National Library of Canada
Acquisitions and Bibliographic Services Branch
395 Wellington Street
Ottawa, Ontario
K1A 0N4

Bibliothèque nationale du Canada
Direction des acquisitions et des services bibliographiques
395, rue Wellington
Ottawa (Ontario)
K1A 0N4

Your file Votre référence

Our file Notre référence

NOTICE

The quality of this microform is heavily dependent upon the quality of the original thesis submitted for microfilming. Every effort has been made to ensure the highest quality of reproduction possible.

If pages are missing, contact the university which granted the degree.

Some pages may have indistinct print especially if the original pages were typed with a poor typewriter ribbon or if the university sent us an inferior photocopy.

Reproduction in full or in part of this microform is governed by the Canadian Copyright Act, R.S.C. 1970, c. C-30, and subsequent amendments.

AVIS

La qualité de cette microforme dépend grandement de la qualité de la thèse soumise au microfilmage. Nous avons tout fait pour assurer une qualité supérieure de reproduction.

S'il manque des pages, veuillez communiquer avec l'université qui a conféré le grade.

La qualité d'impression de certaines pages peut laisser à désirer, surtout si les pages originales ont été dactylographiées à l'aide d'un ruban usé ou si l'université nous a fait parvenir une photocopie de qualité inférieure.

La reproduction, même partielle, de cette microforme est soumise à la Loi canadienne sur le droit d'auteur, SRC 1970, c. C-30, et ses amendements subséquents.

Canada

AL-GHAZĀLĪ'S THEORY OF *MUNĀSABA* IN THE CONTEXT OF THE ADAPTABILITY OF ISLAMIC LAW

By

Siti Qomariyah

A Thesis submitted to
the Faculty of Graduate Studies and Research
in partial fulfillment of the requirements for
the degree of Master of Arts

Institute of Islamic Studies
McGill University
Montreal

July, 1994

ISBN 0-315-99925-X

ABSTRACT

Author	: Siti Qomariyah
Title	: Al-Ghazālī's Theory of *Munāsaba* in the Context of the Adaptability of Islamic law
Department	: Institute of Islamic Studies, McGill University
Degree	: Master of Arts

This thesis studies an aspect of Islamic legal reasoning in terms of the method for determining the ruling on cases for which the *Sharīᶜa* has no textual basis. Al-Ghazālī (d. 550/1111), a great Muslim theologian, philosopher and ṣūfī as well as a remarkable jurist, made an important contribution to this methodological problem. His theory of *munāsaba* proposes a technique for making a ruling on the basis of an understanding and interpretation of the meaning behind the *Sharīᶜa*. With this theory, a new case can be decided through a rational analysis without direct support in the textual sources. This theory is related to the legal doctrine of *maṣlaḥa* according to which legal reasoning ought to be mainly guided by considerations of public interest. Al-Ghazālī argues that the absence of textual basis does not mean the absence of guidance and principles in the *Sharīᶜa* concerning undefined human interests. This theory rests on the theological premise that God's rulings embody a meaning and purpose which can be perceived; such meaning, arrived at through an inductive survey of the *Sharīᶜa* rulings, is taken to indicate the *Sharīᶜa* customary orientation which is to be followed in understanding new cases. The theory is thus neither independent reasoning nor justification for arbitrary decision, because it is the *Sharīᶜa* meaning which determines the ruling on new cases. While al-Ghazālī justifies the extension of the *Sharīᶜa's* meaning to new eventualities so that the law is not restricted by the limited scope of the revelation, he disclaims any influence of the Muᶜtazilīs. This thesis analyses not only al-Ghazālī's theory of *munāsaba* but also his many examples which serve as a practiced guide to an understanding of the adaptability of Islamic law to social change.

RÉSUMÉ

Auteure : Siti Qomariyah

Titre : La théorie du *munāsaba* de al-Ghazālī, dans le contexte de l'accommodation de la Loi islamique

Département : Institut des Études islamiques, Université McGill

Diplôme : Maîtrise

Ce mémoire de maîtrise explore un aspect du raisonnement de la Loi Islamique qui détermine quel sera le jugement lorsque la *Sharīᶜa* n'a pas son fondement dans les textes. Al-Ghazālī (d. 550/111), un grand théologien de l'Islam, un philosophe, un ṣūfī et un juriste remarquable, a fait des contributions importantes dans ce domaine. Sa propre théorie du *munāsaba* érige une technique afin d'établir la règle de base qui permet d'interpréter et découvrir la signification derrière les principes de la *Sharīᶜa*. Avec une telle méthode, les nouvelles situations légales peuvent être évaluées et analysées même s'il n'existe pas de références directes aux textes écrits. Cette méthode est en quelque sorte reliée à la doctrine du *maṣlaḥa*. Celle-ci établie que les analogies faites dans les domaines du droit doivent être guidées par l'intérêt public. Al-Ghazālī argumente que l'absence d'une base concrète dans les textes ne signifie pas l'absence d'une pensée répondant aux intérêts humains et guidée par les principes établis dans la *Sharīᶜa*. Cette méthode prend pour acquis un argument théologique qui dit que la Loi de Dieu établie des principes et des buts qui sont discernables. Ces principes peuvent être déterminés par une analyse inductive des lois de la *Sharīᶜa*, et peuvent indiquer la direction à suivre dans de nouvelles situations. Cette méthode n'est donc pas ni un raisonnement indépendant ni une justification pour prendre des décisions arbitraires, puisque c'est la *Sharīᶜa* qui détermine les principes qui doivent être pris. Alors qu'al-Ghazālī justifie qu'une telle élaboration de la *Sharīᶜa* permet de répondre aux cas non-existants dans les textes, lui-même disait ne pas avoir été influencé par les Muᶜtazilīs. Ce mémoire analyse non seulement la théorie de la munasaba établie par al-Ghazālī mais aussi les différents exemples qu'il a laissés en tant que guide pratique. Le tout permettra une compréhension de l'accommodation de la Loi Islamique aux changements de la société.

ACKNOWLEDGMENTS

I would like to express my sincere gratitude to my thesis supervisor, Professor Wael B. Hallaq, who was my main source of inspiration and guidance. Without his criticism and advice, this work would never have been completed. My thanks are also due to the staff of the Islamic Studies Library, of McGill University, for facilitating my research on this thesis. I am also thankful to Muhammad Qasim Zaman, Bruce Fudge, Richard McGregor, and Richard Cooper for their editorial assistance.

Appreciation and thanks are also due to the Canadian International Development Agency (CIDA) and the McGill-Indonesia Project for granting me a two year scholarship which made the writing of this thesis possible. I must also mention my indebtedness to the Rector of the Walisongo IAIN (State Institute for Islamic Studies in Semarang, Indonesia) and the Dean of the IAIN Faculty of Islamic Law in Pekalongan, who not only encouraged me to study at McGill University, but also gave all necessary assistance.

Last but not least, I am very grateful indeed to my parents, brothers and sisters whose consistent encouragement and love enabled me to complete this work. I owe special thanks to my fiancé for his continued support.

This thesis is dedicated to my mother and father.

S.Q.

Montreal, July 1994

LX11rev
19.11.64

Institute of Islamic Studies
McGill University

TRANSLITERATION TABLE

Consonants: ʾ initial: unexpressed ʿ medial and final: ʿ

	Arabic	Persian	Turkish	Urdu
ب	b	b	b	b
پ		p	p	p
ت	t	t	t	t
ٹ				ṭ
ث	th	s̲	s̲	s̲
ج	j	j	c	j
چ		ch	ç	ch
ح	ḥ	ḥ	ḥ	ḥ
خ	kh	kh	h̲	kh
د	d	d	d	d
ڈ				ḍ
ذ	dh	z̲	z̲	z̲
ر	r	r	r	r
ڑ				r̲
ز	z	z	z	z
ژ		zh	zh	zh
س	s	s	s	s
ش	sh	sh	ş	sh

	Arabic	Persian	Turkish	Urdu
ص	ṣ	ṣ	ṣ	ṣ
ض	ḍ	z̤	z̤	z̤
ط	ṭ	ṭ	ṭ	ṭ
ظ	ẓ	ẓ	ẓ	ẓ
ع	ʿ	ʿ	ʿ	ʿ
غ	gh	gh	ğ	g̲h
ف	f	f	f	f
ق	q	q	ķ	q
ک	k	k	k	k
گ		g	g	g
ں			n̄	
ل	l	l	l	l
م	m	m	m	m
ن	n	n	n	n
ں				ṉ
ہ	h	h	h	h
و	w	v	v	v
ی	y	y	y	y

Vowels, diphthongs, etc. (For Ottoman Turkish vowels etc. see separate memorandum.)

short: ـَ a; ـِ i; ـُ u.

long: ا ā; و ū, and in Persian and Urdu also rendered ō; ی ī, and in Urdu also rendered by ē; ے (in Urdu) ē.

alif maqṣūrah: ى á.

diphthongs: ـَيْ ay; ـَوْ aw.

long with tashdīd: ـِيّ īya; ـُوّ ūwa.

tā' marbūṭah: ـَة ah; in iḍāfah: at.

TABLE OF CONTENTS

INTRODUCTION

A study of the history of Islamic law shows us that *ijtihād* (personal reasoning) has been one of the most important elements in its development. From the early stages of the development of Muslim jurisprudence, law has been shaped by a large scale use of individual reasoning in interpreting the revealed norms. This practice of reasoning is primarily intended to Islamicize eventualities to which no explicit texts refer, and is justified by a famous tradition (*ḥadīth*) on the use of reasoning. According to this tradition, the prophet is reported to have allowed his governors to rely on *ijtihād* by means of *raʾy* (personal reasoning) to adjudicate any new cases upon which explicit guidance from the *Qurʾān* and *Sunna* was not forthcoming.[1] This tradition does not clearly define a certain structure of reasoning. The term *raʾy* in the early period could signify any sound reasoning, whether or not it is clearly parallel to an explicit text.

A scrutiny of legal elements in early verses of the *Qurʾān* indicates that in some cases the law was intelligibly associated with the idea of human welfare. Without arguing that there is an essential relationship between law and human welfare, it is to be noted that this characteristic of revelation encouraged some jurists to consider human needs in some of their rulings. The jurists maintained that the aim of the law was not merely the institution of obedience, but that law was also implicitly the instrument of securing human welfare. Historically speaking, reasoning on the basis of promoting the public good or preventing harm and difficulty, even if this involved, in some cases, neglecting the immediate textual

---

[1] For the tradition, see Abū Dāwūd al-Sijistānī, *Sunan Abū Dāwūd*, English Translation by Aḥmad Ḥasan (Lahore: Ashraf Press, 1984), III, 1019. See also Muhammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Selangor: Pelanduk Publication, 1989), 56, 275.

sources of law, was practiced by early Muslim jurists. They made some of their judgments on the basis of customary social practices, necessity and ease, all under the banner of *raʾy*.[2]

Opinions on a number of cases from different schools of law substantiate the presumption that the practical reasoning of different jurists might lead to different judgments on a given case. This is due to the fact that different jurists have various degrees of experience and different principles in interpreting the norms, especially when they relate to particular conditions. The jurists, moreover, might change their legal opinions (*fatāwā*) as the external conditions underlying the rulings change. Al-Shāfiʿī's new legal opinions, known as *qawl jadīd*, which were dissimilar to his previous legal opinions, known as *qawl qadīm*, for example, show the possibility of giving different judgments on a case in different places in view of local particularities. It is in this regard that Schacht argued for a connection between the variety of doctrines formulated by the founders of the schools and the great geographical divisions which separated them.[3] The use of reasoning obviously involved individual discretion in any attempt to determine the applicability and implications of the *Qurʾānic* injunctions to a new situation. This is a thinking process which consciously or unconsciously involves the aggregate components of the individual jurist's experience as well as the circumstantial reality, both of which are involved in interpreting the texts (*naṣṣ*). The study of the theory of reasoning, involving varying patterns of approach and purpose of legal affiliation, is therefore properly to be undertaken with reference to individual jurists in their particular historical settings.

---

[2] For a consideration of social practices, see Muhammad Y. Faruqi, "Consideration of *ʿUrf* in the Judgment of the *Khulafāʿ al-Rāshidūn* and the Early *Fuqahāʾ*, "*The American Journal of Islamic Social Sciences*, 9: 4 (1992), 483-498.

[3] Joseph Schacht, *The Origins of Muhammadan Jurisprudence* (Oxford: The Clarendon Press, 1950), 7; among those who argue that Islamic legal theory (*uṣūl al-fiqh*) reflects the needs and circumstances of changing times is Hallaq in his "The Primacy of the *Qurʾān* in Shāṭibī's Legal Theory," *Islamic Studies Presented to Charles J. Adams*, ed. Wael B. Hallaq and Donald P. Little (Leiden: E.J. Brill, 1991), 70-71.

Recent studies in Islamic law have encouraged scholars to investigate aspects of the adaptability of the law. Beginning from the nineteenth century, when most of the Muslim peoples came into intimate contact with the West which led to demands for reforms of the law, the question of the adaptability of the law to social change has been raised even more strongly. The fact that conditions of life change requires legislation which is guided by considerations of social interest, and in line with the actual circumstances. Otherwise, rulings will be inapplicable. Although the debate on whether or not Islamic law is adaptable to social change continues, attempts to point out various aspects of legal doctrine which demonstrate that Islamic law is changeable have never ceased. There exist traditionalist Muslim jurists who have held that Islamic law is immutable and therefore not adaptable to social change. Their view is opposed by the majority of Muslim reformers such as Muḥammad ᶜAbduh (d. 1905) and Rashīd Riḍā (d. 1935), who emphasize the role of *ijtihād* and believe that the law contains aspects of flexibility in practice and is adaptable to social change. They argue that Islamic law provides the principles of human welfare, and that the various aspects of human good and the principles of juristic justice are part of the nature of *Sharīᶜa*. Hence the law accepts social change.[4] The question of the immutability of the law continues to be addressed by scholars. The significance of this investigation lies in its contribution to an understanding of the principles of law, which in turn would make it possible to Islamicize current social developments.

Among the most important established theories dealing with the relation between Islamic law and public interest was that of *maṣlaḥa*, literally meaning "interest".[5] Al-Juwaynī frequently used the term *munāsaba* to refer to *maṣlaḥa*. The *munāsaba* term later

---

[4] Their opinions on the principles of the adaptability of the law are briefly discussed in Malcolm H. Kerr, *Islamic Reform: The Political and Legal Theories of Muḥammad ᶜAbduh and Rashīd Riḍā* (Cambridge: Cambridge University Press, 1966), 82, 103, 193-198.

[5] The term *maṣlaḥa* is also literally translated into the words "benefit, advantage, good, welfare, well being, weal" by Rohi Baalbaki, *Al-Mawrid: Qāmūs ᶜArabī - Inklīzī* (Beirut: Dār al-ᶜIlm lil-Malāyīn, 1992), 1054.

used by al-Ghazālī in the sense of a theory of the causation (*al-taʿlīl*) of Islamic law; through this theory, he reasoned on how to use *maṣlaḥa* for interpreting a given case on which there is no textual basis. Historically speaking, considerations of public interests (*maṣlaḥa*) were taken into account from the time of the early development of the law, and Mālikī jurists were known to be its proponents. The Muslim reformers of Islamic law advanced the principle of *maṣlaḥa* as the principle of adaptability. They used the theory on various levels. Some used it only in a limited sense which was tied to the principles existing in the binding textual sources. Others used it without any limitation, and even went so far as to use it as a gate to secularism. The latter, by using *maṣlaḥa* as a legal doctrine, did not develop anything in the law itself except by adopting secular principles, to the disregard of Islamic principles.

Among those who favored *maṣlaḥa* on a large scale were ʿAbduh and Riḍā. In his speech on the reform of law in Egypt and the Sudan, ʿAbduh declared the use of *maṣlaḥa* as preferable to the literal application of the law.[6] His use of *maṣlaḥa*, together with his espousal of the concepts of natural law, serves as a principle for interpreting the law in accommodating it to social change and developing public interest. His successor Riḍā, as shown by Malcolm H. Kerr, considered *maṣlaḥa* as equal to the principles of natural law. *Maṣlaḥa* is determined by reason on the basis of the interests of particular circumstances at a certain time.[7] Facing the contradiction between the intelligible *maṣlaḥa* and the textual sources, Riḍā would prioritize the former over the latter, implying that the textual sources should be interpreted in ways that support considerations of *maṣlaḥa*.[8] The thought of these two scholars on *maṣlaḥa* is not unprecedented. One of the medieval legal thinkers, Najm

---

[6] Muḥammad ʿAbduh, *Taqrīr: Faḍīlat Muftī al-Diyār al-Miṣriyya fī Iṣlāḥ al-Maḥākim al-Sharʿiyya*, ed. Muḥammad Rashīd Riḍā (Cairo: Maṭbaʿat al-Manār, 1317/1900), 73.

[7] Kerr, *Islamic Reform*, 187-208.

[8] Muḥammad Rashīd Riḍā, *Shubuhāt al-Naṣārā wa Ḥujaj al-Islām* (Cairo: Dār al-Manār, 1367), 71-72.

al-Dīn al-Ṭūfī (d. 1316), in fact, had introduced an even more radical view on *maṣlaḥa.* He, as cited by Riḍā, held *maṣlaḥa* to be a rational method used to indicate what is suitable for human welfare. His "liberal" view of *maṣlaḥa* can be seen in his argument for preferring it over the texts and using it to restrict the application of consensus (*ijmāᶜ*), in the name of particularization (*takhṣīṣ*) and exegesis (*bayān*), if the texts and the *ijmāᶜ* were harmful to human interests.[9] The stretching theory of *maṣlaḥa* to such an extent raised strong reactions, especially from conservative groups. Albert Hourani criticizes ᶜAbduh's *maṣlaḥa* and that of other modernists for whom it functioned as a form of utilitarianism. Such an interpretation of *maṣlaḥa*, Hourani says, is not justified because according to traditional thought *maṣlaḥa* cannot be a substitute source but rather merely a supplement to the principle of reasoning.[10] Their concept of *maṣlaḥa* as a legal principle for accommodating growing societies is thus disputable. The most important reason for the opponents' objection to *maṣlaḥa* is the fear of arbitrariness in supporting human interests which might result in the violation of divine law.

