect of the family.

3. The *maqasid* as they pertain to the *ummah*:
 - i. The institutional organization of the *ummah*.
 - ii. The preservation of the Security.
 - iii. The establishment of justice.
 - iv. The preservation of Religion and morals.
 - v. The preservation of sense of cooperation, solidarity and shared responsibility.
 - vi. The dissemination of knowledge and preservation of reason in *ummah*.
 - vii. The preservation of community's (*ummic*) wealth and populating and developing the earth.

4. The *maqasid* as they pertain to humanity:
 - i. The preservation of mutual understanding, cooperation and integration.
 - ii. The preservation of human vicegerency on the earth.

- iii. The preservation of achievement of global peace based on justice.
- iv. The preservation of international human rights.
- v. The preservation of the dissemination of the Islamic message.

***Maqasid al-Shari'ah* – Origin:**

Maqasid al-Shari'ah or The Objectives of Islamic Law is a very significant theme of Islamic Law, hitherto this discipline of *Shari'ah* remained somewhat ignored in the mainstream medieval legal scholarship. Not most of the treatises written on *usul al-fiqh* deliberated upon this concept or science and in fact only a handful of scholars have dealt with this science of *shari'ah* encompassing its entirety and comprehensiveness. Among the galaxy of legal experts we find only Imam al-Haramayn al-Juwayni (d.478/1085), abu Hamid al-Ghazalli (d.505/1111), al 'Izz ibn 'Abd al-Salam (d.660/1209) , Shihab al-Din al-Qarafi (d.684/1285), Ahmed ibn Taymiyyah (d. 728/1327), Shamsuddin ibn al-Qayyim (d. 748/1348), abuIshaq al-Shatibi (d. 790/1388), who have actually engaged and expounded upon this science of *Shari'ah*.

The origin and development of *Maqasid al-Shari'ah* is akin to genesis and evolution of *usul al-fiqh* itself. The origin of both of these two realms being in the sacred texts and discernible in immediate Quranic society, originating on simple terms in a simplistic environment and with civilizational expansion and societal complexities, this concept also embraced intricacies with ever growing challenges.

The practical part of the *Shari'ah* is designed so as to facilitate the benefits (*masalih*) of the human kind and to expedite the development and refinement of human life. The Qur'an is quite expressive of the *maqasid* or rationale of its laws be it the *'ibadah* (rituals) or the *mu'amalah* (civil transactions) pushing a *mukallaf* to follow the injunctions intending for the same objectives. The

Qur'an is expressive of this when it introduces Prophet Muhammad ﷺ as the 'mercy for mankind', it says:

And We have not sent you (O Muhammad) but as a mercy for the '*alameen* (Mankind and Jinn).³³

And announcing itself as 'the healing to the ailments of heart, guidance and mercy', it asserts:

O mankind! There has come to you a good advice from your Lord, and a healing for that which is in your breasts- guidance and a mercy for believers.³⁴

Hashim Kamali observes:

The objective of *Rahmah*, therefore, is most clearly manifested in the realization of *maslahah* (benefit) in the everyday communal life. The *ulema* have, thus, generally considered *rahmah* to be the all-persuasive objective of the *Shari'ah*, and have, to all intents and purposes, used it synonymously with *maslahah*.³⁵

The Quranic concept of justice (*'Adl or Qist*) is intimately related with the Quranic notion of *rahmah* manifesting out of the Divine Attribute of the God being the most Compassionate (*al-Rahman*). Qur'an declares it among the core objectives of the Apostle of the God:

Indeed We have sent our Messengers with clear proofs, and revealed with them the scripture and the balance that mankind may keep up justice.³⁶

Observing the essential place of justice in Quranic worldview, Hashim Kamali writes:

Justice as a value or primary objective of the *Shari'ah* is mentioned in the Quran fifty three times in all. '*Adl*-literally meaning to place things in their right and proper place- as a fundamental objective of the *Shari'ah*, is to seek to establish an equilibrium between rights and obligations, so as to eliminate all excesses and disparities in all spheres of life.³⁷

While giving guidelines for the ritual of ablution (*wudu*) for the prayer, God says:

O you who believe! When you intend to offer prayer, wash your faces and your hands upto the elbows, rub your head and your feet up to ankles...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.³⁸

This verse is quite clear about the objectives of the ritual of *wudu*; not to inflict hardship on rather to cleanse and purify the individual.

