CHAPTER FIVE

A COMPREHENSIVE THEORY OF MAŞLAHA

I. İBRĀḤĪM B. MŪṢĀ AL-ŞĀTİBĪ

1. Introduction

In the second half of the 8th/14th century, the Mālikī jurist Abū Ishāq İbrāhīm b. Mūsā al-Şāṭibī (d. 790/1388) articulates what can be seen as the culmination of the interpretation of maşlaḥa in the pre-modern period. By focusing on the purposes of the Shari’a, he takes the concept of maşlaḥa to new heights and recasts the existing interpretations into a comprehensive and coherent theory. How he accomplished this feat is the subject of this chapter.

Al-Şāṭibī spent his life in the city of Granada in Muslim Spain, where he served as preacher (khaṭīb) at one of the city’s mosques and taught at a local college (madrasa). As a jurisconsult (muftī), he issued fatwas—though it is unclear whether he was officially appointed to this position or not. His career was not without challenges. He was accused and tried of innovation for his legal views, and had some run-ins with the political authorities of Granada. Although 8th/14th century Granada was politically stable under the rule of the Naṣrids, the city state underwent significant changes in the nature of relations between politics, law, education, and society. The ruler, Muḥammad V al-Ghānī bi-llāh (r. 755–760/1354–1359 and 763–793/1362–1391), increasingly took control over the administration and teaching of law. By playing the main judicial positions against each other, Muḥammad V

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2 Masud, *Islamic Legal Philosophy*, 103.
4 Masud gives a detailed account of the factors of change in Granada (Masud, *Islamic Legal Philosophy*, 39–94).
effectively weakened the power of these offices and made them dependent on him. As a result, the office of chief justice (qāḍī al-jamāʿa), which was responsible for appointing functionaries in the judicial and religious administration and, thus, played a role in consolidating the influence of the jurists, lost its independence and social prestige. The decreased political influence of the judges and jurists as part of the religious elites (ʿulamāʾ) was further aggravated by the establishment of official colleges of learning (madrasas) in Muslim Spain during the middle of the 8th/14th century. Whereas teaching and curriculum used to be exclusively in the hands of the predominantly Mālikī jurists, the creation of a madrasa system opened up the choice of materials and views that students were exposed to. This led to a diversification of teaching and intellectual activity, particularly in the area of philosophy and mysticism. Furthermore, it paved the way for Sūfī orders gaining a foothold in Muslim Spain. The rise of Sūfism on the Iberian Peninsula presented a threefold threat to the influence of Mālikī jurists in society. By requiring submission to the Sūfī shaykh it undermined the authority of the ʿulamāʾ as leaders of society; the spread of mystical practices competed with the performance of the Sharīʿa-law rituals; and pious endowments and donations to Sūfī institution, which were outside the supervision of the jurists, weakened the economic basis of the ʿulamāʾ. It is against the backdrop of these societal changes that al-Shāṭibī formulated a theory of law that integrated mašlaha as the purpose of the divine law into all areas of law and law-finding. Masud suggests that “the diversity of laws and the need for reform of local legal practices to bring about the uniformity of laws led scholars to investigate the motive and purpose of law.” Yet, as Hallaq points out, al-Shāṭibī’s legal theory is not only a “distinct reaction to a particular worldly and social reality” but the result of the high level of sophistication reached in legal theory—and one may add in the interpretation of mašlaha—which enabled al-Shāṭibī to remold it in response to these changes.

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5 Ibid., 41, 44–8, and 81.
6 Ibid., 53–5 and 60. A recurrent theme in al-Shāṭibī’s work is his criticism of Sūfism and Sūfī practices, which is well portrayed in Hallaq’s synopsis of al-Shāṭibī’s thought (Hallaq, History, 162–206).
7 Masud, Islamic Legal Philosophy, 62–4.
8 Ibid., 80.
9 Hallaq, History, 162–3.