

Therapeutic Insights into Maqāṣid al-Sharī'ah (Ultimate Objectives of Sharī'ah)

By

Abiola Muideen Lateef, PhD

Department of Arabic and Islamic Studies

University of Ibadan, Nigeria

Abstract

Islam encourages legal development which establishes social justice that concerns itself with the well-being. Central to this legal development is the higher objectives of Sharī'ah or *Maqāṣid al-Sharī'ah* which advocates purpose-based reading of the law in terms of well-being (*Maṣlaḥah*) of all. However, therapeutic framework of this legal development model is still lacking. There is an urgent need to develop this therapeutic model which sees the objectives of Sharī'ah as a healing and mercy to mankind. Using Al-Ghazālī's *Maqāṣid* theory which gives priority to Five Essential Elements, this paper argues that *Maqāṣid* lens can be reconfigured to cater for, or at least pay attention to psychological issues affecting individual and social health, wealth, human relationships and well-being in all spheres of life.

Key words: Therapeutic Framework, Islam, *Maṣlaḥah*, *Maqāṣid al-Sharī'ah*.

Introduction

Islam encourages legal development which establishes social justice that concerns itself with the well-being. Central to this legal development is the higher objectives of Sharī'ah or *Maqāṣid al-Sharī'ah* which advocates not only the goals of educating the individuals and establishing justice but also of ensuring the well-being (*Maṣlaḥah*) of all. This legal development therefore, sees the objectives of Sharī'ah as a healing and mercy to mankind as confirmed by the Qur'anic verse: "Thus do we send down [in the verses] of the Qur'an that which is a healing [for body and soul] and a mercy to the *Mūminīn* (believers) (Qur'an, 17: 82). The word "*Mūminīn*" is a generic term that refers to all believers in the laws of Allah (Sharī'ah) for whom Sharī'ah is originally meant.

The notion of therapeutics is predicated on *Maṣlaḥah* which literally means benefit or interest. It is also called *Iṣṭiṣlah*, *Maṣlaḥah Muṭlaqah*, *Maṣlaḥah al-Mursalah* that is "unrestricted public interest" since its validity or otherwise is not defined in the textual authority. To al-Ghazālī however, *Maṣlaḥah* refers to consideration which acquire a benefit or repel harm but which are congruent with the objectives (Maqāṣid) of the Sharī'ah namely: religion, life, life intellect, lineage and property.

Safeguarding these objective and preventing anything that violates them is termed *Maṣlaḥah*(Al Ghazali, 1993:139-140.).

The idea of speculating within the letter, spirit and purposes of law in order to formulate a new principle to deal with emergent issue or situation in order to promote public benefit and repel harm dates back to the companions of the early prophet as reported in a number of incidents. The companions, for instance, decided to issue currency, to establish prison, and to impose tax (*kharaḥ*) on agricultural lands in the conquered territories despite the fact that there was no textual authority commanding this (Khallaf, 84).

The basic purpose of legislation (*tashrī*) in Islam is *Istiṣlāḥ*; that is, to secure the welfare of the people by promoting their benefit or by safeguarding them against harm. What constitute benefits and how they are brought to the people are virtually inexhaustible and unpredictable; because, they change according to time and circumstance. Thus, an enacted law may be beneficial at one time and harmful at another; or even at one and the same time, it may be beneficial under certain conditions but prove to be harmful in other circumstances. The onus of responsibility now rests on the ruler or the *Mujtahid* to consider the *Maṣāliḥ* and when the occasions demand.

This paper seeks to establish that *Maqāṣid al-Sharī'ah* does embed therapeutic aspiration and concerns which can enrich its theories, methodologies and practices in the area of legal discourses. Conceptual definitions of *Maqāṣid al-Sharī'ah* as proffered by different scholars are examined before dovetailing into therapeutic framework which inheres in the five components of *Maqāṣid al-Sharī'ah*.