About the prayer (*Salah*), God pronounces:

And perform *al-Salat* (the prayers). Verily *al-Salat* prevents from *al-Fahsha* (great sins of every kind and unlawful sexual intercourse) and *al-Munkar* (disbelief, polytheism, and every kind of evil wicked deed).³⁹

The objective of *salah* being declared as means to develop self-restraint so as to stay away from promiscuity and evils, not the outer mechanics of *Salah*, although outward performance of *Salah* is also equally important and required.

Taking the case of *jihad*, the rationale stands:

Permission to fight is given to those who are fought against, because they have been wronged; and surely, Allah is able to give them victory.⁴⁰

Taking account of *jihad*, *salah* and *wudu*, Hashim Kamali writes:

The purpose in other words, in legalizing *jihad* is to fight *Zulm* (Injustice), and of *Salah*, to attain purity and excellence which is accomplished together with physical cleanliness through ablution before the prayer.⁴¹

The rationale behind the law of *Qisas* (Just Retaliation) stands as:

And there is life for you in *al-Qisas* (the Law of Equality in Punishment) O men of understanding.⁴²

And with regards to *Zakah* (Wealth Tax), it proceeds:

What Allah gave as booty to His Messenger from the people of the township – it is for Allah, His Messenger, the kindred, the orphans, the needy, and the wayfarer, in order that it may not become a fortune used by the rich among you.⁴³

In endorsing the law of *Qisas*, the Qur'an proposes the objective of respect of dignified human life and in case of *Zakah* the end being stated as ensured circulation of wealth among all classes of society, providing equal opportunities to all classes to improve their economic state of affairs and resulting in elimination of poverty from the society.

Regarding the fasting in the month of Ramadhan (*As-Sawm*), the Qur'anic statement portrays it as the means towards the God consciousness, not to put humanity in hardship. It says:

O you who believe! Observing *as-Sawm* is prescribed for you as it was prescribed for those before you, that you may become *al-Muttaqun* (the pious).⁴⁴

While the Qur'an ordains and encourages the believers to follow the teachings of the Religion of God in too, at the same time it takes care of human psyche and capability and reveals the nature of Divine commandments as easy and natural to act upon, it says:

And strive hard in the cause of Allah as you ought to strive. He has chosen you and has not laid upon you in religion any hardship⁴⁵.

The same is also complied by the Prophetic hadith recorded by al-Bukhari on the authority of abu-Hurayrah, the Prophet of Allah ﷺ said:

Religion is very easy and whoever overburdens himself in his religion will not be able to continue in that way. So, you should not be extremists, but try to be near the perfection and receive the good tidings that you will be rewarded.⁴⁶

The *maqasidi* theme is quite evident in the Prophetic *Sunnah* too, to cite a few examples from this indispensable source of *Shari'ah*; the Apostle of God ﷺ has been recorded on the authority of Abu Sa'id Sa'ad bin Malik bin Sinan al-Khudari to have said:

There should be neither harming neither reciprocating harm.⁴⁷

This tradition provides the cutting-edge principle in all the human transactions that no harm is to be inflicted nor accepted. From this tradition it is quite apparent that the *Shari'ah* is not there to undermine the legitimate human interests and values rather to cement and regulate these interests and values is the objective of the *Shariah*. This tradition forms the basis of many chapters of *fiqh* and leads to the birth of new branches of *fiqh*, mainly *qawa'id al-fiqhiyyah*.⁴⁸

Another Prophetic tradition says:

Faith has over seventy compartments; at the top is to testify that nothing is worthy of worship except Allah and at the lower end is to remove hardship from a street.⁴⁹

Another tradition says:

Creation (of Allah) is the family of Allah; among them the dearest to Allah is the one who is most beneficial to His family.⁵⁰

In the above quoted tradition of the Prophet, the faith (*Iman*) is being covered in between two ends of *Tawhid* (Oneness of God)

and removal of public hardship. In the second one, the intimacy and love of Allah is made provisional with degree of benefitting the creation of Allah.