The dispute among the jurists on the extent to which human reason can be employed is common since the early development of Islamic legal theory. One can see that a dispute between the proponents of *ḥadīth* (*ahl al-ḥadīth*), who tend to adhere strictly to the textual sources of the *Qurᵓān* and *Sunna,* and the rationalists (*ahl al-raᵓy*), who allowed a rationalization of the texts, has existed from the earliest period. Their disagreement concerned not only the use of human reason in general, but specifically the problematic issue of the theory of *maṣlaḥa* as well. The *ahl al-raᵓy,* supported by most Mālikī and some Ḥanafī jurists, advanced the use of human reason very considerably. Mālik b. Anas (d. 179/795), the founder of the Mālikī school, recognized the principle of *maṣlaḥa*

---

[9] Riḍā, *Yusr al-Islām wa Uṣūl al-Tashrīᶜ al-ᶜĀmm* (Cairo: Maṭbaᶜat Nahḍat Miṣr bi al-Fajjāla, 1370/1956), 71.

[10] Albert Hourani, *Arabic Thought in the Liberal Age, 1798-1939* (Oxford: Oxford University Press, 1962), 65.

(although the term *maṣlaḥa* as a technical term is not used), and used it as a source of guidance for his legal opinions (*fatāwā*). His recognition that *maṣlaḥa* may have no support in the sources, which is why it came to be known later as *al-maṣāliḥ al-mursala*, serves as a basis for understanding the limitations of Islamic law. This recognition encouraged his followers to have a particular attitude towards the developing society. It encouraged them to continue developing the principles of the *Sharīᶜa* in regard to social change. They maintained the possibility of Islamic law adapting to eventualities even if not supported by a specific textual basis, provided that such adaptations were similar to those *maṣāliḥ* which are textually established.[11] Some jurists form the Ḥanafī school also developed the principle of adaptability to social change. Their strong endorsement of the theory of *istiḥsān* (finding human good) enabled them to remove the rigidity of the law in favor of human interest. This theory constitutes a further rationalization of the principle of analogy (*qiyās*) which appreciates, although indirectly, public good. *Istiḥsān*, in addition, prefers hidden analogy (*qiyās khafī*) in favor of appropriateness of the source: here it represents the method of solving cases, on which there are conflicting indications in the sources, on the basis of text (*naṣṣ*) and consensus (*ijmāᶜ*) or the principles of necessity (*ḍarūra*).[12] The implementation of the principles of consensus or common opinion (*raᵓy al-aghlab*) and public interest in regard to necessity enabled the jurist, to a certain degree, to adapt Islamic law to social change. Both the theories of *maṣlaḥa* and *istiḥsān* deal with searching for what is good for human beings. It is *maṣlaḥa*, however, which has a more direct bearing on the question of the adaptability of the law. *Maṣlaḥa* views social change

---

[11] N. J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964/1991), 144.

[12] On *istiḥsān*, see the following two important works: Muḥammad b. Aḥmad Abū Sahl al-Sarakhsī, *Uṣūl al-Sarakhsī*, ed. Abū al-Wafā al-Afghanī (Cairo: Maṭābiᶜ Dār al-Kitāb al-ᶜArabī, 1373/1904), II, 199-207; and al-Bazdawī's work *Kanz al-Wuṣūl ilā Maᶜrifat al-Uṣūl*. See also the commentary on the latter by ᶜAbd al-ᶜAzīz al-Bukhārī (d. 730/1329): *Kashf al-Asrār ᶜalā Aṣl al-Imām Fakhr al-Islām ᶜAlī al-Bazdawī* (Beirut: Dār al-Kitāb al-ᶜArabī, 1394/1974), IV, 1123-1134. Al-Bazdawī's work printed on the margin of al-Bukhārī's commentary. Both al-Sarakhsī (d. 483/1090) and al-Bazdawī (d. 482/1082) were Ḥanafīs and among the proponents of *istiḥsān*.

and welfare as a source for determining a new ruling, rather than being tied, as is *istiḥsān*, by principles such as consensus or necessity.

As a principle of reasoning *maṣlaḥa* is fundamentally opposed to the ideas of those jurists who adhere only to the textual sources and deny the idea of the adaptability of Islamic law (*ahl al-ḥadīth*). Their attitude is governed by their fear of the Islamic tradition being violated by human reason (*raʾy*). They did realize the limitations of the literal provisions of the *Sharīʿa*, because, in fact, they also seek a method to Islamicize developments on which there are no textual indications in the sources. They extended the legal provisions to changing situations by means of *qiyās* whose validity they accepted. But their use of *qiyās* remained restricted and thus differed from that of the rationalists (*ahl al-raʾy*). For fear of further rationalization of *qiyās*, they limited its use by textual evidence. The cause (*ʿilla*) of *qiyās*, representing the most important element in analogy should, they said, be textually indicated in the binding sources (the *Qurʾān*, *Sunna* and the consensus of the early generations). Therefore, they invalidated even *istiḥsān* because this theory prefers the implicit cause over the revealed one. The jurists of this group opposed a causal understanding of the law as God's actions and commands. There could not be rulings having any cause and motive; and they therefore considered it wrong to seek any cause for God's provisions. Their principle of *qiyās* was a corrective method to other theories in which *raʾy* occupied a large part. Al-Shāfiʿī (d. 204/820) and Ibn Ḥazm (d. 456/1065) were among this group. They rejected any reasoning which lacked a basis in (*aṣl*) or indications from (*dalāla*) the sources.[13] Consequently, although their works do not directly mention the *maṣlaḥa* term, they presumable accept only that *maṣlaḥa* which has a specific textual basis in the sources. They believed *maṣlaḥa* to be an element inclusively

---

[13] See Muḥammad b. Idrīs al-Shāfiʿī, *Al-Risāla*, ed. Aḥmad Muḥammad Shākr (Cairo: Muṣṭafā al-Bābī al-Ḥalabī wa Aulāduh, 1358/1940), 504-507; see also Muḥammad ʿAlī b. Aḥmad b. Ḥazm *Al-Iḥkām fī Uṣūl al-Aḥkām* (Cairo: Maṭbaʿat al-Imām, n.d.), IV, 772-8, 1130.

incorporated into the *Sharīᶜa*, and thus they maintained that *maṣlaḥa* is what the *Sharīᶜa* commands, and is never to be a new source of the law.

From the foregoing, it can be clear that reasoning on the basis of *maṣlaḥa* is accepted variably by jurists in regard to its relation to the sources of the law. Some jurists put *maṣlaḥa* in the position of an "independent source," and therefore as not necessarily comprised of, or in conformity with, the fundamental sources. Other jurists consider, however, that *maṣlaḥa*, like other methods of reasoning, should have its basis in the revealed texts. The first group of jurists deals with any new cases on the basis of the consideration of *maṣlaḥa mursala*, while the second group tends to reject such *maṣlaḥa* because it is considered as something outside the *Sharīᶜa*. These two different views on *maṣlaḥa*, which went along with the development of legal theory, could be confusing. It was after al-Juwaynī (d. 478/1047) analyzed the problem of *maṣlaḥa* in his *Al-Burhān*, using it interchangeably with the term *munāsib* or *munāsaba* (relevancy) as a cause (*ᶜilla*) of *qiyās*, that a clearer formulation was achieved. He divided *maṣlaḥa* on the basis of its relation to the principles on which the *Sharīᶜa* is revealed (*al-uṣūl al-Sharᶜiyya*) into five categories, which include indispensable matters, necessities and benefits of peoples' life. Any new public interests which were considered similar to one of these five categories was to be adapted to Islamic law.[14]

Al-Juwaynī's student al-Ghazālī (d. 550/1111) later developed further the former's innovative approach to the adaptability of the law. Of al-Ghazālī's several treatises on Islamic legal theory (*uṣūl al-fiqh*), *Shifāʾ al-Ghalīl* makes a significant contribution to reasoning on the basis of peoples' interests (*maṣlaḥa)*, a problem to which al-Ghazālī

---

[14] Al-Imām al-Ḥaramayn Al-Juwaynī, *Al-Burhān fī Uṣūl al-Fiqh*, ed. ᶜAbd al-ᶜAẓīm al-Dīb (Cairo: Dār al-Anṣār, 1400/1980), II, 901-945.

dedicates around 120 out of 600 pages.[15] Al-Ghazālī adhered to the theory of *qiyās* and simultaneously strongly appreciated the principles of *maṣlaḥa*. Using his teacher's term "*munāsaba*," he attempts to develop a legitimate means whereby to anticipate given cases on which there is no textual evidence in the sources. Through *munāsaba* he made a further investigation of *maṣlaḥa*. In his theory of *munāsaba*, al-Ghazālī points to *maṣlaḥa* (public interests) which stands in line with the meanings of *Sharīᶜa* (*maᶜānī al-Sharᶜ*). He introduces criteria according to which he differentiates acceptable and unacceptable *maṣlaḥa*. His original and distinctive theory of *munāsaba*, subsumed under the subject of causation (*taᶜlīl*), is proposed as a method for identifying the objective cause for which neither the immediate texts (*naṣṣ*) nor consensus (*ijmāᶜ*) provide indications. *Munāsaba* constitutes a method of extending Islamic law to new cases having no textual basis (*uṣūl*, pl. of *aṣl*). His *munāsaba* thus provides a principle in term of which Islamic law can accommodate itself in a developing society. Significantly, al-Ghazālī's *munāsaba* is based on the analysis of reason (*al-naẓrī al-ᶜaqlī*) to which he introduces the method of reasoning called "*mujādala*" or dialectics.

Al-Ghazālī's *munāsaba* is a complex concept. It constitutes a combination of an understanding of *maṣlaḥa* and *maᶜānī al-Sharᶜ* in their function as the *ᶜilla* (cause) for *qiyās*. His concept of *munāsaba* constitutes an important acknowledgment of human reason, guided by the spirit of *Sharīᶜa*, as the basis of an interpretation of the law in accommodating new cases which have no textual basis. He insists that the theory is secure from the influence of the rationalist Muᶜtazilīs from whom he identifies himself to be

---

[15]The complete title of this work is *Shifāʾ al-Ghalīl fī Bayān al-Shabah wal-Mukhīl wa Masālik al-Taᶜlīl*, ed. Ḥamd al-Kabīsī (Baghdād: Maṭbaᶜat al-Irshād, 1390/1971). His other important works on the subject are: *al-Mankhūl min Taᶜlīqāt al-Uṣūl*, ed. M. Ḥasan Hītū (Damascus: Dār al-Fikr, 1400/1980), composed before *Shifāʾ al-Ghalīl*, and *Al-Mustaṣfā min ᶜIlm al-Uṣūl*, ed. Muṣṭafā Muḥammad (Cairo: al-Maktaba al-Tijāriyya, 1937), written after *Shifāʾ al-Ghalīl*. Furthermore, it is said that he also wrote another important book on the same subject, *Tahdhīb al-Uṣūl*; which is lost. For further information, see Ḥamd al-Kabīsī, "*Muqaddimat al-Taḥqīq*," in *Shifāʾ al-Ghalīl*, 23-24. Al-Kabīsī says that this work was composed after *Shifāʾ al-Ghalīl* and before the *Al-Mustaṣfā*. The work, therefore, would have been the most comprehensive of his legal treatises.

excluded. Compared to that of al-Ṭūfī and Riḍā, al-Ghazālī's approach to the adaptability of law may be preferred by some Muslim scholars because it is devoid of liberal and secular tendencies. His notion of the meaning behind the law plays an important role in guarding his reasoning from the inroads of secularism. Given its interest, al-Ghazālī's theory of *munāsaba* deserves careful study.

Several scholars have remarked on al-Ghazālī's principle of the relationship between Islamic law and society, and his influential concept of *maṣlaḥa* and *munāsaba*. According to Rudi Paret, al-Ghazālī's is an authoritative exposition of to which subsequent writers have very little to add.[16] Kerr mentions al-Ghazālī as being among the chief classical jurists, besides al-Ṭūfī and Ibn Taymiyya (d. 1328), from whom the modernists have taken the notion of *maṣlaḥa* as the basis for dynamism and humanism in Islamic law.[17] Wael B. Hallaq's brief investigation into the methodology of Islamic law and its connection with circumstantial elements also helps us to understand the significance of al-Ghazālī's theories of *munāsaba* and *maṣlaḥa*. He indicates that his theories show the possibility of originality. They strongly employ human reason but ultimately arrive at the legal norms of the *Sharīʿa*.[18] Aḥmad al-Raysūnī, for his part, has studied the influence of al-Ghazālī on later scholars of Islamic legal theory (*uṣūliyyūn*). He argues that al-Ghazālī's theories influenced the works of several later scholars. Fakhr al-Dīn al-Rāzī's important work (d. 606) *Al-Maḥṣūl*, for instance, relies heavily on al-Ghazālī's *Al-Mustaṣfā*, a work he composed after *Shifāʾ al-Ghalīl*. In *Al-Maḥṣūl*, al-Rāzī adopts al-Ghazālī's distinct classification of *maṣlaḥa* into essential needs (*ḍarūrāt* or *maṣlaḥa ḍarūriyya*), necessities (*ḥājāt* or *maṣlaḥa ḥājiyya*) and benefits (*taḥsīnāt* or *maṣlaḥa taḥsīniyya*), etc. Sayf al-Dīn

---

16 Rudi Paret, "Istiḥsān and Istiṣlāḥ," *Encyclopedia of Islam*, New Edition, (Leiden: E. J. Brill, 1978), 257.

17 Kerr, *Islamic Reform*, 55-56.

18 Wael B. Hallaq, "*Uṣūl al-Fiqh*: Beyond Tradition," *Journal of Islamic Studies* 3: 2 (1992), 179, 189.

al-Āmidī (d. 631) also takes over the classification of *maṣlaḥa* though with innovations of his own. Al-Ghazālī's theory is also to be seen in the works of such other writers as Ibn al-Ḥājib (d. 646), al-Bayḍāwī (d. 685), Ibn al-Subkī (d. 771), al-Isnawī (d. 772) and al-Shāṭibī (d. 790).[19]

Although those scholars and others have taken account of al-Ghazālī's theory of the extension of the law to new cases which have no textual basis, a comprehensive analysis of it has not yet been attempted. As indicated by Hallaq, the above mentioned methodology of al-Ghazālī is among promising areas of research.[20] This thesis will therefore attempt to investigate of al-Ghazālī's theory of *munāsaba*. An exploration of the theoretical and epistemological aspects of this theory seems to be significant for understanding his particular legal principles regarding the adaptability of Islamic law. The thesis discusses and analyzes al-Ghazālī's concept of *munāsaba* as a legal doctrine which has the potential to enable jurists to deal with new eventualities, even if there exist no textual original bases for them in the main sources (the *Qurʾān*, the *Sunna* and the consensus of the early generation). The term "adaptability" will be used to denote the ability of the law to accommodate current reality and, to the degree possible, to soften the rigidity of its textual formalism in adapting to any changing situation.

Some major themes of the following discussion include: 1. Views on the theories of the adaptability of Islamic law to new cases according to al-Ghazālī's predecessors, and al-Ghazālī's own theory of the principle of the extension of the law to new cases on which there is no textual basis in the sources. 2. Al-Ghazālī's theory of *munāsaba*, which will be discussed along with an analysis of al-Ghazālī's theory of the meaning of law (*maʿnā al-Sharʿ*) in its relation to the determination of the rational cause, as well as its potentiality to

---

19 Aḥmad al-Raysūnī, *Naẓariyyat al-Maqāṣid ʿind al-Imām al-Shāṭibī* (Ribāṭ: Dār al-Amān, 1991), 37-48.

20 Hallaq, "*Uṣūl al-Fiqh*," 188.

adapt the law to eventualities. Each of these themes will comprise a chapter of this thesis. The thesis is divided into two chapters, the first of which, entitled "The Early Development of Islamic Legal Theory and al-Ghazālī's Legal Doctrine of Public Interest," deals with general principles of Islamic legal theory in relation to a changing society, as articulated by the predecessors of al-Ghazālī and the situation up to the time of al-Ghazālī. The second chapter, entitled "*Munāsaba* in al-Ghazālī's Legal Reasoning on the Adaptability of Islamic Law," constitutes the most important section and will provide an analysis of al-Ghazālī's theory of *munāsaba*. In this section, the analysis of his peculiar theory of the application of *maṣlaḥa*, subsumed under his theory of *munāsaba*, will be undertaken in the context of the theories of adaptability of the law to undefined public interests.