Maqāṣid al Sharī'ah (Ultimate Objectives of Sharī'ah)

Maqasid al-Sharī'ah is the objectives and the rationale of the *Sharī'ah*. A comprehensive and careful examination of the *Sharī'ah* rulings entails an understanding that *Sharī'ah* aims at protecting and preserving public interests (*maṣlaḥah*) in all aspects and segments of life (Al-Shāṭibī, 2004:2). Many *Sharī'ah* texts state clearly the reasoning behind certain *Sharī'ah* rulings, suggesting that every ruling in *Sharī'ah* comes with a purpose, which is to benefit the mukallaf (accountable person). For example, when Qur'an prescribes Qisas (retaliation), it speaks of the rationale of it, that applying retaliation prevents further killing "There is life for you in Qisas" (Qur'an, 2:179). Similarly, when Qur'an prohibits wine it says that wine is the works of devil as it causes quarrel and instills hatred and enmity among Muslims "The devil only wants to excite enmity and hatred between you in

intoxicants and gambling and hinder you from remembrance of Allah and from prayer" (Qur'an,5:91).

Islam incorporates permanent features and mechanisms for adapting to change. While its fundamentals, such as *'aqidah* (creed), *'ibadah* (worship), and *akhlaq* (morality and ethics), never change, their manifestations in *mu'amalat* (legal, social, economic and political transactions) require flexibility and development according to time and space (Kamali, 1989:215-35). This is embodied in the Shari'ah, which is central to Islam's worldview. To understand the Shari'ah, one needs to understand its objectives, which allow flexibility, dynamism, and creativity in social policy (Hallaq, 2004:6). According to Imam al-Ghazzali:

The objective of the Shari'ah is to promote the well-being of all mankind, which lies in safeguarding their faith (*din*), their human self (*nafs*), their intellect (*'aql*), their posterity (*nasl*) and their wealth (*mal*). Whatever ensures the safeguard of these five serves public interest and is desirable (Chapra, 2000:118).

Al-Ghazzali's list and sequence have found favour with Al-Shaṭībī, who considers them as the most preferable in terms of their harmony with the Shari'ah's essence (Nyazee, 2000:121). Generally, the Shari'ah is hinged on benefiting the individual and the community, and its laws are designed to protect these benefits thereby facilitating the improvement and perfection of human life in this world which is symptomatic of religious purpose of the Hereafter. Al-Ghazzali reinforces the significance of preserving the Sharī'ah's objectives as *maṣlaḥah*'s fundamental meaning. In his definition,

Maṣlaḥah is essentially an expression for the acquisition of benefit or the repulsion of injury or harm, but that is not what we mean by it, because acquisition of benefits and the repulsion of harm represent human goals, that is, the welfare of humans through the attainment of these goals. What we mean by *maṣlaḥah*, however, is the preservation of the Shari'ah's objectives (Al-Raisuni, 1992:41-45).

Al-Shaṭībī, closely following al-Ghazzali's taxonomy, defines *maṣlaḥah* in his *Al-Muwafaqat* as a principle that concerns the subsistence of human life, the completion of one's livelihood, and the acquisition of what his/her emotional and intellectual qualities require of him/her in an absolute sense (Hallaq, 168). In fact, he singles *maṣlaḥah* out as being the only overriding Shari'ah objective broad enough to comprise all measures deemed beneficial to people, including administering justice and worship.

It is generally held that Shari'ah on a whole aims at securing benefit for the people or protecting them against corruption and evil in various degrees. The basic Ahkam al-Khams illustrates this. The *wājib* (obligatory), *mandūb* (recommended) and *mubāh* (permissible) aim at realizing the benefit and welfare while the *makrūh* (Reprehensible) and *harām* (forbidden) aim at preventing corruption and evil (Kamali, 1989:215-235). As a principle, any matter that increases the welfare of people from the Shari'ah point of view is regarded as *maṣlaḥah* i.e. producing therapeutic outcomes. Likewise, any matter that decreases the welfare of the people is considered *mafsadah* or anti-therapeutic consequences. Based on the above therapeutically framework, Shari'ah concerns itself with protection, improvement and amelioration of man's five basic elements as enunciated by al-Ghazālī namely: religion, life, intellect (mind), offspring and wealth.

Islamic Therapeutic Framework and Maqāṣid al-Shari'ah

Therapeutic insights are all about taking cognizance of and prioritizing *Maṣlaḥah* i.e. the welfare, benefit, interest or well-being of both the individual and the society in the contemporary exigencies in the application of law. It seeks to optimize legal outcomes by going beyond bare legal rights to include and consider the participants' needs, goals, desires, mental status, well-being and relationships. Aside leading to better overall outcomes of legal problems, this therapeutic orientation will offer approaches that would resolve disputes, minimize litigation, produce long-lasting settlement, preserve social relations and enhance the well-being of individuals and the society. Through this framework, healing potentials of the law for the individual and society can be extrapolated to articulate the ultimate objectives of the Shari'ah. This paper has used al-Gazālī's Maqāṣid theory which gives priority to preservation of five essential elements (*Darūriyat al-khams*) as basis for this exposition.