In addition to the above traditions, which require or sanction the undertaking of some positive action, one may also refer to the laws of the *Shari'ah* which prohibit or discourage certain actions that are or may be harmful and that may result in bias, exploitation and injustice. In all cases, whatever the aim or justification of the individual *ahkam*, however, it is to be noted that the underlying objective is the insight of some *maslahah*(benefit).

Like the Prophetic example (*Sunnah*), Prophetic society is also full of such examples which demonstrate upon the objective based understanding of Sacred Texts. An incident collected by al-Bukhari⁵¹ and Muslim says; Prophet of God sent a group of companions to the tribe of Banu Qurayzah and ordered them to pray their afternoon prayer on reaching Banu Qurayzah. While, still on the way, the time of *salah* entered; the companions found themselves divided into two opinions, whether to pray on time outside Banu Qurayzah or to delay the prayers to be prayed in Banu Qurayzah. The rationale behind the group considering to pray in Banu Qurayzah, anyways, was to follow the words of Prophet literally and simplistically. While as the rationale behind the opinion of the second group was to consider the Prophetic intent, i.e. to make haste to reach the tribe of Banu Qurayzah not to defer the *salah*. On reaching back to Prophet of Allah, the whole incident was narrated to him. On listening the whole story, the Prophet remained silent (Tacit Approval). The example of abu Bakr, the first caliph of Islam, to collect the Quran in a single volume⁵² was also based upon the rationale of *masalih al-naas*.

Another telling incident happened during the caliphate of 'Umar ibn al-Khattab. When Muslim armies conquered the lands of Iraq and Egypt, the companions asked the Caliph to distribute the 4/5 of

the conquered lands amongst those who took part in the expedition as the spoils of war. The argument was based on the specific Quranic verses. ‘Umar, the Caliph, refused their claim by referring to other Quranic verse (59:07) with more general applications, arguing that God has purpose or objective of not letting the specific community monopolize the wealth and secondly, these conquered lands are to be preserved for the future generations⁵³ and based his judgment on the Quranic verse:

Say: “In the bounty of Allah and His Mercy- therein let them rejoice.” That is better than what they amass.⁵⁴

Hence, ‘Umar ibn al-Khattab understood the verses of spoils of war in the *maqasid* context not mere in its literal content, proposed by the more general verses.

Another significant example ‘Umar ibn al-Khattab’s application of moratorium on punishment for theft during the famine of Madinah.⁵⁵ The philosophy for application of moratorium being *maslahah al-naas*; when people are struggling for survival, the survival of human life should get precedence over the protection of wealth.

‘Umar ibn al-Khattab’s decision to include horses under the qualified assets upon which giving of *Zakah* is obligatory, in spite of the apparent Prophetic tradition which had left horses out of such obligations. But ‘Umar taking in consideration the letter and spirit of the Prophetic tradition and the reality of the times argued that since horses are becoming more valuable than camels should be included in the list. ‘Umar ibn al-Khattab was fully aware of the general objectives of *Zakah* as the means of economic justice throughout the spectrum of the society, to help poor and to serve the public good.

Taking a bird’s eye view of the *Shari’ah*, its internal and external implications on the individual and the society, Wahbah al-Zuhayli accomplishes the objective of *Shari’ah* as civilizing or humanizing

the individual (*Tahdhib al-Fard*). The objective of civilizing the individual precedes other important objectives like justice or safeguarding the individual interests; since these social objectives emanate from a civilized society and civilized society emerges out of civilized individuals. He argues that educating the individual is a top priority of *Shari'ah* as the well-being of community is totally dependent upon the state of its individuals. The objective of *Tahdhib al-Fard* aims at educating and training the individual to be an agent of the Islamic values.⁵⁶

All the above enlisted texts and examples from the Prophetic times and the times of rightly guided Caliphs infer at the notion of understanding the texts, related to transactions, respecting not just their literal sense but taking full consideration of the spirit of the texts. It is the realized methodology of understanding the sacred texts to serve the purposes of the *Shari'ah* aimed by *Shari'* (Lawgiver) for the subjects.

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