CHAPTER I

THE EARLY DEVELOPMENT OF ISLAMIC LEGAL THEORY AND AL-GHAZĀLĪ'S LEGAL DOCTRINE OF PUBLIC INTEREST

A. Considerations of Public Interest (*Maṣlaḥa*) in the Legal Thought of al-Ghazālī's Predecessors

A study of al-Ghazālī's theory of *munāsaba* necessitates a discussion of the extension of *Sharīᶜa* values to new cases on which there is no explicit text (*al-naṣṣ*). As we shall see later, al-Ghazālī's theory is, in fact, a continuation and extension of the existing discussion on the principle of public interest, known later as reasoning on the basis of *maṣlaḥa*. By *munāsaba*, he means an understanding of the availability of aspects of *maṣlaḥa* inferred in the ruling which is relevant as its cause. *Maṣlaḥa* itself is understood as the maintenance of meanings (*maᶜānī*), aims (*maqāṣid*), and principles (*uṣūl*) of the *Sharīᶜa* which serve human welfare. His *munāsaba* and *maṣlaḥa* are, therefore, interrelated theories which deal with an understanding of the relationship between the meaning behind the law and aspects of human interest. Reasoning by *munāsaba*, like other similar principles of the extension of the law to accommodate the new cases, is introduced by the jurists in awareness of the necessity to develop legal theory through which the cases having no textual basis can be Islamicized. It would be useful to briefly review the historical development of the theory of *maṣlaḥa* and the views of earlier jurists in order to be able to view the context and significance of al-Ghazālī's theory of *munāsaba*. *Munāsaba*, in the context of the adaptability of the *Sharīᶜa* to realities which have no textual basis, is, in fact, a term with a long history.

Etymologically, the word *maṣlaḥa* is a noun derived from the Arabic root *Ṣ-L-Ḥ*, meaning a thing or a person becoming good or upright. It also means benefit or interest, an

occasion or a goal which is good.[21] Several derivative words of the root *ṣaluḥa* are mentioned in the *Qurʾān*, but the word *maṣlaḥa* itself is never used. We find an active participle, *ṣāliḥ*, for instance, which occurs in the verse, "They believe in God and the last day, they enjoin what is right and forbid what is wrong, and they hasten (in emulation) in (all) good works, they are in the ranks of the righteous (*ṣāliḥīn*)."[22] The term *maṣlaḥa* or *maṣāliḥ* (pl. of *maṣlaḥa*) is used by Muslim jurists in the words, *"mā yataᶜallaq min al-aḥkām bi maṣāliḥ al-khalq* (rulings dealing with the peoples' interests), " or the words, "*hādhihī maṣlaḥa ᶜalā wajh kadhā* (this is a benefit with regard to ...)."[23] The jurists used it as a synonym with *istiṣlāḥ*, which usually refers to a consideration of aspects of human welfare.

Technically, the term *maṣlaḥa* is understood as maintenance of the meaning or principles of the *Sharīᶜa*: to secure a benefit or prevent a harm to the people. When the expression *al-maṣlaḥa al-mursala* is used, it refers to undefined public interest, provided that there is no indication from the textual authority of the *Sharīᶜa* as to its validity or otherwise.[24] The collection of the scattered *Qurʾānic* verses by the companions to make a canonical text is usually considered to be an instance of *maṣlaḥa*. They compiled them into a single volume and destroyed the variant versions of the texts. This was a decision for which no authority was found either in the revelation itself or in the prophetic *Sunna*, but which was legally accepted.[25] To take another example, Mālikī jurists acknowledge the

---

21 J. Milton Cowan (ed.), *A dictionary of Modern Written Arabic (Arabic-English)* (Wiesbaden: Otto Harrassowitz, 1979), 609-610.

22 See A. Yusuf Ali, *The Holy Qur'an: Text, Translation and Commentary* (Maryland: Amana Corp., 1983), (3: 114), 152.

23 Al-Ghazālī, *Shifāʾ al-Ghalīl*, 203, 217.

24 Kamali, *Principles*, 338.

25 Muḥammad Baltājī, *Manhaj ᶜUmar Ibn al-Khaṭṭāb fī al-Tashrīᶜ* (Cairo: Dār al-Fikr al-ᶜArabī, 1390/1970), 3621-7.

validity of *bayᶜ al-muᶜāṭā*, meaning a transaction without offer and acceptance (*ījāb wa qabūl*) but merely by giving goods and payment. Underlying this decision is the consideration of *maṣlaḥa* (human interest), by maintaining existing social custom to secure the interests of the people.[26]

Maṣlaḥa consists in arguing that "human welfare" is good and what is good is "lawful". Al-Būṭī maintained that *maṣlaḥa* refers to anything having utility or benefit (*nafᶜ*) for the people.[27] According to Paret, *istiṣlāh* is consideration of human welfare in the widest sense. He interprets *maṣlaḥa* as a theory which works parallel with the theory of *istiḥsān*. He considers the latter as a broad and indefinite concept of finding the good, while the former is more limited and more defined in content. *Maṣlaḥa*, directly working on the principle of human interest, Paret says, carries greater conviction in legal decisions and may be more firmly established than the empty criterion of *istiḥsān*. Moreover, he observes, the validity of *istiṣlāḥ* is considered to derive directly from the *Qurᵓān*, *Sunna* and *ijmāᶜ*. Compared to *istiḥsān*, the validity of *istiṣlāḥ* is considered to go beyond the validity of *qiyās*, in which *istiḥsān* is subsumed, and unlike *istiḥsān*, *istiṣlāḥ* is not strongly disputed.[28] In contrast to Paret, Kerr says that *maṣlaḥa* is identical to utilitarian

---

26 According to some Shāfiᶜī and Ẓāhirī as well as Shīᶜī jurists, the transaction is invalid because there exist no words of proposal and acceptance (*al-ījāb wa al-qabūl*); some other jurists from the Ḥanafī and Ḥanbalī schools view that the transaction will be valid only if the exact price is known. For the Mālikī school it is not required to know even the price, but it is enough that their mutual giving shows their acceptance. See Aḥmad al-Raysūnī, *Naẓariyya*, 80-81.

27 M. S. R. al-Būṭī, *Ḍawābiṭ al-Maṣlaḥa fī al-Sharīᶜa al-Islāmiyya* (Beirut: Muᵓassasat al-Risāla, 1977), 23.

28 Paret, "Istiḥsān and Istiṣlāḥ," 256. The term "*istiḥsān*" is subject to controversy. Al-Shāfiᶜī interpreted *istiḥsān* as not more than a jurist's individual opinion which is based on "convenience" (*taladhdhudh*) or "something which occurs to one's imagination" (*mā khaṭara ᶜalā auhāmihim*). *Istiḥsān* is considered to have no foundation in the acceptable legal sources. Al-Shāfiᶜī's interpretation led him to presume its arbitrariness and to reject it. To defend *istiḥsān* from such objections, jurists who were proponents of *istiḥsān*, among them al-Sarakhsī (d. 483/1090) and al-Bazdawī (d. 482/1082), argued that *istiḥsān* is not a departure from the fundamental sources. They suggested that, for some cases, *istiḥsān* is a kind of reasoning which takes a hidden but a proper and stronger evidence (*qiyās khafī*) over an immediate but weak evidence (*qiyās jalī*). In some other cases, it also can be a kind of reasoning which departs from reasoning by analogy (*qiyās*) in favor of other textual

jurisprudence.[29] Muhammad Y. Faruqi's observations on *ʿurf* (custom) led him to argue that considerations of *maṣlaḥa* make for the adaptation of Islamic law to custom (*ʿurf*) and tradition (*ʿāda*), for they represent people's interest.[30]

In the light of its various interpretations, *maṣāliḥ* are considered to be a proper ground for adjudicating particular cases, especially in the absence of explicit indication from the text (*naṣṣ*). When aspects of a *maṣlaḥa* are identified and the *mujtahid* does not find indications from a revealed text on a case, he should act to make his decision in the interest of human welfare (*maṣlaḥa*). The use of *maṣlaḥa* as a means to accommodate every eventuality implies the belief that the principles of Islamic legislation should be adaptable to change and not restricted by the limited scope of the revelation. This belief brought about the acceptance of the principle that Islamic law can accommodate itself to any new values which may further human welfare. The proponents of *maṣlaḥa* maintained that whatever is known to produce the greatest utility for the people is considered as good and on this basis particular rulings are to be made. Social interest or public good, representing the needs of most people, finds its authority to shape a ruling in term of the norm that the interest of most people takes precedence over that of the few. This norm will also be a guide to decide a given case which relates to two probable but conflicting interests. In such a situation, whatever ensures the wider or stronger benefit for the people is given preference. This norm may also lead to the consequence that an individual benefit or interest is neglected to secure another interest which benefits a number of people.[31]

---

sources, or common opinion (*ghālib al-raʾy*, *ʿāda* or *ijmāʿ*), or public necessity (*ḍarūra*). It is in being guided by common opinion and public interest that *istiḥsān* is closely related to the theory of *maṣlaḥa*. See al-Shāfiʿī, "*Bāb Ibṭāl al-Istiḥsān*" in *Kitāb al-Umm*, VII, ed. Muḥammad Zuhrī al-Najjār (Cairo: Maktabat al-Kulliyyāt al-Azhariyya, n.d), 209- 300; see also Al-Sarakhsī, *Uṣūl al-Sarakhsī*, V. II, 200-201 and al-Bukhārī, *Kashf al-Asrār*, IV, 1123-1134.

[29] Kerr, *Islamic Reform*, 76.

[30] Faruqi, "Consideration of *ʿUrf*," 491.

[31] On the norms of *maṣlaḥa*, see al-Raysūnī, *Naẓariyya*, 267.

Making a ruling in consideration of *maṣlaḥa* is a consequence of an understanding of the meaning behind the *Sharīᶜa*. Fundamentally, the theory of *maṣlaḥa* pertains to a discussion of whether or not the meaning of *Sharīᶜa* is intelligibly deduced, and whether or not the *Sharīᶜa* recognizes the principle of causality. That the principles on which the *Sharīᶜa* is established are understandable through human reason, and that the principles are not restricted by revelation, are two premises which should be accepted in advance. Otherwise the legal theory of *maṣlaḥa* must be rejected. In fact, several ancient Muslim scholars have discussed those fundamental questions. Al-Tirmidhī of the third *hijrī* century, for instance, had recognized that there was meaning behind the prescriptions of the *Sharīᶜa* and that this meaning was to be grasped through human reason. His opinion is clearly reflected in the title of his work *Al-Ṣalāt wa Maqāṣiduhā*, in which he explained the benefits of praying in general and of specific acts of praying. His other works, *Al-Ḥajj wa Asrāruh*; *Al-ᶜIlal*; *ᶜIlal al-Sharīᶜa*; and *Al-ᶜIlal al-ᶜUbūdiyya*, are also evidence of his acknowledgment of the intelligible meaning behind the law.[32] Another scholar, al-Qāḍī Abū Bakr ibn al-Ṭayyib al-Bāqillānī (d. 403), was an authority on legal theory and contributed much through his works, *Al-Aḥkām wal-ᶜIlal* and *Kitāb al-Bayān ᶜan Farāᵓiḍ al-Dīn wa Sharāᵓiᶜ al-Islām*, to the discussion on the cause (*ᶜilla*) of the law.[33] Further, al-Juwaynī, who was greatly indebted to al-Bāqillānī, clearly described the rational aims of legislation (*maqāṣid al-Sharīᶜa*). His monumental work *Al-Burhān* discussed principles on the basis of which the *Sharīᶜa* conforms with human welfare and their possible adaptation to new values. To al-Juwaynī's innovative discussion, his student al-Ghazālī made further and original contribution. Arguing that the intent of the *Sharīᶜa* is to secure human interests and is discernible by human reason, he clarified further the relationship between the *Sharīᶜa* and the developing human interests. These scholars thus established that it is through an

---

[32] For further information on al-Tirmidhī's works, see al-Raysūnī, *Naẓariyya*, 26-28.

[33] Al-Raysūnī, *Naẓariyya*, 30-32.

understanding of the meaning behind the *Sharīᶜa* that the aims of the law are intelligibly known and on that basis, any new values and interests are accommodated.

The belief of these jurists that the *Sharīᶜa* recognizes considerations of human interest does not seem to be derived from a single conclusive statement in the textual sources. It is rather grasped from their inductive survey of several rulings of the *Sharīᶜa*. To validate their observation that the ruling of the *Sharīᶜa* safeguard human interest, some proponents of the theory of *maṣlaḥa* invoked textual evidence from the *Qurʾān* and *Sunna*. Citing the *Qurʾānic* verse which describes the purpose of prophethood, "We have not sent you but as a mercy for all creatures (*wa mā arsalnāk illā raḥmat lil-ᶜālamīn*)," they argued that the *Sharīᶜa's* concern to promote human interests is regulated by the text (*naṣṣ*). From the same verse they deduced that the provisions of the *Sharīᶜa* as a whole should promote human benefits, otherwise this explicit revelation would be contradicted.[34] Some used the prophetic tradition, "Harm is neither inflicted nor tolerated in Islam (*lā ḍarara wa lā ḍirar*),"[35] and argued that this tradition encompasses the essence of the principle of *maṣlaḥa* in its broader implementation. The Ḥanbalī jurist, al-Ṭūfī, maintained that this tradition is a decisive *naṣṣ* on *maṣlaḥa*. In his treatise entitled *Al-Maṣāliḥ al-Mursala*, in which is mainly a commentary on this tradition, he argued that this tradition is the most important principle of the *Sharīᶜa* and is preferable to all other considerations. He asserted that in transactions and temporal affairs (*aḥkām al-muᶜāmalāt wa al-siyāsāt al-dunyawiyya*), the textual proofs and existing indications in the *Sharīᶜa* are to be applied only if they conform to the *maṣlaḥa* of the people; otherwise the *maṣlaḥa* should take precedence over them. To clarify the relationship the general textual proofs and the specific tradition "*lā ḍarara wa lā ḍirār*," he suggested that the preference given to the tradition is in the nature of specification

---

[34] See Ali, *The Holy Qur'an*, (21: 107), 197.

[35] Muḥammad b. Yazīd b. Mājah al-Qazwinī, *Sunan Ibn Mājah* (Istanbul: Cagri Yayinlari, 1401/1981), II, 785.

(*takhṣīṣ*) and explanation (*bayān*) of the sources generally.[36] Other traditions, "The prophet chose the easier of the two alternatives so long as it did not amount to a sin," and "Muslims are bound by their stipulations unless it be a condition which turns a *ḥarām* (prohibition) into *ḥalāl* (lawful) or a *ḥalāl* into a *ḥarām*," are much used to justify the theory of *maṣlaḥa*.[37] Furthermore, another tradition, "God loves to see that His concessions (*rukhaṣ*) are observed in the same way that His strict laws (*ʿazāʾim*) are obeyed," is also cited.[38] From this tradition, they understood that it is not necessary to always enforce the strict rulings because the Muslims are allowed to avail themselves of the flexibility and concessions given by the lawgiver. All these traditions are considered by proponents of *maṣlaḥa* to grant Muslims the freedom to pursue their public interests as long as this does not result in a violation of the explicit commands and prohibitions of the *Sharīʿa*.

As regard the origins of the theory of *maṣlaḥa*, some authorities maintain that Mālik (d. 179/794) was the first to use it.[39] This view has some basis in that Mālik's legal opinions did lay considerable stress upon considerations of *maṣlaḥa* (though he did not use the term itself). For example, he deemed it permissible to sell fresh fruit before the time of ripening. This opinion was against the established rule that fresh fruit cannot be sold, but Mālik based his own view on consideration of public interest. It is also reported that Mālik validated the payment of blood money in whatever was the principal medium of exchange amount of the people. In the time of the Prophet and Abū Bakr, blood money was paid

---

36 Muṣṭafā Zayd, *Al-Maṣlaḥa fī al-Tashrīʿ al-Islāmī wa Najm al-Dīn al-Ṭūfī* (Cairo: Dār al-Fikr al-ʿArabī, 1384/1964), 238-240.

37 "*Innahū mā khayyara bayn amrayn illā ikhtār aysarahumā mā lam yakun ithmā*," Abū Dāwūd, *Sunan*, III, 1020; "*Al-muslimūn ʿalā shurūṭihim ʾillā sharṭan aḥalla ḥarāmā aw ḥarrama ḥalālā*," Abū al-Ḥusayn b. al-Ḥajjāj al-Nishāburī al-Muslim, *Mukhtaṣar Ṣaḥīḥ Muslim*, ed. Muḥammad N. al-Albanī (Beirut: al-Maktab al-Islāmī, 1402/1982), 1546, as quoted by Kamali in his *Principles*, 340-342.

38 Kamali, *Principles*, 341.

39 Paret, "Istiḥsān and Istiṣlāḥ," 257.

only by camels, but Mālik allowed payment in currency. He argued payment by camels is for those who are in the rural areas, where wealth is not held in currency. Urban people, who are used to monetary exchange, were to be fined in term of their main currency.[40] He further differentiated the people who used gold and those who used silver. The Syrians and Egyptians, who used gold in their commercial transactions, were asked to pay about a thousand gold coins (*dīnār*), while the Iraqis, whose main currency was silver coins, were asked to pay about twelve thousand silver coins (*dirham*).[41] These opinions were preferred to accommodate peoples' interest, rather than to maintain the established practice of textual proofs, which were in accordance to the interests of particular circumstances.

Furthermore, Mālik is reported to have decided on matters of transaction (*buyūᶜ*) on the basis of their meaning (*maqṣūd*) in the sense of their conformity with the aims of the *Sharīᶜa*, rather than of their explicit words (*al-lafẓ al-ẓāhirī*). For this reasoning, he denied the permissibility of selling grapes which were used for making intoxicating drink. He also prohibited selling weapons to the enemies of the Muslims, or selling land for the building of churches. These prohibited transactions are seen by him as to potentially harmful to the people. On considerations of securing human benefits (*maṣlaḥa*), therefore, they are banned. Dealing with the question of marriage, Mālik prohibited the marriage of a young daughter before she could have sexual intercourse (*al-waṭʾ*), given that this would lead to her harm. Mālik also disapproved of marriage to a sick person who is on his death bed, reasoning that this marriage can be used for material purposes (inheritance) and thus leads to neglect of the *Sharīᶜa*'s aims regarding marriage, he prohibited it.[42] We can see here that Mālik used the principle of the intent behind the rulings both to argue for the adaptability of

---

[40] Paret, "Istiḥsān and Istiṣlāḥ," 256.