Maqāsid al-Sharī'ah	Maṣlaḥah (Therapeutic) Values	Mafsadah (Anti-therapeutic) Values
Faith	Freedom of belief / worship, Moral enhancement, Eschatological probity / scrupulous, Spiritual enrichment value, proper motivation	Corruption, Religious intolerance / crises, Moral decadence
Life	Preservation of human dignity human development, Material well-being, Security of life, Property and honour	Insecurity of life, crime rate and anomie
Intellect	Propagation of scientific thinking, Education, Research opportunities, freedom of speech and thought, Expansion of knowledge and technology base	Brain drain, Herd mentality, intoxication, Intellectual poverty
Progeny	Survival and progress of the family integrity, Protection of future generation, Reproduction health literacy, Child upbringing	Broken homes, Juvenile delinquency, Child abuse
Wealth	Wealth circulation, Price stability, Poverty alleviation, Employment & Self-employment opportunities, Insurance, Saving / investment	Poverty, Embezzlement, Financial crime.

(i) Preservation of Religion

The first and foremost objective of *Sharī'ah* is to preserve and protect the religion itself. It is fundamental that every society must put in place rules and regulation to govern the affairs of its denizens. It is impossible to survive without enforcement of, and compliance with those rules. Otherwise, the magnitude of transgression will be alarming. If laws or rules are so vital to the human existence, then religion is the mother of all rules and law in the universe.

It is in the light of this that Allah has sent his revelation to mankind for guidance and set the limits to regulate our interactions. Thus, to protect Islam as a religion, one must first believe in the revelation and messages of Allah. This belief is succinctly referred to as *al-Tawhid*. *Tawhid* is part of the religion and the beginning of the Islamic faith. Allah says of Himself in the Qur'an:

And to Him belongs whoever is in the heavens and the earth. All are to Him devoutly obedient. And it is He who begins creation; to Him belongs the highest

description in the heavens and the earth. And He is Exalted in Might, and Wise (Qur'an, 30: 26).

Therefore, *tawhid* is the foundation of every aspect of the Muslim's life. It lays the basis for every aspects of human life. This is because it is only when a person believes in the oneness of his creator (Allah) that he or she becomes conscious of the dealings with other beings. Hence, the issues of the purpose of man's creation in this earth and his responsibility in this world are relevant and vital to understanding the nature of man's relationship with his spiritual enrichment.

As an extension of vertical ethicality of Islam, *tawhid* also places importance on spiritual accountability in the sense that as the continuation of this world, there is a hereafter, and that hereafter is the arena where the ultimate 'justice' will take place. This, hence, is expected to motivate individual to conduct their actions and tasks within *tawhid* in a way to maximize their return in the hereafter as well. The extension of time horizon, thus, introduces a moral filter in one's life in terms of his/her access and consumption of the available resources to achieve the objectives of the Sharī'ah. Thus, faith is closely aligned to well-being and protection by enabling adherents to take a long-term view of their self-interest through belief in accountability in the Hereafter.

Islam recognizes the freedom of worship as an essential need for humans. This has been the theme of several declarations in the Qur'an, namely:

- "Let there be no compulsion in religion. Truth stands out clear from Error" (Qur'an, 2:256).
- "The truth has come from your Lord. Whoever wishes may believe in it and whoever wishes may reject it" (Qur'an, 18:29).
- "If it had been thy Lord's will, they would all have believed – all who are on earth! Wilt thou then compel mankind, against their will, to believe!" (Qur'an, 10:99)

According to Ibn Ashur, preservation of religion refers to as salvaging the faith of every individual Muslim from being affected by anything that might confuse either belief or distort his/her behaviour. It also means salvaging the community from anything that might violate and destroyed its fundamentals including defending Muslim land and sovereignty as well as preserving the means of Islamic education among the present and future generations of the Muslim Community (Ashur, 1998:116).

