

INTRODUCTION

Law is a changing thing, rulings and judicial interpretations shift in time. Legal reinterpretations should come as no surprise, given that even the laws of nature—thought to be unchanging—every so often get revised or newly discovered by physicists, as Einstein and others have shown us. Islamic law is no exception. Although for Muslims the revelation of the law ended with the death of the Prophet Muḥammad, the content of the divine law is, one may say, interpreted anew each time a person, usually a jurist, approaches the texts. This is not to say that the jurist operates on a *tabula rasa*. His¹ interpretation is influenced, and may even be bound, by his time and his social, political, and economic environment, including its rules and conventions for interpreting language, law, and theology.

Despite variations in legal interpretations, some of the questions jurists ask of the legal texts remain the same. One question which has been posed throughout the existence of Islamic law—and which it shares with many legal systems—is how to apply the finite body of the authoritative legal texts to the infinite number of possible legal incidents. Finding principles by which the revealed law can be applied to situations beyond the immediate wording of the authoritative texts has been the concern of Muslim jurists from the inception of Islam. Only by devising and applying such principles can Islamic law retain its relevance in an ever-changing environment. The jurists' task is to develop legal principles and methodologies that, when applied in law-finding, faithfully reflect God's will as manifested in the revealed law and that do not lead the believers to stray from God's path. The following study presents the intellectual history of one such principle, namely the concept of *maṣlaḥa*.

Maṣlaḥa, which literally means a source or cause of well-being and good, is sometimes translated as 'public interest' or 'social good.' While it does include those meanings, it also goes well beyond them; to preserve its conceptual complexity, I retain its Arabic linguistic

¹ Given the reality that historically the great majority of Muslim jurists were men, I refer to them only with male gender pronouns.

form and do not translate it into English.² *Maṣlaḥa*, although it is not mentioned in the Qurʾān, has become synonymous with God's purpose in revealing His law to humankind. The purpose of the divine law is understood as attaining the well-being (*maṣlaḥa*) of humanity in all their mundane and otherworldly affairs. In its relationship to what is referred to as the purposes of the Shariʿa (*maqāṣid al-shariʿa*) *maṣlaḥa* is one of the main procedural vehicles to address legal change. It can be used as a tool of finding new law when the authoritative texts are silent and of adapting existing law when circumstances call for it. The function of *maṣlaḥa* as a method of law-finding and vehicle of legal change makes it an important legal principle, especially in the contemporary period; today no book or pamphlet on Islamic law is written without reference to it.

The principle of *maṣlaḥa* as the purpose of the Shariʿa did not emerge overnight. It has a history, a pedigree, and an evolution that is the object of this study. I do not claim comprehensiveness in taking into account every reference to *maṣlaḥa* there is and every twist and turn its interpretation took in the hands of every Muslim jurist who ever lived. My aim is to lay out the main features that shaped its articulation, its interpretation, to indicate the intellectual hurdles jurists had to overcome to make *maṣlaḥa* a valid legal method, and to point out how the way a jurist integrates considerations of *maṣlaḥa* into the law-finding process impacts the ability for legal change. To this end, I focus, first of all, on writings of legal theory (*uṣūl al-fiqh*) by Sunni jurisprudents, disregarding works on legal practice (*furū*). Since legal theory is the area of the law where the validity and scope of application of legal methods are articulated, legal theorists are primarily the ones who discuss the concept of *maṣlaḥa* in detail. Secondly, I attend to some of the main figures of Islamic jurisprudence who contributed to making *maṣlaḥa* a firmly grounded method of law-finding.³ Hence, this is not a thorough study of its development within a particular school of law or at a specific point in time. Almost absent from consideration is the Ḥanafī school of law, which, for reasons partly explained

² In this study, I use *maṣlaḥa* in its Arabic form, giving it the English plural "s" when needed.

³ The jurisprudents I selected for this study are unique in that their conceptions of *maṣlaḥa* are still discussed today, with the exception, perhaps, of al-Jaṣṣāṣ and al-Baṣrī (cf. Felicitas Opwis, "Maṣlaḥa in Contemporary Islamic Legal Theory," *Islamic Law and Society* 12 [2005]: 182–223).