[41] Mālik b. Anas, *Al-Muwaṭṭaʾ* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1370/1951), II, 181.

[42] On the prohibited transactions and several others of Mālik's legal opinions in accordance with consideration of human interest, see al-Raysūnī, *Naẓariyya*, 76-79.

the law and to prevent possible harm to the people. The fact that Mālik himself did not use the term *maṣlaḥa*, did not hinder later observers to associate the emergence of the theory of *maṣlaḥa* with Mālik.

Considerations similar to *maṣlaḥa* had, in fact, already existed in the time of the Companions. Observing the development of Islamic law in its earliest period of Islamic history, we find the establishment of the prison, issuance of currency, and the imposition of tax on agricultural land in the conquered territories. Although these cases have no textual grounds in the *Sharīᶜa*, they were legislated by the Companions because they were believed to ensure human welfare. [43] Considerations of *maṣlaḥa*, as Faruqi suggests, can represent an adaptation of Islamic law to the existing *ᶜurf* (custom) and *ᶜāda* (tradition), because maintaining customary practice secures peoples' interests in their daily life. The companions are reported to have adapted the existing system of measures; they continued to maintain that grain, viz. wheat and barley and other similar things are measured by capacity (*kaylī*), while gold and silver are to be measured by weight (*waznī*).[44] The accommodation of Islamic law toward existing tradition, in case of hiring (*ijāra*), including renting homes, land, and animals, or hiring skilled people like guides, was popular in the time of ᶜUmar. The *al-Khulafāʾ al-Rāshidūn* even maintained the tradition of lighting the fire at Muzdalifa. This is a ceremonial custom in the time of pilgrimage which is used to direct the pilgrims from ᶜArafa to Muzdalifa. This ceremonial custom is legally not important in itself. However, it is to be continued for its usefulness to the people and because it does not violate the *Sharīᶜa*.[45]

---

[43] ᶜAbd. Wahhāb al-Khallāf, *ᶜIlm Uṣūl al-Fiqh* (Kuwait: Dār al-Qalam, 1398/1978), 84.

[44] Faruqi, "Consideration of *ᶜUrf*," 497, 482.

[45] Al-ᶜAskarī, *Kitāb al-Awāʾil* (Madīna: n.p., 1386/1966), 28. Aḥmad b. ᶜAlī al-Qalqashāndī, *Subḥ al-Aᶜshā fī Ṣināᶜat al-ʾInshāʾ* (Cairo: al-Muassasa al-Miṣriyya al-ᶜAmma, 1383/1962), I, 409; as quoted in Faruqi, "Consideration of *ᶜUrf*," 487-8.

Among the companions, it was ᶜUmar who made the most frequent use of considerations of human welfare. He is reported even to have adopted foreign customs. When the merchants of Manbij came to sell their wares in Muslim lands and asked permission from ᶜUmar promising taxes in return, ᶜUmar consulted the Companions, especially to Abū Mūsā al-Ashᶜarī; who latter informed him that this practice was found in other lands and ᶜUmar accepted this proposal. Although there is no explicit indication on such tax in the *Qurᵓān* or *Sunna*, he permitted the merchants to market their merchandise and appointed Ziyād b. Ḥuḍayr al-Asadī to collect the tax in Iraq and Syria.[46] Furthermore, ᶜUmar's adaptation to social realities meant that he was prepared to introduce changes from time to time or according to the needs of different peoples. For example, observing the different conditions of people in the rural and urban areas, ᶜUmar promulgated the payment of blood money in terms of the real wealth of different people: one hundred camels for those whose wealth was in camels (*ahl al-ibil*), ten thousand *dirhams* for those who used silver as medium of exchange (*ahl al-waraq*), one thousand *dīnārs* for those whose wealth was mainly in gold (*ahl al-dhahab*), two thousand one-year-old sheep for those who had their wealth mainly in sheep (*ahl al-shāᵓ*), two hundred cows for those whose main wealth was in cows (*ahl al-baqar*), and two hundred dresses for those whose wealth was in clothing (*ahl al-ḥulla*).[47] After he established the *dīwān* system and salaried the people from the treasury (*bayt al-māl*), he limited the alternative means of paying blood-money only to *dirhams, dīnārs* and camels, for these three items now became the main wealth of the people.[48]

---

46 Yaᶜqūb b. Ibrāhīm Abū Yūsuf, *Kitāb al-Kharāj* (Cairo: al-Maktaba al-Salafiyya, 1976), 145-146.

47 Al-Shaybānī, *Al-Aṣl* (Hyderabad: Dāᵓirat al-Maᶜārif al-ᶜUsthmāniyya, 1386/1966), IV, 451-452. See also in Abū Dāwūd, *Sunan* (Ḥims: M. ᶜAlī al-Sayyid, 1388/1969), II, 277-278.

48 Al-Shaybānī, *Al-Aṣl*, IV, 452.

Among the founders of the four schools of law, Mālik (d. 795) has already been mentioned as regards *maṣlaḥa*. Abū Ḥanīfa (d. 767) also greatly appreciated a principle which is similar to *maṣlaḥa*. Under his broad term "*istiḥsān*," he acknowledged social interest and public opinion to be elements in making a ruling. As his successor al-Sarakhsī clarified, Abū Ḥanīfa's theory of *istiḥsān* is a method of choice among conflicting sources or a means to depart from *qiyās* in which his principle of public interest is subsumed. *Istiḥsān* would, for instance, validates ordering the manufacture of commodity because to do so accords peoples' tradition and interest. The tradition to ask the tailor to sew clothes, for example, according to the regular reasoning of *qiyās* is not a transaction at that time, for an error in the final product may occur. This practice, however, has been long established in many communities and the people tolerate the possible small errors, and thus it is a permitted practice.[49] *Istiḥsān's* abandoning *qiyās* for adaptability to social needs is clarified by al-Sarakhsī as favoring considerations of public opinion (*ijmāᶜ*) or public necessity (*ḍarūra*), which include abolishing public difficulty (*dafᶜ al-ḥaraj*). In favor of this theory, its proponents referred to the prophetic tradition, " What the Muslims deem to be good is good in the sight of Allah." [50]

Al-Shāfiᶜī (d. 820), however, opposed considerations of *maṣlaḥa*. In his important work *Al-Risāla*, a work on account of which he is recognized as the founder of Islamic legal theory, he expressed his strong opposition to the practice of any kind of independent reasoning, meaning those represent a departure from the binding sources. He did not mentioned the term *maṣlaḥa*, but he pointed to *istiḥsān*, under which considerations of public interest are taken into account. He believed *istiḥsān* to be a totally independent form

---

49 "*Mā raᵓāhu al-Muslimūn ḥasanan fahuwa ᶜind Allāh ḥasan*," al-Sarakhsī, *Uṣūl*, 202-204.

50 Quoted in Kamali, *Principles*, 316. Al-Āmidī considered this saying to be a *Ḥadīth*; see Sayf al-Dīn ᶜAlī b. Muḥammad al-Āmidī, *Al-Iḥkām fī Uṣūl al-Aḥkām*, V.1, ed. ᶜAbd al-Razzāq ᶜAfīf (Beirut: al-Maktab al-Islāmī, 1402/1982), 214. Others, however, regarded this to be a saying of the prominent companion ᶜAbd Allah b. Masᶜūd; see Abū Isḥāq Ibrāhīm al-Shāṭibī, *Al-Iᶜtiṣām* (Cairo: Maṭbaᶜat al-Manār, 1332/1914), II, 319.

of reasoning which had to be opposed. Arguing that *istiḥsān* is based on "convenience (*taladhdhudh*)", or "something which occurs to an individual's imagination (*mā khaṭara ᶜalā auhāmihim*)," he considered it as a procedure which is based on liberal personal opinion (*yaḥkum bi-raᵓy nafsih*).[51] Therefore, he rejected the use of *istiḥsān* on the grounds that this procedure has no basis in the sources and is arbitrary.[52] Thus, he unfavorably contrasted *istiḥsān* to his general theory of *qiyās*. Although al-Shāfiᶜī's *Al-Risāla* does not use the word *maṣlaḥa* that does not mean that his position toward the principle of *maṣlaḥa* is not intelligible. The absence of the term *maṣlaḥa* in *Al-Risāla* is due to the fact that the term was not yet in use. For this reason, the problem and practice of *maṣlaḥa* is treated in terms of the general term of *istiḥsān*, the instrument of the adaptability of Islamic law to public interest.[53] Al-Shāfiᶜī's position regarding *maṣlaḥa* is therefore likely to have been the same as his position toward *istiḥsān*. He would accept it in so far as it has grounds in the binding sources, otherwise it is not justified.

Thus we see that in the time of al-Shāfiᶜī, discussions on legal reasoning began to question various forms of such versions in terms of their link with the sources. This constitutes an important development in legal theory which later continues to be strongly discussed. The theory of *maṣlaḥa*, a technical term appearing after al-Shāfiᶜī, began to be discussed with reference to the question of its connection to the sources. To al-Shāfiᶜī, all kinds of reasoning for determining rulings should have grounds in the sources; he called such reasoning *qiyās* and *ijtihād* interchangeably. This indicates that al-Shāfiᶜī rejected any kind of reasoning for which there was no authority in the binding sources. His contribution to systematizing *Ḥadīth* may be seen as his response to the Mālikī jurists who

---

51 Al-Shāfiᶜī, *Al-Risāla*, 504-507.

52 Al-Shāfiᶜī, *Al-Risāla*, 209-300.

53 Paret suggests that until the time of al-Shāfiᶜī, a discussion on *maṣlaḥa* might be as a subdivision of the discussion on *istiḥsān*, see Paret, "Istiḥsān and Istiṣlāḥ," 256-257.

preferred the use of *ʿamal* (common practice) of the people of Madina over *Ḥadīth āḥād.* This represents both his critique on the use of independent reasoning, and his effort to systematize Islamic legal theory to be consistent with the sources. Al-Shāfiʿī's position on *maṣlaḥa* should probably be seen in terms of his position on *qiyās,* whose consistency with the sources he required. He accepted the latter if it had a basis in the sources and does not contradict the *Sharīʿa.* This, however, does not mean that al-Shāfiʿī was excluded from the people who used consideration of social realities. Al-Shāfiʿī himself, in fact, had changed his own opinion due to existing realities: his new opinions (*aqwāl jadīda*, pl. of *qawl jadīd*) are at variance with his previous legal opinions (*aqwāl qadīma*, pl. of *qawl qadīm*). For instance, in the matter of the woman left by the husband for a long period, al-Shāfiʿī, in his *qawl qadīm*, permitted the woman to marry another man. Later, in his *qawl jadīd,* he prohibited it on the reasoning that this serves clearer the *maṣlaḥa* of the couple. This is, for some degree, evidence of his appreciation of the different possible judgments because of different considerations of interests.[54]

The founder of a later school, Ibn Ḥanbal (d. 241), is also reported to have given legal opinions in accordance with different social realities. In Abū Dāwūd's work *Masāʾil al-Imām Aḥmad,* he is reported to have given his opinion on the matter of hoarding (*ḥukra*) in the light of circumstances. Consequently, it will differ from one place to another, and be defined differently in every society. In other cases, particularly those dealing commercial transactions such as the hiring of a skilled person for a specific job, Ibn Ḥanbal gave legal opinions without referring to either *naṣṣ* or *ijmāʿ.*[55] As Muṣṭafā Zayd's work *Al-maṣlaḥa* shows, several of Ibn Ḥanbal's legal opinions relied on considerations of *maṣlaḥa.* His legal opinion on the death penalty for the spies who bring harm to the Muslim community

---

54 Cited in al-Ghazālī, *Shifāʾ al-Ghalīl,* 261-262.

55 Quoted in Faruqi, "Consideration of *ʿUrf,*" 491.

is deemed to be based on *maṣlaḥa*.[56] All this implies that for Ibn Ḥanbal consideration of the aspects of human welfare was authoritative. Although we cannot find the use of the legal term *maṣlaḥa* in his legal opinions, we do see use of considerations similar to *maṣlaḥa* by Ibn Ḥanbal. He used it as an important element in interpreting the law and accommodating social interest.

Thus a practical reconciliation between Islamic law and public interest at a given time was acknowledged by several Muslim jurists even before Mālik, and even by the Companions of the Prophet. Islamic law could therefore be adapted to the actual situation. The responsiveness of law to public interest represents not only the realization of the prophetic tradition "....you know more about your own affairs (*antum aʿlamu bi umūr dunyākum*)," but also the foundation of the rational interpretation of the law on the basis of a specific social order. The possibility of the adaptation of law to changing situations implies an appreciation of the peoples' different interests in different conditions. The fact that the law may be beneficial for a certain time or place and harmful for another, means that the application of considerations of public interest cannot be predicted in advance. This is because there may be possible changes of interest according to different conditions.

Determination of the law in accordance with such considerations of human welfare is known later as *maṣlaḥa*. Although the word *maṣlaḥa* as a technical legal term did not yet appear even in the time of Mālik or al-Shāfiʿī, the theory of *maṣlaḥa* is associated with Mālik. This association is probably related to the fact that among the founders of the four ancient schools he made the most frequent use of *maṣlaḥa*. Even the Mālikī school became later known as the school of *maṣlaḥa* and *istiḥsān*, and *darʾ al-mafāsid* or *sadd al-dharāʾiʿ*.[57] As regard the term itself, observers indicate that "*maṣlaḥa*" began to be

---

56 Zayd, *Al-Maṣlaḥa*, 60

57 Al-Raysūnī, *Naẓariyya*, 299.

seriously discussed by the Muslim scholars of the eleventh century as al-Juwaynī (d. 438/1047) and Abū Ḥusayn al-Baṣrī al-Muᶜtazilī (d. 478/1085). This view raises the question of when the term came into use. It is impossible, however, to pinpoint the exact time of its appearance or the precise history of its development. Given the loss of many earlier writings, it is not possible to systematically study and trace back the earliest use of the legal term *maṣlaḥa.*

Al-Juwaynī's work *Al-Burhān* provides a clear definition and discussion of the term *maṣlaḥa.* Al-Juwaynī's work indicates that *maṣlaḥa* was under the discussion by the jurists of his time. But, to know this still does not reveal to us the exact date of the emergence of the term. Al-Juwaynī, for his part, defines *maṣlaḥa* as whatever is relevant to the principles on the basis of which the *Sharīᶜa* is legislated (*uṣūl al-Sharīᶜa*).[58] He also introduced the term *munāsaba,* and used it to refer to reasoning on the basis of *maṣlaḥa.*[59] In the period of al-Juwaynī, as shown by *Al-Burhān,* the validity of reasoning on the basis of *maṣlaḥa* had became a controversial issue. The discussion of the theory of *maṣlaḥa* developed into an inquiry into the relationship between this reasoning and the sources. Significantly, al-Juwaynī notes the existence of three groups of jurists who took different positions on *maṣlaḥa.* First, some Shāfiᶜīs and *mutakallimūn* accepted only that *maṣlaḥa* which has a basis (*aṣl*) in the texts (*naṣṣ*), that for which there is no basis in favor or otherwise (*al-maṣlaḥa al-mursala*), was considered invalid by them. Secondly, some other Shāfiᶜī and Ḥanafī jurists considered the validity of both the *maṣlaḥa* which has support in the texts and that which has no such basis but has similarity to the former. Another group, represented by the majority of Mālikī jurists, is reported to have maintained the validity of any kind of *maṣlaḥa* irrespective of a textual basis or of similarity with what is stipulated in

---

58 Al-Juwaynī, *Al-Burhān*, II, 923.

59 Al-Juwaynī, *Al-Burhān*, II, 875-6

the texts.[60] These three different views on *maṣlaḥa* also enable us to classify *maṣlaḥa* in regard to its relationship with the sources into three categories: *maṣlaḥa* which has textual grounds in the *Sharīᶜa*, *maṣlaḥa* which has no grounds but has some similarity to what is given in the texts, and *maṣlaḥa* for which the *Sharīᶜa* provides neither textual ground nor similarity.

For al-Juwaynī *maṣlaḥa*, used interchangeably with the term *munāsaba* and also called *istidlāl* (finding indications), is not wholly acceptable.[61] He insists that an acceptable *maṣlaḥa* is that which is relevant to the aims of *Sharīᶜa* which can be classified into five categories. Any newly identified *maṣlaḥa* which has similarity with or falls within the categorization will be validated. The five categories are the following.

The first kind of *maṣlaḥa* is that which pertains to essential public necessities (*ḍarūrāt*) and is considered to conform with the primary aims of the *Sharīᶜa* to secure human life and public order. Al-Juwaynī explained, for example, that the *Sharīᶜa*'s establishment of retaliation (*qiṣāṣ*) for murder, is intended to secure human life. Whatever leads to the harm of the life will therefore be banned. Another instance of the people's essential necessities maintained by the *Sharīᶜa*, he says, is the *Sharīᶜa*'s allowing of trading the transactions (*taṣḥīḥ al-bayᶜ*). Such transactions are indispensable to the people. Its prohibition will create difficulty in life (*maḍarra*); its validity is thus assured. In regard to this category of *maṣlaḥa*, the level of public interest represents indispensable matters. They refer to universal things (*rājiᶜ ilā al-nawᶜ wal-jumla*) which are considered the essentials of public necessities. These essentials are to be ensured for all people as a general necessity (*al-ḍarūra al-kulliyya*) and should be established regardless of its meaning for each person.