To Attia, a contemporary Muslim scholar, religion can be preserved at three realms namely individual, Family and the ummah (Muslim Community) which are correspondingly achieved at the Duririyah Hjiyyah and Tahsiniyyah levels. He employs the terms "*al-tadayyan*" (personal Piety) which individual realm, means

promotion religion piety within oneself. This is to be achieved at *Daruriyah* level through the following means: strengthening the creed, performing obligatory worship, observing good behavioral traits and carry out obligatory acts of audience. At the family realm, *al-tadayyun* means preserving of piety within the family which is achievable at *hajjiyyah* level by making good choice of spouse in marriage as instructed in the prophetic tradition. At the *ummah* realm, Attia interprets *al-tadayyun* preservation of religion and morals which can be achieved at the *hajjiyyat* level by upholding moral values and curbing the spread of corruption (Atiyah, 2008:6).

Auda, another contemporary scholar, traces the early interpretation of the term to al-Amiri's punishment for giving up true faith which has been re-interpreted by modern scholars to mean 'freedom of faiths' or 'freedom of believe' (Auda, 2008:24), Chapra, however opines that preservation of the faith focuses on religion worldview which potentially helps man to reform human self to realize all his spiritual and material needs. Consequently, preservation of religion takes the following dimensions:

1. Providing correct religious worldview
2. Strengthening the faith
3. Embracing good ethos and
4. Performing obligatory worship and virtual acts.

In sum, therapeutic framework considers Faith as an essential dimension of well-being because it brings meaning and purpose to life and can thereby transform a person in a way that will lead to the actualisation of all other spiritual and material needs. By conferring on believers clear moral and ethical values along with explicit rules of behaviour, faith leads to moral enhancement and social solidarity which are key assets in addressing adversity and vulnerability.

(ii) Preservation of Life

The preservation of life has lent itself to so many definitions by Muslim jurists. Al-Juwayni and al-Ghazali explain *hifz al-nafs* in terms of the law of retribution which safeguards the preservation of human life against murder. According to Ibn Ashur, *Hifz al-Nafs* means to protect human lives from being destroyed individually or collectively by preventing harm and ruin before they happen such as taking timely measures against epidemics.

On the issue of protection of life, many human practices are endangering to human life. Thus, a Muslim is expected to shun activities that are likely to put the life of his fellow being in danger (An-Na'im, 1990:185). Islam sees life as the entirety of humankind and that is why it is stated in the Qur'an that whoever kills a life is as if he has killed the whole humanity and whoever saves a life will be rewarded as if he has saved the entire human race (Qur'an, 5:32). Therefore, if we do anything that

will endanger a single life through our action or inaction, we are seriously violating the second objective of *Sharîcaḥ*, which is the protection of life (Qur'an, 5:32).

In Islam, it is forbidden to kill a life unlawfully without a just cause. Islam did not only prohibit taking a life unlawfully, it also forbids causing harm to another person. Stressing the sacredness of life, Allah says in the Holy Qur'an:

And do not kill a soul which Allah has forbidden, except for a right. And whosoever is killed unjustly, we have given his heir authority, but let him not exceed limits in the matter of taking life. Indeed, he has been supported by the law (Qur'an, 5:32).

The above verse portrays that killing a person without a justifiable reason is prohibited by Allah and a great punishment awaits any one that violates such injunction. In the context of protecting life, Allah has enjoined us to desist from activities likely to endanger or cause destruction to ourselves, where he has exhorted us to spend in his cause, and do good deeds (Qur'an, 2:192). The Qur'an says: "And spend in the way of Allah and do not throw yourselves with your own hands into destruction. And do good; indeed Allah loves the doers of good."

Al-Shāṭibi identifies three ways by which preservation of life can be achieved, namely: establishing its foundation through legitimate procreation mechanism such as valid marriage and divorce; ensuring its survival from within through food and drink and; providing security that would guarantee survival from without from human and non-human threats. In a more contemporary context, Chapra enumerates what *Ḥifz al-naḥs* entails in the modern parlance; dignity; self-respect, brotherhood and social equality justice, spiritual and moral height; security of life property and honour; freedom; education; good government; removal of poverty and need fulfillment; employment and self-employment opportunity; equitable distribution of income and wealth; marriage and stable family life; family and social solidarity minimization of crime and anomie; and mental peace and happiness. Based on the above definitions, *ḥifz al-naḥs* can be defined as ensuring the existence, sustenance and development of human life through the fulfillment of basic needs such as physical, spiritual, moral & social needs and its protection from both human and non-human threats (Chapra, 2008:7-19).