---

[60] As summarized by Muḥammad Muṣṭafā al-Shalabī, *Taᶜlīl al-Aḥkām: ᶜArḍ wa Taḥlīl li-Ṭarīqat al-Taᶜlīl wa Taṭawwurātih fī ᶜUṣūr al-Ijtihād wa al-Taqlīd* (Cairo: Maṭbaᶜat al-Azhar, 1947), 292.

[61] Al-Juwaynī, *Al-Burhān*, II, 1204, 876, 1204.

Therefore, they are differentiated from the particular necessity which is tied to certain conditions of an individual person (*al-ḍarūra fī ḥaqq al-wāḥid*). According to al-Juwaynī, these necessities include any universal matters (*al-umūr al-kulliyya*) through which the *Sharīᶜa* maintains the pillars of life.[62]

Secondly, there is the category of *maṣlaḥa* which is concerned with the maintenance of the needs of the common people (*ḥājāt al-ᶜāmma*). This category is based on several rulings of the *Sharīᶜa* which indicate that the law provides some provisions to ensure people's needs which are of a lesser order than the essential necessities. This category of *maṣlaḥa* consists of any concessions which represent mitigating law. The *maṣlaḥa* of the *Sharīᶜa*'s legislation on the permissibility of "borrowing" (*ijāra*) is, according to al-Ghazālī, under this category. It is an established practice and is needed by the community, especially by the poor people. Transactions involving borrowing are not an indispensable pillar of life, but many people need to do so. Like essential necessities in the first category, peoples' needs in the second category represent universal things which are established regardless of its meaning for each person. Al-Juwaynī says, when the needs represent the interest which must be applied by all people, the needs will be in the position of "necessity" for one person (*ḍarūrat al-khāṣṣa*). For example, when no one is prepared to lend what one poor person needs, the latter will be in a condition of necessity as an individual.[63]

The third category of *maṣlaḥa* is not related to essential necessities or peoples' needs, but is concerned with the benefits of life (*al-maḥāsin*). The chief intent behind their establishment is to ensure good morality (*makārim al-akhlāq*). Again, the benefits represent

---

[62] Al-Juwaynī, *Al-Burhān*, II, 923-924, 927-930; this is later clarified further by al-Ghazālī who suggests that five matters, including maintaining religion, life, intellect, progeny and property, are under this category of *maṣlaḥa*, see al-Ghazālī, *Shifāʾ al-Ghalīl*, 160-165 and idem, *Al-Mustaṣfā*, I, 140.

[63] Al-Juwaynī, *Al-Burhān*, II, 924, 930-4.

universal things which are encouraged for the majority of people at any time. They are encouraged by the *Sharīᶜa* and are considered to indicate a particular category of *maṣlaḥa*. To ensure this interest, the *Sharīᶜa*, for example, demands cleanliness. Cleanliness is neither among the matters of essential necessities nor of common needs, but is rather benefits. The neglect of benefits will never damage life or create difficulty for the people, but it will deplete the goodness of life. An understanding of this kinds of *maṣlaḥa* has some grounds in the existing rulings in the *Sharīᶜa* concerning with matters of benefits for the peoples.[64]

The fourth category of *maṣlaḥa* formulated by al-Juwaynī has the same substance as the third but is less prioritized. The benefits of the fourth category represent exceptional matters which are excluded from the general rule of reasoning by analogy. That there exist regulations on the restriction of the period of being a slave (*ᶜabd mukātab*), for instance, is excluded from the general rules of slavery. This restriction is intended to liberate the slave within certain period of time. This is established and encouraged (*mandūb*) for its benefits to the people (*maṣlaḥa*).[65]

The last category of the acceptable *maṣlaḥa* is that which is related to matters in which the meaning (*maᶜnā*) of individual cases is unclear but the general meaning is understandable. According to al-Juwaynī, this category of *maṣlaḥa* is dictated by the *Sharīᶜa*'s legislation on bodily obedience (*al-ᶜibāda al-badaniyya*). The meaning or benefit of individual *ᶜibāda*, he says, is not clear, but in general *ᶜibāda* is understood to protect people from shameful and unjust deeds (*yanhā ᶜan al-faḥshāᵓ wal-munkar*).[66] Following this principle, there exist interests which individually provide unclear *maṣlaḥa*, but are

---

64 Al-Juwaynī, *Al-Burhān*, II, 925, 937-942.

65 Al-Juwaynī, *Al-Burhān*, II, 925-6.

66 Al-Juwaynī, *Al-Burhān*, II, 926-7.

understandable in general. These interests are deemed to be in the last category of *maṣlaḥa*. It is to be noted that for al-Juwaynī the matter of *ʿibāda* individually is not intelligible. He puts *ʿibāda* in a separate category outside the other four categories of *maṣlaḥa*. His differentiation of *maṣlaḥa* into these categories is based on a distinction of the less-intelligible matters of *ʿibāda* and the intelligible matters.

Al-Juwaynī's introduction of these five categories of *maṣāliḥ* significantly contributed to the previously unformulated concept of the *maṣāliḥ*. According to al-Juwaynī's interpretation, the *maṣāliḥ* or consideration of *munāsaba* represent the implementation of the general intent behind the *Sharīʿa*. Reasoning on the basis of *maṣlaḥa* is essentially no different from determination of a ruling on the basis of the spirit of the *Sharīʿa*. This constitutes an important step toward which the principle of *maṣlaḥa* is to be guided by the established principles of law. *Maṣlaḥa* which has no similarity with that is established in the *Sharīʿa*, will consequently discredited. For al-Juwaynī, therefore, *maṣlaḥa* is not always acceptable. The significance of his concept of *maṣlaḥa* lies in its ability to guide the ruling on cases for which there is no indication in the texts, without violating the *Sharīʿa* itself. Generally speaking, al-Juwaynī proposed that *maṣlaḥa* be parallel to the principle of the aims of *Sharīʿa* (*maqāṣid al-Sharīʿa*), which he systematically classified into five categories. Al-Juwaynī's concept of *maṣlaḥa* and its relation to the intent behind the law is later developed by al-Ghazālī. It is at the hands of al-Ghazālī that the principle of *maṣlaḥa*, discussed under al-Ghazālī's theory of *munāsaba*, arrives at its clearest formulation.

In deciding on any given case with a grounding in the sources, the consideration of *maṣlaḥa* is similar to reasoning by analogy (*qiyās*). Both *maṣlaḥa* and *qiyās* are based on seeking similarity of the attribute of the new case (*farʿ*) and original case (*aṣl*): a rational consideration of benefit in the case of *maṣlaḥa*, objective cause (*ʿilla*) in the case of *qiyās*. The theory of *maṣlaḥa*, however, differs from *qiyās*. The application of *qiyās* is governed

by a specific indication from the established rulings, while *maṣlaḥa* is dictated by the general meaning behind the *Sharīᶜa*. The aspect of human interest secured by *qiyās* is based on an indication of the explicit text; that of the legal theory of *maṣlaḥa*, on the other hand, is guided by the understanding of the general principles of Islamic legislation.

A ruling which is based on *maṣlaḥa* is original in the sense of its having no precedent (*ᶜain al-ḥukm al-muᶜayyan*). For this reason al-Juwaynī differentiates *maṣlaḥa* or *munāsaba* from *qiyās* and particularly named the former as *istidlāl* or *istirsāl*. He does not consider this a departure from the *Sharīᶜa* because *maṣlaḥa* is deemed by him to be in line with the *Sharīᶜa* principles of legislation of *Sharīᶜa*. He insists that the aims behind the *Sharīᶜa* are the main reference in identification. The validity of *maṣlaḥa* thus depends on its conformity with the aims. Al-Juwaynī claims that his concept of *maṣlaḥa* conforms to what was implemented by the Companions of the Prophet, whom he calls *al-murtarsilīn*.[67] This implies that, besides the terms *maṣlaḥa* and *munāsaba*, the term *al-maṣlaḥa al-mursala* (undefined public interest) existed in the time of al-Juwaynī.

The terms *maṣlaḥa* and *maṣāliḥ* are also discussed by the Muᶜtazilī Abū al-Ḥusayn al-Baṣrī in his *Al-Muᶜtamad*. He defined *maṣlaḥa* as rational determination of what is good and appropriate for the people. Consideration of *maṣlaḥa*, therefore, represents analysis of what is beneficial for the people on the basis of reason (*al-ᶜaql, al-naẓr*). Like al-Juwaynī, al-Baṣrī subsumes this kind of reasoning under the discussion of *qiyās*. He employs *maṣlaḥa* to determine a cause (*ᶜilla*) for which there is no clear indication (*dalāla*). Particularly, al-Baṣrī maintains that determination of *maṣlaḥa* is directed by reason's decision of what is good and proper for the *Sharīᶜa*. Arguing that the *Sharīᶜa* consists of *maṣlaḥa*, he insists that the use of *maṣlaḥa* for identifying the cause of a new case is

---

67 Al-Juwaynī, *Al-Burhān*, II, 1204.

considered as good according to our reason.[68] His belief that *maṣlaḥa* may be different in accordance with different times and places leads him to argue that the *Sharīᶜa* can adapt to the different interests of different conditions, and that its rulings may change accordingly. He observes, for instance, that the traveler's prayer is distinguished from that of those who are at home because the *maṣlaḥa* of these two people is different. He also cites the example of different *Sharīᶜas* for different prophets because of different situations and conditions of the people. Therefore, *maṣlaḥa*, he believes, can be determined in accordance with particularities.[69]

This rational understanding of *maṣlaḥa*, however, does not lead al-Baṣrī to prefer it over the texts (*naṣṣ*). In fact, it is suggested that consideration of *maṣlaḥa* can only be undertaken in the absence of the explicit texts (*naṣṣ*). If *maṣlaḥa* contradicts the ruling of the text, preference is to be given to the latter. But, al-Baṣrī also argues that the insistence of those as represented by Abū Zayd al-Dabūsī who requires *maṣlaḥa* to be based on *naṣṣ* is not acceptable, for this would signify the implementation of *naṣṣ* itself. He compares *maṣlaḥa* with *ḥadīth āḥād* which may be an independent source in the absence of the stronger one: *maṣlaḥa* is nullified in the presence of and the text, while *ḥadīth āḥād* is disregarded in the absence of *ḥadīth mutawātir*. All this suggests that for al-Baṣrī *maṣlaḥa* is a rational understanding of such aspects of benefit or goodness in rulings. *Maṣlaḥa* does not require its ground in the explicit texts. It is rather determined by reasoning on the basis of the probability (*ẓann*) which relies on the understanding of what is good and benefits for the people. He generally insists that *maṣlaḥa* cannot violate the texts themselves.[70] Here, al-Baṣrī seems to be more liberal than al-Juwaynī; to al-Baṣrī, *maṣlaḥa*

---

68 Al-Juwaynī, *Al-Burhān*, II, 715-16.

69 Al-Juwaynī, *Al-Burhān*, II, 712-708.

70 Abū al-Ḥusayn Muḥammad b. ᶜAlī b. al-Ṭayyib al-Baṣrī, *Kitāb al-Muᶜtamad fī Uṣūl al-Fiqh*, ed. Muḥammad Hamidullah (Damas, 1380/1965), II, 690, 695, 706, 712-714.

may be a rational determination of the aspects of benefit for the people without the limitation of any strict criteria.[71]

In contrast to al-Baṣrī, Abū Zayd al-Dabūsī, another al-Ghazālī's predecessor, maintained that consideration of *maṣlaḥa* must be guided by the explicit sources (*athar*): the texts (*naṣṣ*) and consensus (*ijmāᶜ*). To al-Dabūsī *maṣlaḥa* is not only restricted to being parallel to the *Sharīᶜa* but must also be proved by the sources. Therefore, as al-Ghazālī indicates in his *Shifāʾ al-Ghalīl*, al-Dabūsī's view of *maṣlaḥa* is not subject to reason. Al-Dabūsī's theory of *maṣlaḥa* is strongly criticized by al-Ghazālī who argues that *maṣlaḥa* in such a meaning would be nothing more than the implementation of *naṣṣ* and *ijmāᶜ* themselves. According to al-Ghazālī, since the discussion of *maṣlaḥa* is subject to the theory of extension of the law to new interests for which there is no explicit sources, al-Dabūsī's *maṣlaḥa* clarifies nothing. Al-Dabūsī's view that *maṣlaḥa* is determined by the jurist's feeling of satisfaction (*qabūl al-qalb wa ṭamaʾnīnat al-nafs*) and thus cannot be demonstrated through reason is considered by al-Ghazālī as a problematic legal theory. It leads to uncertainty of legal opinion, for when one jurist says that something is acceptable according to his perception (*ghalaba ᶜalā ẓannī*) another can say that it is not acceptable to him, without demonstrating their argumentation.[72] In contrast to al-Dabūsī's unintelligible determination of *maṣlaḥa*, al-Ghazālī, as we shall discuss later, proposed his particular theory of *maṣlaḥa* in its rational determination. According to al-Ghazālī, *maṣlaḥa*

---

[71] As we shall see later, the idea that the theory of *maṣlaḥa* is justified by reason's decision of what is good and bad for the *Sharīᶜa* is a matter over which al-Ghazālī is in disagreement with the Muᶜtazilīs. Al-Ghazālī took the position that the rational understanding of *maṣlaḥa* and its application to a given case is justified under the direction of the values of the *Sharīᶜa* itself, see his *Shifāʾ al-Ghalīl*, 204-5.

[72] Al-Dabūsī's idea on *maṣlaḥa*, expressed by the term *munāsaba*, is cited in al-Ghazālī's *Shifāʾ al-Ghalīl*, 142-143. In the beginning of his work al-Ghazālī rejects al-Dabūsī's opinion, but later in the same work, after he approved that al-Dabūsī's legal term of "*naṣṣ*" includes its textual and inferred meaning, he uses it to support his position to hold *maṣlaḥa* on the basis of indirect textual basis (*munāsib mulāʾim*), see al-Ghazālī, *Shifāᶜ al-Ghalīl*, 178.

constitutes a matter of argument which can be identified through rational analysis and demonstrated through dialectical argumentation (*mujādala*).

From forgoing, one can see that the majority of the proponents of *maṣlaḥa* acknowledged the principle of rational determination of good and bad in making a ruling. They are, however, as ᶜAbd al-Wahhāb al-Khallāf notes, not purely rationalist who follow the principle of utilitarianism (*madhhab al-manfaᶜa*) because their rational principle of *maṣlaḥa* is restricted by the condition that a rational determination does not contradict the existing explicit *maṣlaḥa* or the general principles of the *Sharīᶜa*. In making a ruling on a given case, if the case was dealt with by the texts and or by *ijmāᶜ*, they preferred to follow those sources. In doing so, the proponents of *maṣlaḥa* sought to refute the accusation of arbitrariness and emphasized that *maṣlaḥa* cannot contradict the explicit texts. If the case did not have any established indication in the sources, they ruled on it according to the guidance of *maṣlaḥa*. In this case, the decision was not considered as purely man-made law or arbitrary law making. It was believed to be like a ruling of *Sharīᶜa* on account of its basis in the general meaning behind the *Sharīᶜa*.[73] What is disputed by the jurists is that which relates to the explanation of *maṣlaḥa*'s justification and determination. That is why the theory of *maṣlaḥa*, as stated above, does not represent a single meaning, but rather involves several interpretations according to different jurists.

According to the availability or not of a textual basis, *maṣlaḥa* can be classified into three categories: *maṣlaḥa* for which the text expresses its validity, *maṣlaḥa* which is discredited by the text, and one which has no textual indication as to its validity or otherwise. The first category of *maṣlaḥa* represents one which is definitive and whose realization is required without any debate. The *maṣlaḥa* of the *Sharīᶜa*'s legislation on retaliation (*qiṣāṣ*) for the preservation of life is among those are explicitly stipulated in the

---

73 ᶜAbd al-Wahhāb al-Khallāf, *Maṣādir al-Tashrīᶜ al-Islāmī fīmā lā Naṣṣa fīh* (Cairo: Arab League Institute of Higher Arab Studies, 1955), 74-76.

textual sources. Other textual directions such as to defend the right of ownership through penalizing the thief, or to protect the progeny and the honor of the people by penalizing fornication and false accusation, are some instances of *maṣāliḥ* which explicitly exist in the *Sharīᶜa*. These textual provisions of the *Sharīᶜa* and some others like them which also involve *maṣlaḥa*, are to be implemented as they are. The second category of *maṣlaḥa* is negative. It represents consideration of public interest regarding things which explicitly contradict the textual basis. As Kamali observes, considering the goodness of giving an equal share to men and women in inheritance, and contradicting the text in doing so, is an example.[74] The last category of *maṣlaḥa*, which is not textually stipulated consists of an adaptation of any new *maṣlaḥa*. In contrast to the first category of *maṣlaḥa* which is restricted by its textual derivation, the third category of *maṣlaḥa* is open to accommodating any new human interests. For example, in recent times, the changing situation in many Muslim countries has led to the adaptation of Islamic law to the effect that the claims of marriage and divorce should be proved by official documents. This practice is not explicitly validated by the *Sharīᶜa* but it called for by *maṣlaḥa*, and is justified.[75] Having no specific basis in the established law, whether in favor or against, this kind of *maṣlaḥa* requires an analysis and is considered as being subject to *ijtihād*.

Apart from the various interpretations of its meaning, *maṣlaḥa* simply and in broad term means the legal principle of considerations of public interest, or good. Historically, the discussion of *maṣlaḥa* developed in the direction of seeking either its relation to the binding sources or the means for determination. The view that *maṣlaḥa* is to be based on explicit texts is an impossible legal demand. This is properly applicable more to reasoning by analogy (*qiyās*), rather than to the principle of *maṣlaḥa*, for the latter relates to a determination of rulings on those cases for which the explicit texts are silent.

---

74 Kamali, *Principles*, 346.

75 Kamali elaborated the similar differentiation of *maṣlaḥa* in his *Principles*, 345-346.

Determination of *maṣlaḥa* on the basis of the text will mean the implementation of the text itself. Another view which suggests that *maṣlaḥa* is based on the general aims of the *Sharīᶜa* (*maqāṣid al-Sharīᶜa*) is a view which seems to be acceptable to the majority of the proponents of *maṣlaḥa*. This interpretation, however, remains unclear because the scholars who takes this opinion are, in fact, in disagreement in effectively demonstrating the existence of these aims and their implementation in a given case. It was al-Ghazālī who was to greatly develop the discussion of this interpretation. Under the heading of the reasoning by *munāsaba* he demonstrated the relationship between public interest and the meaning behind the *Sharīᶜa*. Influenced by his professor al-Juwaynī, he suggested that the adaptability of the law to new interests must be in harmony with the meaning in the *Sharīᶜa*. He greatly developed al-Juwaynī's innovation on the principles of law (*uṣūl al-Sharīᶜa*) and formulated the subject clearer than any achieved before him. He systematized the principles of the *Sharīᶜa* in an original manner and qualified them as criteria to measure the validity of reasoning on the basis of public interests (*maṣlaḥa*). The ramifications of al-Ghazālī's theory of *munāsaba*, under which the principle of *maṣlaḥa* is elaborated, is discussed in the following section.

B. Al-Ghazālī's Legal Doctrine of *Munāsaba*

Reasoning on the basis of *munāsaba* is proposed by al-Ghazālī as a technique for determining objective causes on the basis of *maṣlaḥa*. His *munāsaba* represents the rationalization of *Sharīᶜa* rulings on the basis of which the law may accommodate such emerging social interests on which there is no explicit text (*naṣṣ*). Al-Ghazālī discusses his theory of *munāsaba*, simultaneously introducing his particular concept of *maṣlaḥa*, especially in his work *Shifāʾ al-Ghalīl*. He defines *munāsaba* as a rational understanding

of aspects of *maṣāliḥ* or their indications.[76] The ruling is considered *munāsaba* when it shows signs of *maṣlaḥa* which are deemed to be relevant (*munāsib*) to the ruling. Consequently, whatever does not seem to have the meaning of *maṣlaḥa* will never arrive at the attribute of *munāsaba*. Al-Ghazālī's theory of *munāsaba*, therefore, represents a rational analysis undertaken to determine whether a particular ruling involves *maṣlaḥa* or *maḍarra*, the opposite term of *maṣlaḥa*.

Maṣlaḥa, according to al-Ghazālī, signifies the implementation of the meaning (*maʿnā*), referring to the aims (*maqāṣid*) or principles (*uṣūl*), of the *Sharīʿa* which pertain to human interests.[77] The determination of the emergence of *maṣlaḥa* or otherwise must be guided by the meaning implying in the *Sharīʿa* rulings.[78] His *maṣlaḥa* thus constitutes a rational understanding of the aspects of human welfare which find ground in the divine law. By such definition, al-Ghazālī's *maṣlaḥa* as a principle of the adaptability of law seems to have been secured against liberal tendencies and violations of the *Sharīʿa*. A study of his particular theory of *maṣlaḥa* is significant as a basis for understanding his notion of *munāsaba*. To understand that his reasoning has a valid objective basis in the *Sharīʿa*, and is not merely arbitrary, it is necessary to see his particular method both of determining *munāsaba* and explaining the notion of *maṣlaḥa* and the meaning (*maʿnā*) of *Sharīʿa*, and to know the relation of one to the other. Before presenting his notion of *munāsaba*, it is proper to consider his principle of *maṣlaḥa* and his view of the meaning of the *Sharīʿa*.

---

76 "*Mā tushīr ilā wujūh al-maṣāliḥ wa amārātihā*," al-Ghazālī, *Shifāʿ al-Ghalīl*, 159.

77 In indicating the meaning, principles, aims and spirit which imply behind the rulings of the *Sharīʿa*, al-Ghazālī uses the term "*maʿnā*" and "*maʿānī* " more frequently than the term "*maqṣūd*" or "*maqāṣid*" as usually being used by other scholars, viz. "*al-taʿlīl bihādhihī al-maʿnā*," "*maʿānī al-munāṣaba*," "*jins maʿānī al-Sharʿ*," "*al-maʿānī al-maʿqūla*," "*ittibāʿ al-maʿānī*," see al-Ghazālī, *Shifāʾ al-Ghalīl*, 145, 146, 149, 154, 155, 190, 200, 201; his teacher al-Juwaynī uses the term *uṣūl*, see al-Juwaynī, *Al-Burhān*, II, 923.

78 Al-Ghazālī, *Shifāʾ al-Ghalīl*, 159.

Maṣlaḥa and *the Meaning* (*Maᶜnā*) *of Sharīᶜa*

Practically, the term *maṣlaḥa* is defined by al-Ghazālī as that which governs the benefit and prevents the harm for the people and which, at times, represents a rational meaning behind the *Sharīᶜa* rulings. He considers *maṣlaḥa* as an expression of whatever is useful (*manfaᶜa*) or removes whatever is harmful (*maḍarra*) for the people. These aspects of peoples' interests themselves are, however, considered unimportant unless they conform to the meaning, or purposes, which guide the *Sharīᶜa*. Hence, al-Ghazālī's concept of *maṣlaḥa* is identical with considerations of maintaining the aims of the *Sharīᶜa* (*riᶜāyat amr maqṣūd*).[79] An identification of the aspects of human welfare will not necessarily constitute an identification of *maṣlaḥa* unless it finds some grounds in the meaning of the rulings of the *Sharīᶜa*. A failure to discover such grounds will lead to the inability of the public interest to be considered as *maṣlaḥa*. In other words, to al-Ghazālī, *maṣlaḥa* is the consideration of securing a benefit or preventing harm to the people in so far as this stands in line with the objectives of the *Sharīᶜa*. Significantly, by such a definition, al-Ghazālī sees *maṣlaḥa* not only in the light of its promotion of human benefit but also of its guarantee to secure the aims of the revelation.

Al-Ghazālī's concept of *maṣlaḥa* is governed by his belief that the *Sharīᶜa* provides the principles which seek to promote the interest of the people. He considers the purpose of the *Sharīᶜa* to be primarily securing human welfare. This belief is, in fact, not based on a conclusive individual statement in the *Sharīᶜa*, but is rather concluded from an inductive analysis of several *Sharīᶜa* rulings. In support of his rational analysis, al-Ghazālī adduces the meaning inferred behind the *Qurʾānic* legislation on retaliation (*qiṣāṣ*) for murder, for example. The retaliation is to be understood as a means of ensuring the lives of the people. The purpose of this ruling is a disincentive against killing, so that this ruling

---

79 Al-Ghazālī, *Shifāʾ al-Ghalīl*, 159; idem, *Al-Mustaṣfā*, I, 139-140, 143.

benefits to the people. On the *Sharīᶜa's* prohibition of drinking wine, he explains that this prohibition is based on its intoxicating effect which leads to the loss of rational behavior (*yuzīl al-ᶜaql*). The prohibition of drinking wine is thus intended for maintaining the intellect. The fact that the intellect is an important instrument for understanding and receiving God's demands means it must be secured by the *Sharīᶜa*. Whatever leads to the harm of the intellect is thus prohibited because the harm contradicts the *maṣlaḥa*. Other *Sharīᶜa* legislation, for example, in regard to punishment for the fornicator, is also explained in the light of the *Sharīᶜa*'s purpose of securing lineage and protecting any disruption of life through sexual crimes.[80] Thus, that securing peoples' interests is the purpose of the *Sharīᶜa* constitutes the meaning inferred in the *Sharīᶜa* which can be intelligibly understood.

By surveying the *Sharīᶜa*'s rulings governing the peoples' interests, al-Ghazālī concludes that maintaining peoples' interests is what represents the custom of the law (*ᶜādat al-Sharᶜ*). When a ruling is deemed to provide a certain benefit, it is reasonable to assume this benefit to be its purpose. Thus, as already noted, al-Ghazālī's insistence on understanding the aspects of human interest in the *Sharīᶜa* is based on an inductive analysis on Islamic revelation. Citing the *Qurᵓānic* verse on the intent of prophethood, "We did not send you, but as a mercy for all creatures," al-Ghazālī supports his idea that the purpose of the *Sharīᶜa* is to promote the interests of the creature, whether these interests are concerned with this life or the hereafter.[81] This is to suggest that the understanding of the meaning behind the *Sharīᶜa* is not deduced from the discredited theological position concerning God's obligation as regards His creatures, or from the rationalists' theory of pragmatic utilitarianism; it is understood rather from the direction, intent, and purpose of the *Sharīᶜa* which God customarily attaches to His rulings.

---

[80] On al-Ghazālī's rational understanding of several *Sharīᶜa* rulings, see his *Shifāᵓ al-Ghalīl*, 160-161; and idem, *Al-Mustaṣfā*, I, 139-140.

[81] Al-Ghazālī, *Shifāᵓ al-Ghalīl*, 162; on the verse, see Ali, *The Holy Qur'an*, (21: 107), 846.

Al-Ghazālī significantly acknowledges that among the rulings of the *Sharīᶜa* there are those with a broad and abstract wisdom. To identify and extract the divine meaning behind the rulings constitutes a difficult task. These ruling are, therefore, to be followed without seeking the real aspects of peoples' interests (*nawᶜ taṣarruf*) in them. These cases constitute the less intelligible rulings in the *Sharīᶜa*, and, as al-Ghazālī says, they represent a small number of the rulings. He argues that because the rulings in general provide a clear meaning in rational terms, the small number of less intelligible rulings cannot nullify those which are fully intelligible. He gives the example of heavy clouds which customarily indicate rain; although it happens that the heavy cloud may not followed by rain, this is rare and only seldom occurs.[82] As such, al-Ghazālī insists that the *Sharīᶜa* consists of the interests of the people (*maṣāliḥ*), and does not merely the institution of the obedience.

Arguing that the *Sharīᶜa* intelligibly protects the interests of the people, al-Ghazālī points a rational relationship between the aims of the law and the interests of people. Consideration of public interest which is harmonious with the aims of the *Sharīᶜa* constitutes the valid *maṣlaḥa*. The realization of *maṣlaḥa* may be established by adapting to new public interests (*taḥṣīl*) or maintaining the existing public welfare (*ibqāʾ*) through preventing harm. The establishment of whatever the *Sharīᶜa* wants to secure is considered as holding *maṣlaḥa*. The creation of any harm, on the other hand, is considered as *maḍarra*. To maintain those interests which already exist is to prevent harm and is thus also considered as *maṣlaḥa*. In other words, *maṣlaḥa* consists of, on the one hand, maintaining the established *Sharīᶜa*'s interests and preventing whatever leads to their disruption, and, on the other, promoting those new aspects of human welfare which are in conformity with the *Sharīᶜa*.[83]

---

82 Al-Ghazālī, *Shifāʾ al-Ghalīl*, 198-202.

83 Al-Ghazālī, *Shifāʾ al-Ghalīl*, 159.

In explaining the meaning of the *Sharīᶜa*, al-Ghazālī begins by distinguishing the kinds of interests (*maṣāliḥ*) promoted by the *Sharīᶜa*, whether the interests are directly concerned with this life (*dunyawī*) or concerned with religion (*dīnī*).[84] As regard interests of this life, al-Ghazālī says, the *Sharīᶜa* seeks to safeguard three categories of interests which represent three categories of *maṣlaḥa*. The first category comprises indispensable interests (*al-maṣlaḥa al-ḍarūriyya*), which are to be established to secure the order of the community. They consist of maintaining life (*nafs*), intellect (*ᶜaql*), progeny (*buḍᶜ/nasl*) and property (*māl*), matters for which the *Sharīᶜa* is mainly intended.[85] Al-Ghazālī indicates that all these four sub-categories are understood from the *Qurᵓān* and are further substantiated by the *Sunna*.[86] That these matters are rationally deemed to represent indispensable necessities of the public life is resulted by belief that the neglect of the *Sharīᶜa* in these areas will result in a destruction of life, and is thus rationally impossible.[87] The second category of interests, complementary to the first category, pertains to the people's needs (*al-maṣlaḥa al-ḥājiyya*), and should be established to ease the difficulties of life. This category of interests belongs to mitigating law. Acknowledging this category of interests is

---

84 Al-Ghazālī, *Shifāᵓ al-Ghalīl*, 159.

85 Al-Ghazālī, *Shifāᵓ al-Ghalīl*, 160; idem, *Al-Mustaṣfā*, I, 140

86 In his *Shifāᵓ al-Ghalīl*, in which al-Ghazālī differentiates interests into those which pertain to mundane life and those which pertains religion, he lists *al-maṣlaḥa al-ḍarūriyya* including only four universals: maintaining life, intellect, progeny and property, see al-Ghazālī, *Shifāᵓ al-Ghalīl*, 160. Later in his *Al-Mustaṣfā*, after he acknowledged the impossibility to differentiate both these kinds of life, he encloses aspects of religion in every level of category. *Al-Maṣlaḥa al-ḍarūriyya* now consists of the religion in addition to the four universals, see idem, *Al-Mustaṣfā*, I, 140. Al-Raysūnī observes that such other jurists as al-Qurāfī (d. 684), al-Ṭūfī (d. 716) and Ibn al-Subkī (d. 771) considered honor (*al-ᵓaᶜrāḍ*) as among universals, in addition to these five universal things, of this category of *maṣlaḥa*, see al-Raysūnī, *Naẓariyya*, 47-8, see also Shihāb al-Dīn al-Qurāfī, *Sharḥ Tanqīḥ al-Fuṣūl*, ed. Ṭāhā ᶜAbd al-Raᵓūf (Cairo: Maktabat al-Kulliyyāṭ al-Azhariyyā, 1973), 391; Muḥammad b. ᶜAlī b. Muḥammad al-Shawkānī, *Irshād al-Fuḥūl ilā Taḥqīq al-Ḥaqq min ᶜIlm al-Uṣūl* (Cairo: Muṣṭafā al-Bābī al-Ḥalabī wa Aulāduh, 1937), 216.

87 "*Yaqaᶜ dhālik al-maqṣūd fī ruṭbat yushīr al-ᶜaql ilā ḥifẓihā wa lā yastaghnī al-ᶜuqalāᵓ ᶜanhā.*" Here, although, as we shall see later, al-Ghazālī avoids claiming any affinity with the rationalist Muᶜtazilīs, his idea of rationalization of indispensable interests is very close to that of al-Baṣrī al-Muᶜtazilī, as already discussed. See al-Ghazālī, *Shifāᵓ al-Ghalīl*, 163.

to understand that the *Sharīᶜa* fundamentally serves to mitigate the possible harshness involved in the implementation of the first category of interests. The first two kinds of universal interests constitute the most important interests. They are embellished by another category of universal interests which are less important and are called "benefits" (*al-maṣlaḥa al-taḥsīniyya*). The last category of interests the *Sharīᶜa* seeks to promote is concerned with maintaining the good morality and behavior of the people. Although this category of interests is less important than the other two categories of interests, it is promoted because it helps to improve the functioning of the *Sharīᶜa*.

Al-Ghazālī's differentiation between the interests of the religious life and those of mundane life is obscure, for they interpenetrate. Regarding these three kinds of interests, al-Ghazālī affirms that they do not merely pertain to mundane life, but also involve aspects of religious and hereafter life. He suggest, for example, that wine is prohibited because harms the intellect, and can thereby harm not only the worldly but also the religious life. The same is rule of other matters of the essential necessities as well as of the other two categories: their beneficial or harmful aspects pertain to both the worldly and religious life.[88] It should be noted that al-Ghazālī's differentiation between the interests pertaining to worldly and religious life which the *Sharīᶜa*'s rulings promote does not mean that these two interests are for him separable.

As regards the meaning of the *Sharīᶜa* which promote the interests of religion, al-Ghazālī suggests that matters of worship, for example, which individually serve an unclear interest, in fact, provide benefits (*maṣlaḥa*) to the people. Citing the *Qurʾānic* verse on the benefits of prayer, "Prayer restrains from shameful and unjust deeds," al-Ghazālī holds that securing the interests of religion also serves people's interests in their mundane life.[89]

---

88 Al-Ghazālī, *Shifāʾ al-Ghalīl*, 164.

89 Al-Ghazālī, *Shifāʾ al-Ghalīl*, 159-161. On the verse, see Ali, *The Holy Qur'an*, (29: 45), 1041.

When the *Sharīʿa* states that prayer helps avoid wrong deeds, this can be explained in light of the potentiality of prayer to restrain the people from drinking wine, stealing, killing, etc. Prayer thus promotes the interests of religion and mundane life simultaneously.