Thus life, from the therapeutic perspective relates to all aspects of the physical self. This dimension encompasses all the needs of human beings that should be fulfilled for the sustenance of the human body and also those that are necessary for humans to discharge their role as custodians (*khalifa*) of the earth namely, preserving dignity and good governance. The physical needs include food, shelter and clothes. Prophet Muḥammad (SAW) has defined the barest needs of the body in the *ḥadith* which says: "The son of Adam has no better right than that he would have a house wherein he may live, and a piece of cloth whereby he may hide his nakedness, and a piece of bread and some water (*Tirmidhi'e ta*)." Other important needs included in this dimension are health, the rights to life and security, healthy environment, food, shelter, and freedom from fear.

(iii) Preservation of the intellect.

Islam lays emphasis on the significance of the intellect as dignifying parameters that places human being over and above other creatures. According to Imam al-Ghazali as cited in Chapra, intellect is the fountainhead, standing point of foundation of knowledge; thus Sharī'ah prohibits wine in order to show that it is necessary to preserve the intellect (Chapra, 2008:28). To Ibn Ashur, preservation of intellect means the protection of people's mind from anything that might put them in disorder which may lead to serious corruption reflecting in improper and perverted human conduct. Chapra points out the relativity of faith and intellect in Islamic paradigm. Faith provides the right direction to the intellect lest it tends towards the deceptions and delusion. Likewise, faith needs the service of intellect in order to maintain its dynamism in responding to changing socio-economic and intellectual environment (Chapra, 2008:28). This proximity between faith and intellect is expressed in the first verses of Qur'anic revelation.

Some activities affect the reasoning faculty of human beings. Islam has forbidden us from consuming anything that may likely interfere with the functioning of the mental faculty of man. For instance, Islam forbids intake of liquor, alcohol, marijuana, heroin and other similar things capable of negatively influencing man. Basically, anything whether of food or drink is unlawful if taking it would incapacitate man's intellect. In the opinion of al-Zarkashi (1994), Sharī'ah aims at preserving the intellect by making legal punishment for consumption of intoxicants. Mind, it is believed, is the ground for any act related to *maṣlahah* (well-being) and any disruption of the intellect leads to extreme *mafsadah*. Humans are endowed with intellect which enables them to gain knowledge through education. The first revelation of the Qur'an to the Prophet (PBUH) required him to: "Read in the name of the Lord ... Who taught man through the use of pen what he did not know (Qur'an, 96:1, 4 and 5)."

The Prophet himself has made it obligatory for every Muslim man and woman to seek knowledge. This objective highlights the importance of freedom of thought and expression in Islam. The development of the intellect and the acquisition of knowledge is universally accepted as foundational in building capabilities, human freedom and removing barriers to human development. This is because education is the vehicle through which individuals can explore their own conception of what it is they have reason to value and thereby work towards the freedom to make valued choices in other spheres of life. The principle of the protection of the intellect has also enabled scholars to respond to contemporary threats to the intellect such as psychotropic drugs.

(iv) Preservation of progeny

Some scholars have interchanged the name with family or lineage or progeny or offspring. The Islamic therapeutic framework embraces all these terms. The focus is on the protection of future generations and the family as the basic unit of society and solidarity. It includes the right to family life and the rights of the child. It can also include honour, freedom from shame, right to privacy, etc. An obvious contemporary

issue that is prioritized by this objective is the responsibility to secure future generations through environmental management and protection.

Good and unadulterated progeny is held in high esteem in Islam for it translates into a healthy, productive and effective Islamic society. Civilization survives only if its future generations are spiritually physically and mentality superior in quality to the preceding ones so as to be able to successfully take the new, emergent challenges. Thus, family is the first school for moral upbringing and intellectual development of the children. Islam desires that the offspring is of pure descent and therefore legalizes marriage as the only legal way of forming a viable stable family through which future generations can be preserved. *Hifz Al-Nasl* guarantees the right of legitimacy for the offspring through marriage and prohibits adultery/fornication with harsh sanctions for the violators. It is therefore the protection of everything that would guarantee the survival and progress of the family in all dimensions, be it physical, material, spiritual or emotional and the preservation and development of future generations.