His differentiation of these two aspects occurs only in his *Shifāʾ al-Ghalīl.* In his later work *Al-Mustaṣfā* he does not use it any longer. In the latter work, he implies to classify religious interests into three categories, just as the mundane interests are classified into three categories; it substantiates the idea that al-Ghazālī does not seek to contrast or oppose the religious and the mundane to each other. He locates maintenance of religious matters in every level of category that he discusses. The indispensable interests (*maṣlaḥa ḍarūriyya),* as he describes them, include preservation of religion, life, intellect, lineage and property.[90] In this category, by the preservation of religion he means securing the foundations of religion such as the belief in God and His Oneness and performing the ritual devotions.[91] When preservation of religion belongs to the second category (*maṣlaḥa ḥājiyya*), then it relates to the rules of concession which mitigate the harshness of people's needs concerning the interests of religion. To ensure this, al-Ghazālī says that the *Sharīʿa*'s permission to perform the shortened prayer (*ṣalāt al-qaṣr*) for the traveler, for example, can be interpreted as a sign of the *Sharīʿa*'s accommodation to the needs of people, although the difficulty (*mashaqqa*) is not necessarily the real cause here.[92] In the last category, dealing with the interests of benefits (*maṣlaḥa taḥsīniyya*), the interests of religion is concerned with such things as maintaining order (*marātib*) and good manners (*aḥsan al-manāhij*) in worship.[93]

---

90 Al-Ghazālī, *Al-Mustaṣfā*, I, 140; see also al-Raysūnī, *Naẓariyya*, 40

91 Al-Ghazālī, *Al-Mustaṣfā*, I, 287.

92 Al-Ghazālī, *Shifāʾ al-Ghalīl*, 168.

93 Al-Ghazālī, *Shifāʾ al-Ghalīl*, 169; idem, *Al-Mustaṣfā*, I, 140.

It seems that al-Ghazālī had finally made up his mind on the impossibility of differentiating these interests. The rulings of the *Sharīᶜa* are believed to secure people's interests (*maṣāliḥ*) for both the mundane and religious lives at the same time. Al-Ghazālī's consideration that the *Sharīᶜa* furthers human interests simultaneously in both spheres is probably what led him to replace his term "*al-buḍᶜ*" (sexual intercourse), used in his *Shifāʾ*, by the word "*al-nasl*" (progeny), in *Al-Mustaṣfā*.[94] This substitution seems to be a reflection of his later position which tends to explain the *Sharīᶜa* on the basis of its integrated interests, disregarding its relation to particular spheres of life. The word "*al-buḍᶜ*" relates solely to mundane matters, while "*al-nasl*" implies the interests of both mundane and religious life. All this indicates that, according to al-Ghazālī, the *Sharīᶜa*, in all spheres of life guarantees human welfare.

The categorization of the three kinds of interests, namely the essentials (*ḍarūrāt* or *maṣlaḥa ḍarūriyya*), the necessities (*ḥājāt* or *maṣlaḥa ḥājiyya*) and the benefits (*taḥsīnāt* or *maṣlaḥa taḥsīniyyaʾ*), on the basis of which *maṣlaḥa* is classified is peculiar for al-Ghazālī. The idea of the classification of *maṣlaḥa* in accordance with its conformity to a particular category of the interests, in itself, is not something new. As we have seen, al-Juwaynī had already introduced five categories. However, al-Ghazālī's formulation is original in that it represents his particular systematization of the subject. He has his own interpretation of the meaning that the purpose of the *Sharīᶜa* is to safeguard the categories of interests. He considers that the purpose, in its every categories, involve the interests of both the mundane and the religious life at the same time. Moreover, al-Ghazālī's threefold classifications encompasses al-Juwaynī's fivefold. Al-Ghazālī encloses the interests of the less intelligible matters belonging to al-Juwaynī's fifth category into his sub-category of preserving religion, which consists of the matters such as worship. Being of the view that the meaning

---

[94] The term "*al-buḍᶜ*" is stated in al-Ghazālī's *Shifāʾ al-Ghalīl*, 160; while the term "*al-nasl*" can be found in idem, *Al-Mustaṣfā*, I, 140.

of the less intelligible matters can also be identified through understanding their general relationship to the particular category, without understanding the benefits of the particular case itself, al-Ghazālī deems it possible even to interpret their position in all his categories. Thus he explains interests of religion in the light of whether they pertain to the *ḍarūrāt*, *ḥājāt*, or *taḥsīnāt*. Al-Juwaynī's differentiation of the third and the fourth categories, both consisting of matters of benefits, does not exist any longer in al-Ghazālī's formulation. It seems to me that al-Ghazālī considers both categories as equal and thus locates them in the same category, namely *taḥsīnāt* or *tazyīnāt* (benefits). Compared to al-Juwaynī's notion of the aims of the law, al-Ghazālī's shows a definitive advance and further innovation. Furthermore, for his categorization, al-Ghazālī provides ample examples and clarifies the relationship between one category and another to make his formulation clear. This is something never done by al-Juwaynī and shows the originality of al-Ghazālī's formulation.

In the scale of interest, the *Sharīᶜa*'s maintenance of the first category of interests (*ḍarūriyyāt*) constitutes its most important aims. The maintenance of this kind of interests is that *maṣlaḥa* the consideration of which would ensure the life of the community. Any ruling to adapt any new interests should be explained in accordance with its five sub-category which represents essential universal matters (maintaining religion, life, intellect, progeny and property) and not violate them. The death penalty for murder and the cutting of the hand for theft which apparently stand in sharp contrast with the *Sharīᶜa*'s securing of the individual's life are, in fact, to be seen in the light of their *maṣlaḥa* for other people. In these cases, the death penalty which sacrifices one person's life is aimed at ensuring human life in general. The *Sharīᶜa*'s prescription regarding the cutting of the hand should be explained in terms of its interest, viz. creating a disincentive against crime or mistreatment or threatening other peoples' property. The implementation of the first category as such does not exclude possibly controversial cases or exception. Thus, for instance, al-Ghazālī approves the marriage of a young daughter as a means to release her parents of the case of

maintenance. This opinion is contradict the principle that marriage is intended to ensure progeny which requires the maturity of the daughter. The practice of the marriage is, however, considered as valid when it is directed by the people's need (*ḥāja*) which is in fact another category of the secured interests, namely *al-maṣāliḥ al-ḥājiyyāt.* This opinion finds authority in the value of the *Sharīᶜa* on the basis of which the law justifies mitigating the rules.

The second category of the interests secured by the *Sharīᶜa* is that which relates to the needs (*ḥājāt*) which come after the essential necessities. These interests are concerned with the maintenance of the needs of people so as to prevent hardship in life. A recognition of the second category leads to an understanding of the *Sharīᶜa*'s flexibility in accommodating changing realities. The consideration of avoiding or reducing hardship and difficulty, for example, may bring about the reduction of obligations of the *Sharīᶜa.* Any consideration on the basis of which people fulfill their needs falls under the scope of this level of *maṣlaḥa.* This is an important *maṣlaḥa,* a complement to the essential *maṣlaḥa* of the first category. This category is referred to the *Sharīᶜa*'s rules which provide peoples' interests whose neglect leads to hardship in the community. The maintenance of these interests is thus to ensure particular aspects of *maṣlaḥa* for the people, the absence of which creates harm (*maḍarra*).

These interests consist of those deal with mitigating rules which may accommodate the possible harshness in implementing the first value. In the area of devotional matters (*ᶜibāda*), for example, there are concessions (*rukhaṣ*). The devotions are the *Sharīᶜa*'s way of maintaining religion for the five sub-essential necessities. The concessions, on the other hand, represent the *Sharīᶜa*'s rules which propose to mitigate the needs (*ḥājāt*). They make for the flexibility of the law and are needed for accommodating particular conditions. These mitigating laws may prevent possible hardships in undertaking the essentials (*maṣlaḥa ḍarūriyya*). The people's interest in the accommodation of the law to their needs find its

legal authority in the *Sharīᶜa*'s custom of maintaining this second category of the interests. Although neglecting the concessions will not lead to disruption, the concessions are to be given consideration because they benefit people (*maṣāliḥ*) by eliminating hardship (*maḍarra*) in the community.

To clarify the implementation of such interest, as already cited, al-Ghazālī gives a legal opinion on the validity of marriage of young children (*taslīṭ al-sighār*). A poor father or a guardian (*walī*) can marry off his young daughter on the reasoning that by this marriage he can release his obligation of maintenance. This marriage is not encouraged on biological grounds and is not covered by the category of indispensable interest for the young children. This marriage is, however, valid on the consideration that the marriage will end the obligation of their maintenance, etc. When it is known that the man who wants to marry her (*khāṭib*) is of an equal status to her and good morals, the young daughter is allowed to be married. Although the marriage itself does not give benefit concerning the essential necessity of marriage, it is considered valid, for it provides fulfillment to peoples' need (*ḥāja*) by reducing the difficulty of maintenance for the poor father.[95] The *Sharīᶜa*'s accommodation of people's interests and needs, such as several other mitigating rules, constitutes particular universal values of the *Sharīᶜa*. With regard to the categorization of the aims of *Sharīᶜa* and the *maṣlaḥa*, this value falls under the second category for it is less important than the first value of *Sharīᶜa*: to ensure indispensable interests.

Another category of interests, representing interests other than those in the *maṣlaḥa ḍarūriyya* and *maṣlaḥa ḥājiyya* categories, are in the position of benefits (*taḥsīnāt*). Although consideration of this kind of interest is deemed to be a less important *maṣlaḥa* than these mentioned above, it is promoted by the *Sharīᶜa*, provided that it serves to improve the character of the *Sharīᶜa*. This third class of interests consists of those whose

---

95 Al-Ghazālī, *Shifāʾ al-Ghalīl*, 166; idem, *Al-Mustaṣfā*, I, 140.

realization leads to the improvement and the attainment of that which is desirable in the community. They are the interests which deal with convenience, appropriateness, goodness, and ease of the *Sharīᶜa*. Securing good morality or behavior and desirable customs as well as good manners in devotions (*ᶜibāda*) and in human relationship (*muᶜāmala*) are the objectives of these interests. For example, the requirement of the fitness of men (*kafāᵓa*) for women in marriage, in the sense that women do not directly seek men whom they will marry but rather through guardians seeking appropriate men, falls within the scope of benefits. Here, the women who seek men by themselves are not appreciated by the existing religious customs since this shows their sexual desire toward men and is thus undesirable. The guardian system as a manner of securing the fitness of men for women in marriage is merely an interest of benefits. The interest of this system is not related to the indispensable necessities or needs of people, but is concerned with the matter of goodness. That the *Sharīᶜa* requires "equality" (*kafāᵓa*) between the man and the woman in marriage is justified by the implementation of this second category of interest.[96] This kind of interest is, however, to be secured by the *Sharīᶜa* because it serves the convenience of the community.

As such, the purposes of the law (*maqāṣid al-Sharīᶜa*) seek to ensure the realization of these categories of interests. Any established rulings in the *Sharīᶜa* must, in al-Ghazālī's view, be rationally relevant to one of this categories, and will never contradict the *Sharīᶜa*. The implementation of one ruling for maintaining a particular category of interests is not separable from other rulings for maintaining other categories of interests. This is due to the fact that all kinds of interests are simultaneously maintained by the *Sharīᶜa* in the same manner. In this respect, although *taḥsīnāt* constitute less important interests, their implementation is nevertheless demanded by the *Sharīᶜa*. Al-Ghazālī does not seem to consider the implementation of these categories of *maṣlaḥa* under the principle of

---

96 Al-Ghazālī, *Shifāᵓ al-Ghalīl*, 171; idem, *Al-Mustaṣfā*, I, 140-141.

alternative. This means, it is possible that the *maṣlaḥa ḍarūriyya* and *maṣlaḥa taḥsīniyya,* for example, are implemented at the same time, without contrasting one to the other. It is only when the interests involve alternatives between interests of *ḍarūriyya* and interests *ḥājiyya*, that the former should take precedence over the latter. If it is impossible to implement the interests at the level of *ḍarūriyya*, al-Ghazālī's categorization suggests that the category of *ḥājiyya* then should be applied. This is just like when one finds difficulty in performing the regular prayer, then one is allowed to make use of concessions which are provided as an alternative.

According to al-Ghazālī, any consideration which seek to maintain the above mentioned kinds of interests, representing maintenance of what is secured by the *Sharīᶜa* (*riᶜāyat amr maqṣūd*), is called *maṣlaḥa,* as contrasted with *maḍarra* (harm). In regard to *maḍarra*, representing whatever leads to the violation of these interests, al-Ghazālī affirms that whatever removes the *maḍarra* is *maṣlaḥa* as well.[97] The *maṣāliḥ* as such are the measure on the basis of which the conformity of any new public interest to the *Sharīᶜa* must be determined. When a particular interest directly or indirectly finds its similarity to, or falls in, the genus of one of these kinds of *maṣāliḥ*, it is considered a valid *maṣlaḥa* and is acceptable. Otherwise it is invalid and is to be rejected. In other words, when any new interests includes various expressions of *maṣlaḥa*, depending on the circumstantial values, al-Ghazālī would be prepared to justify only those relevant to the *maṣāliḥ* inferred from the *Sharīᶜa.*

The most important of al-Ghazālī's opinions on the notion of *maṣlaḥa* and the meaning behind the *Sharīᶜa* is his acknowledgment that an understanding of the *Sharīᶜa's* interests behind its rulings can be achieved through rational analysis. The *Sharīᶜa's* promotion of the needs of people is, even in the absent of the textual sources, also justified

---

97 Al-Ghazālī, *Shifāʾ al-Ghalīl*, 159.

by reason. However, al-Ghazālī insists that his way of using reason is different from that of the discredited rationalist Muᶜtazilīs, from whom al-Ghazālī excludes himself. According to the Muᶜtazilīs, al-Ghazālī says, maintaining what the *Sharīᶜa* cannot neglect, meaning peoples' necessities, is based on their theological idea of God's obligation to provide the creature with what is good for them. Particularly, their opinion of the impossibility of the *Sharīᶜa*'s neglect of the people's necessities is based on the determination of human reason of what is good and bad. Disagreeing with their opinion, al-Ghazālī takes the position that God freely determines His acts as regards His creatures without any obligation to provide them what is most beneficial to them. He argues that his rational understanding of the purpose of God's revelation is governed by indications and signs from the rulings in the *Sharīᶜa*. By an inductive methodology of examining the rulings of the *Sharīᶜa*, he believes that the custom (*ᶜāda*) of the rulings is to promote the people's interests (*maṣāliḥ*): securing aspects of benefit and preventing harms to the people.[98]

In such a way, al-Ghazālī claims that his rational understanding of the *maṣāliḥ* in the *Sharīᶜa* is not based on an independent reason, but is governed by the *Sharīᶜa* itself.[99] The principles governing the categorization of these three kinds of interests, al-Ghazālī insists, are also extracted from an inductive investigation into the textual sources: the *Qurʾān* and the *Sunna*. These three different interests represent universal norms which are inferred from several particular rulings in the authoritative sources.[100] The implementation of the meaning of the *Sharīᶜa* is considered to find its authority in the light of its attachment

---

[98] Al-Ghazālī, *Shifāʾ al-Ghalīl*, 162-4;

[99] Al-Ghazālī, *Shifāʾ al-Ghalīl*, 204.

[100] The universality of these categories is clearly indicated by Hallaq in his "The Primacy," 86.

to the *Sharīᶜa*. From this reasoning, al-Ghazālī believes that the formulation of the meaning as such is an acceptable matter and is practiced by the people of analogy.

Following his principle of *maṣlaḥa* as such, and in regard to the relation of new *maṣāliḥ* to those already existing in the *Sharīᶜa*, al-Ghazālī recognizes three new possible *maṣāliḥ*. First, *maṣlaḥa* which clearly finds its similarity in one genus of the three universal *maṣāliḥ* (*ḍarūriyya*, *ḥājiyya*, and *taḥsīniyya*), and is acceptable (*muᶜtabara*). The second possible *maṣlaḥa* is that which clearly contradicts or threatens to change the *maṣāliḥ* existing in the *Sharīᶜa* and it is thus invalid (*bāṭila*). The rest of the *maṣāliḥ* are those for which the *Sharīᶜa* provides no similarity nor indication of rejection. This third kind is thus considered as a strange *maṣlaḥa* (*gharība*) which, according to al-Ghazālī, consists of such things as heresy (*badīᶜ*).[101] This kind of *maṣlaḥa* is that which al-Ghazālī himself seems to accept, though not in its entirety. To determine of the validity or otherwise of undefined public interest, al-Ghazālī suggests, is subject to *ijtihād*. The jurist must decide upon it through his reasoning on the basis of such interest which is not contradicted by the textual sources, as we shall discuss later.

To explain the practical application of consideration of undefined public interest, al-Ghazālī cites a famous legal opinion on killing a person on a ship when it is realized that the ship will sink unless one person is removed. According to al-Ghazālī, consideration of peoples' interest by such a reasoning, i.e. sacrificing one innocent person to ensure the safety of a number of people, is a "strange" *maṣlaḥa* (*maṣlaḥa gharība*) for which the *Sharīᶜa* provides no clear indications in favor or against. Examining this opinion by his *ijtihād*, al-Ghazālī concludes that the opinion is a heresy (*bidᶜa*), for it justifies murdering an innocent person which is not allowed by the *Sharīᶜa*. He believes that when a person is innocent, the *Sharīᶜa* provides no reason to take his life. Here al-Ghazālī implies that the

---

101 Al-Ghazālī, *Shifāʾ al-Ghalīl*, 209-10.

sacrifice of a person in such a circumstances is not covered by the *Sharīᶜa*'s prescription on murder by retaliation (*qiṣāṣ*).