(v) Preservation of property/wealth

Ibn Ashur defines *hifz al-māl* as the protection of the wealth of the community from being destroyed and from shifting to the hands of others without compensation (Ashur, 2006:8). From criminal perspective as usual, Al-Juwayni and Al-Ghazālī describe this preservation as the protection of people's possessions from thieves by cutting off their hands (Al-Raysuni, 2006:10). Al-Shātibi views it as the prohibition against injustice depriving orphans of their property, wastefulness, envy, giving short measure and weight, corruption on the land (Al-Raysuni, 2006:10).

In the modern literature, *hifz al-mal* is viewed in a more holistic manner. It is the protection of ownership and property from damage, harm, theft, exploitation or injustice. It also means the acquisition and development of wealth by making it available through circulation and equipment distribution as well as preserving the wealth through investment and good government.

Preservation of wealth is a keydeterminant of well-being. Islam considers wealth as the life blood of the community which must be in constant circulation; therefore its possession excludes the right of hoarding. This implies that wealth must be invested to improve people's well-being. The benefit of the investment is not only measured by the monetary gain associated with it, but also by the benefit which accrues to the society. The needs of the society must therefore be a consideration for the owner of wealth. Certain regulations determine the disposition of wealth in Islam. First, the rights of others must be recognized in the wealth.

Again, appropriate levies (*zakat*) if the amount falls within the specified threshold must be paid. Only then can the owners use it as they wish within the bounds of the law. More so, Divine law opposes extravagance, opulence, waste or general abuse of wealth; or its use to harm others. The right to lawfully acquired wealth is strictly

protected but the wealthy are regarded as trustees who hold the wealth as a trust on behalf of God "... and give them from the wealth of Allah which He has given you (Qur'an, 24:33)."

Despite these apparently strict restrictions, Islam encourages the legitimate pursuit of wealth and the enjoyment of the bounties created for human fulfilment. Complete abandonment of family life, means and the community in pursuit of exclusive *Ibādah*(worship) to God is not a tradition encouraged by Islamic teaching. Indeed, along with one's personal worship, the growth of one's spiritual stature as a human being is also related to the fulfilment of social obligations, service and relationships through full social engagement. The Qur'an says: "But the Monasticism, which they invented for themselves, We did not prescribe for them" (Qur'an, 57:27).

The Prophet (PBUH) also said: "There is nothing wrong in wealth for those who are God-conscious" (Mājah, 1952, P. 2132). Thus, the right to private property is respected. God says: "Believe in Allah and His Messenger and spend out of that in which He has made you successors. For those who have believed among you and spent, there will be a great reward" (Qur'an, 57:7). However, wealth is considered in Islam to belong to the dominion of God and it is a trust to be acquired and used in lawful ways. Greed and the hoarding of wealth are prohibited since they harm the well-being of both present and future generations. The Prophet (PBUH) said: "Wretched is the slave of dinar, dirham and velvet" (Bukhari, 2887).

In Islam, work is a very broad concept. The Qur'an considers idleness or the pursuit of work that is not beneficial as a manifestation of lack of faith and a person who earns their livelihood through hard work is highly praised. No one who is physically and mentally able to work is allowed to become a liability on their family or on the state through idleness. Therefore work is regarded not only as a right but a duty and an obligation. This important objective also underpins Islam's view of abject poverty as being of harm to the human being both physically and spiritually, since it undermines mankind's natural dignity and the means to achieve it. Therefore the struggle to lift people out of abject poverty is a duty both of the individual and of society and a key principle in Islam.

Conclusion

Thus, it may be seen that Islam has emphasized all the ingredients of human well-being, including the faith, life, intellect, posterity and wealth, along with their therapeutic corollaries. They are all interdependent and help realize real human well-being. This study has proposed to develop a therapeutic framework based on, and representing the noble objectives of Sharī'ah. Each component of Maqāṣid al-Sharī'ah has been identified with therapeutic and anti-therapeutic values based on relevant existing indicators. This does show that therapeutic insights are part and parcel of *Maqāṣid* paradigm. Therapeutic articulation of the *Maqāṣid al-Sharī'ah* will provide a better functionality of Islamic law.

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