Maṣlaḥa in al-Ghazālī's Theory of *Munāsaba*

As already mentioned, al-Ghazālī defines *munāsaba* as a rational understanding of aspects of *maṣāliḥ* or their indications (*mā tushīr ilā wujūh al-maṣāliḥ wa amāratihā*). Reasoning by *munāsaba* represents a rationalization of a ruling on the basis of its *maṣāliḥ* (interests) which are considered to be relevant (*munāsib*) to the ruling. In clarifying his concept of *munāsaba*, al-Ghazālī analyses the case of the prohibition of wine. The prohibition of wine is due to its intoxicating effects, which are deemed to weaken the human intellect. The *Sharīᶜa*, on the other hand, seeks to safeguard the intellect; consequently, anything that can injure the intellect is considered harmful (*maḍarra*) and it must be properly prohibited under the consideration of *maṣlaḥa* (to avoid what is harmful for the people's rational behavior). In this case, the *maṣlaḥa* (maintaining the intellect) is protected by the *Sharīᶜa's* ruling of prohibition. This ruling, therefore, serves to illustrate the nature of *munāsaba*: relevancy between *maṣlaḥa* and its ruling. As pointed out earlier, when determination of the objective cause does not yield the *maṣlaḥa* which is relevant to the ruling, the attribute of *munāsaba* will be lacking. For example, to rationalize the prohibition of wine as being caused by its particular smell (*li-rāᵓiḥatih*) or its redness (*li-ḥumratih*), is not relevant to the ruling. Such a rationalization gives no understanding of *maṣlaḥa* nor therefore of *munāsaba*.[102]

Another example of rationalization by the principle of *munāsaba* relates to the *Sharīᶜa*'s legislation on women, who are not asked to make up for the prayers missed

---

102 Al-Ghazālī, *Shifāᵓ al-Ghalīl*, 145-146.

during the time of their menstruation, but they must do so for their fasting during Ramadhān. A rational analysis of its objective cause, al-Ghazālī suggests, is that making up for missed prayers will create difficulty for they are undertaken frequently in the day and night, while fasting poses no such difficulty. That the *Sharīᶜa* does not require women to perform their missed prayers is to be understood in term of *maṣlaḥa* (to avoid difficulty) and has similarity in other rulings of the *Sharīᶜa*. This reasoning shows relevancy between an objective cause and its ruling; as such it has the attribute of *munāsaba* (relevancy). In contrast to this, if one rationalizes that the cause of the ruling is "that the fasting is to be performed without obligation of ablution (*lā tajibu fīh al-ṭahāra*), while prayer is accompanied by demands of ablution," the cause, according to al-Ghazālī, serves no *maṣlaḥa* meaning which is relevant to the ruling. The rationalization as a such is thus deemed to give no attribute of *munāsaba.*[103]

A rational understanding of aspects of *maṣlaḥa* of a ruling may, in fact, be guided by direct or indirect indications in the *Sharīᶜa*. Direct indications here mean some explicit textual sources (*athar*) which directly mention a *maṣlaḥa* of a ruling,[104] on which a legal position for a new case which has similar attribute can be decided. Indirect indications mean some grounds from the *Sharīᶜa* which provide genus of *maṣlaḥa* on which a given case which implies similar meaning under the genus can be decided. To this end, the *maṣlaḥa* of the prohibition of wine (the harmful consequence of wine) is directly mentioned by the texts.[105] The texts dealing with the prohibition of wine and the reasons for it are found in both the *Qurᵓān* and *Sunna*. A tradition from the Prophet, for example, says that

---

103 Al-Ghazālī, *Shifāᵓ al-Ghalīl*, 147.

104 In his discussion of the theory of *munāsaba*, al-Ghazālī prefers to use the term "*al-ᵓathar*," rather than "*naṣṣ*." He implies "*athar*" to include the textual sources from the *Qurᵓān* and *Sunna* and the *ijmāᶜ* of the Companions of the Prophet, which is different from his "*al-naṣṣ*" because it consists of the textual sources merely from both the *Qurᵓān* and *Sunna*.

105 See the *Qurᵓān* (2: 219; 4: 93). For the tradition, see al-Imām Muḥammad b. ᶜIsā al-Tirmidhī, *Sunan al-Tirmidhī: al-Jamiᶜ al-Ṣaḥīḥ*, ed., ᶜAbd al-Raḥmān Muḥammad ᶜUthmān (Beirūt: Dār al-Fikr, 1983), 192-193.

wine is an intoxicating substance, and whatever is intoxicating is prohibited. On this textual basis the jurists then can understand that the prohibition gives the *maṣlaḥa* which stands in line with the *Sharīᶜa*'s principle to secure intellect. The idea that the prohibition of wine is due to intoxicating effects which harm the intellect is based on a rationalization of a ruling which is guided by the textual basis.

On the other hand, the objective cause of the ruling that women need not later perform the prayers missed during menstruation is determined by indirect indications from the *Sharīᶜa* concerning the accommodation of difficulties. The *Sharīᶜa*'s indications dealing with reducing difficulties (*maṣlaḥa*) themselves are not directly addressed to the case of the women. The *Sharīᶜa* rather provides the indications in different rulings dealing with the *Sharīᶜa* may remove prescribed obligation in order to prevent difficulties, such as giving concessions to travelers or sick people. Preventing difficulty to women is deemed to find its similarity (*mulāʾim*) to the genus of this ruling: the *Sharīᶜa's* mitigating possible difficulty.[106]

That *munāsaba* constitutes the determination of the objective cause on the basis of rational meaning behind the *Sharīᶜa* requires the implementation which is guided by the principle of *maṣlaḥa* as already clarified above. The categorization of *maṣlaḥa* into those relates to essential necessities (*ḍarūriyya*), peoples' needs (*ḥājiyya*), or benefits of life (*taḥsīniyya*) determines the strength or the weakness of *munāsaba.* When *munāsaba* pertains to essential necessities, it is deemed to be at its highest level. Its relation to public needs brings it to the second level and this represents the complement or mitigating law for the higher level of *munāsaba.* That which has the less important interest is *munāsaba* which is concerned with the third category of *maṣlaḥa* (*taḥsīniyya).* With regards to causation by *munāsaba* may establish the meaning which, according to our reason, has relevance to be

---

106 Al-Ghazālī, *Shifāʾ al-Ghalīl,* 148-9

use of the causes (*al-ḥaqīqī al-ʿaqlī*) or the meaning which has least certain (*al-khayālī al-ʾiqnāʿī*), *munāsaba* is divided into two categories: *munāsib ḥaqīqī ʿaqlī*, which includes *maṣlaḥa ḍarūriyya* and *ḥājiyya*, and *munāsib khayālī ʾiqnāʿī*, which consists of *maṣlaḥa taḥsīniyya*, as we shall discuss later.[107] All this is parallel to the definition that *munāsaba* represents the rationalization of ruling in the light of a *maṣlaḥa*. As already mentioned in the previous section, the maintenance of the meaning of the *Sharīʿa* in general as including its intents, principles, value, and spirit, is considered as *maṣlaḥa*. The rationalization of the ruling which yields the meaning of *maṣlaḥa* is deemed to have the attribute of *munāsaba*. In other words, reasoning by *munāsaba* necessarily consists of rationalization of the ruling on the basis of *maṣlaḥa*.

From the viewpoint of the availability or otherwise of textual authority in its favor, the reasoning of *munāsaba* is classified into three categories. They are: that which is directly identified by the revealed texts, called *munāsib muʾaththir*; that which is indirectly regulated by the texts, called *munāsib mulāʾim*; and that for which no textual authority can be found, called *munāsib gharīb*.[108] In fact, the definitions of these three categories are subject to dispute; therefore, al-Ghazālī's own interpretation needs to be discussed here. An understanding of this categorization is important because this will be discussed further in the context of the criteria of acceptable *munāsaba* and the techniques of implementation.

Al-Ghazālī defines *munāsib muʾaththir* as that for which the texts mention a particular indication, while *munāsib mulāʾim* is that for which the texts provide merely the genus of indication.[109] Substantially, *munāsib muʾaththir* and *munāsib mulāʾim* thus may consist of the same objective cause and ruling, but they have different types of grounds in

---

107 Al-Ghazālī, *Shifāʾ al-Ghalīl*, 162-169.

108 Al-Ghazālī, *Shifāʾ al-Ghalīl*, 144-149.

109 "*Mā ẓahara taʾthīruhu fī jinsihi lā fī ʿaynih*," *Shifāʾ al-Ghalīl*, 148-149.

the sources; particular texts or merely genus of the texts. As mentioned above, the prohibition of wine falls within the category of an understanding of *munāsaba* on which the texts explicitly mention the direct indication. The reasoning on the basis of *maṣlaḥa* in such a case is thus called "*munāsib muʾaththir*". If the texts did not mention the harmfulness of wine, the jurist could still infer it, basing his reasoning on some indirect texts attesting to the necessity of protecting the rational behavior. The prohibition of wine on the basis of such a reasoning would belong to the category of *munāsib mulāʾim*. This is based not on direct texts, but on a rational analysis carried out under the direction of certain indirect textual indications showing its similarity in to genus. Thus, al-Ghazālī says that the difference between *munāsib muʿaththir* and *munāsib mulāʾim* is not substantial, but is related to the availability of particular direct texts or indications of similarity in the genus of a ruling in indirect texts. If determination of *maṣlaḥa* of the ruling is based on the direct texts which mention a particular ruling (*ʿaynuh*), the *munāsaba* is considered to be under the category of *munāsib muʾaththir*. On the other hand, if this is based on indirect indications which mention the genus (*ʿuhida jinsuh*), the *munāsaba* falls within the category of *munāsib mulāʾim*.

Compared to the determination of *munāsib muʾaththir*, that of *munāsib mulāʾim* is more problematic. To identify the former one can simply seek its grounds in the explicit text, while to identify the latter one must properly seek its genus in the established indirect rulings in the *Sharīʿa* (*ʿuhida jinsuh fī taṣarrufāt al-Sharʿ*). Admittedly, the genus can only be discerned from our knowledge of the meaning behind the *Sharīʿa*. For example, the belief that the *Sharīʿa* does not demand women to make up for prayers missed during menstruation is similar (*mulāʾim*) to the genus of the existing precedents belonging to different cases. This means that the *Sharīʿa* itself does not clearly explain its objective cause. The *Sharīʿa*, however, has provided several rulings of other cases implying that the *Sharīʿa* may remove obligations to prevent difficulties. An understanding of the aims, the

principles, and the custom of the *Sharīᶜa's* rulings on different cases is necessary here because it helps identify *munāsib mulāᵓim.*

On the basis of the consideration of *munāsib mulāᵓim*, the legal opinion that the prohibition of drinking wine includes drinking even small portions, although it does not intoxicate, is extended to decide the prohibition of drinking other little intoxicating things. The causation (*al-taᶜlīl*) on the basis of *maṣlaḥa* which represents the objective cause (*ᶜilla*) here is that drinking a little amount of wine will be an incentive to drink much more, which will be intoxicating. Furthermore, the quantity which will intoxicate cannot be determined because different people will require different measures. Based on considerations of such aspects of *maṣlaḥa*, even a little wine, and likewise other little intoxicating things, are thus prohibited. According to al-Ghazālī, this reasoning is under the general implementation of *munāsib mulāᵓim* because it has grounds in the genus of similar meaning of the rulings in the *Sharīᶜa.* He says that the prohibition of drinking a little intoxicating things is similar to the *Sharīᶜa*'s prohibition of a man and a woman being together in seclusion (*al-khalwa*). In this regard, the *Sharīᶜa* prohibits seclusion on the ground that such seclusion may lead to fornication, which is prohibited. Other rationalizations of the objective cause of the rulings and their extension to new cases on the basis of its similarity (*mulāᵓim*) to the genus of the precedents in the *Sharīᶜa* are considered to have the attribute of *munāsib mulāᵓim.*[110]

Al-Ghazālī's definitions of *munāsib muᵓaththir* and *munāsib mulāᵓim* as such are peculiar. His concept of *munāsib muᵓaththir* is different from that of al-Dabūsī, for example. Al-Dabūsī's view implies that *munāsib muᵓaththir* includes the reasoning on the basis of *maṣlaḥa* which is guided both by direct and indirect indications. On this view, he considers that the causation of the cleanliness of cats on the basis of the tradition from the

---

110 Al-Ghazālī, *Shifāᵓ al-Ghalīl*, 152.

Prophet "The cats are among the animals which accompany you"[111] is the implementation of *munāsib muʾaththir*. According to al-Ghazālī, this causation is not under considerations of *munāsib muʾaththir*, but is rather under those of *munāsib mulāʾim*. Al-Ghazālī reminds us that the cleanliness of the cats is not directly indicated by the source. The cleanliness is concluded from the reasoning that the cats accompany us lead to our necessity (*ḥāja*) to accompany them too, and they are necessarily to be cleanliness. This represents making a ruling in consideration of mitigating the needs of people which is justified by among the genus of principles existing in the *Sharīʿa*. The reasoning as such is considered as the causation on the basis of *munāsib mulāʾim*.[112]

The third category, *munāsib gharīb*, represents the "strange" *munāsaba*, and refers to rationalization of a ruling in the light of those kinds of *maṣlaḥa* for which the *Sharīʿa* provides no indication as to their validity or rejection. This kind of *munāsaba* includes consideration of unrestricted *maṣlaḥa*, i.e. *maṣlaḥa* undefined by the established rules of the *Sharīʿa*. For instance, according to al-Ghazālī, the causation that the *maṣlaḥa*, representing the objective cause, behind the murderer's not inheriting from the killed person is "canceling the right of the person who wants to take it before its appropriate time" is a "strange" (*gharīb*) reasoning. This reasoning belongs to the category of *munāsib gharīb* because the *Sharīʿa* provides no grounds in favor or against. He says that if this is rationalized by the idea that the killing is a crime, and canceling the murder's share in inheritance is its punishment, this has similar principle (*mulāʾim*) to those already existing in the *Sharīʿa*: the *Sharīʿa* provides the crime with the punishment. The prohibition therefore comes under

---

111 "*Innahā min al-ṭawwāfīn ʿalaykum wa al-ṭawwāfāt*," quoted in al-Ghazālī, *Shifāʾ al-Ghalīl*, 178.

112 In explaining his own concept of *munāsib mulāʾim*, al-Ghazālī employs several examples of the rationalizations of rulings by al-Dabūsī which according to al-Dabūsī are under the reasoning by *munāsib muʿaththir*, but, in fact, fall under al-Ghazālī's definition of *munāsib mulāʾim*, see al-Ghazālī, *Shifāʾ al-Ghalīl*, 178-186.

the consideration of the genus of punishment. Hence when it is done by children or the insane, it will lead to no prohibition for they are not liable or responsible for their acts.[113]

Another example of *munāsib gharīb* is the rationalization of the prohibition of usury (*ribā*) in the four articles for food.[114] According to al-Ghazālī, although the prophetic tradition states, "Do not sell food by food," to consider "food" as the cause of prohibition is strange causation.[115] Another instance is the widow's not needing a guardian (*walī*) who may enforces woman to get marriage given the objective cause that she already has experience in marriage. The prophetic tradition, "The widow has more right to herself than her guardian," does not refer to experience in marriage.[116] The rationalization is, therefore, considered to have no authority and is strange. This belongs to the category of *munāsib gharīb.*

An investigation of al-Ghazālī's work *Shifāʾ al-Ghalīl* shows al-Ghazālī's different uses of the term *munāsib gharīb.* In the beginning he uses the term "*gharīb*" to indicate the general consideration of *maṣlaḥa* for which the *Sharīʿa* has no basis, whether in support or against. In this meaning, *munāsib gharīb* consists of all reasoning of a given case which relies purely on rational analysis of the *maṣāliḥ* which is not corroborated in existing sources. It involves every consideration of undefined public interest, in the sense that the *Sharīʿa* provides no precedent in specific or in the genus of meaning.[117] In the following pages, arguing that undefined public interest may include aspects of peoples' interest which

---

113 "*Istiʿjāl al-ḥaqq qabl awānih,*" see al-Ghazālī, *Shifāʾ al-Ghalīl,* 155.

114 "... wheat for wheat, barley for barley, dates for dates and salt for salt must be equal for equal, hand to hand ....." quoted and translated by Kamali in his *Principles,* 265.

115 "*Lā tabīʿū al-ṭaʿām bi al-ṭaʿām,*" al-Ghazālī, *Shifāʾ al-Ghalīl,* 154-156.

116 "*Al-thayyib aḥaqq bi nafsihā min waliyyihā,*" al-Ghazālī, *Shifāʾ al-Ghalīl,* 155.

117 For al-Ghazālī's definition of the terms *munāsib gharīb* by such a meaning, see al-Ghazālī, *Shifāʾ al-Ghalīl,* 158.

can be justified by the general meaning of the *Sharīᶜa* (*ᶜādat al-Sharᶜ*), he uses the term *munāsib gharīb* to indicate a different meaning. They are used specifically to indicate reasoning on the basis of strange *maṣlaḥa* which is rejected. To indicate those types of reasoning which are justified, he uses other terms "*al-istidlāl al-mursal*", "*al-munāsib al-mursal*", and "*al-maṣlaḥa al-mursala*" or "*istiṣlāḥ*", as we shall discuss later.[118]

As such, al-Ghazālī's doctrine of *munāsib mulāᵓim* constitutes a great innovation in legal reasoning in determining the cause (*ᶜilla*) for which the *Sharīᶜa* provides no direct textual indications. Having determined that the ruling implies an attribute of *munāsib mulāᵓim*, the attribute is then taken as the cause of the ruling and can thereby be extended to other cases having the same attributes. Furthermore, he proposes that even *munāsib gharīb*, meaning that of *mursal*, may be the determinant of a cause. Significantly, this would enable the Muslim jurists to make a ruling on a certain case on the basis of public interest as determined by reason and without definite grounds in the textual sources. This is al-Ghazālī's legal doctrine on the basis of which new public interests, while have no similarity to those are recognized in the *Sharīᶜa*, may be justified. His concepts of *munāsib mulāᵓim* and *munāsib mursal* illustrate his theory of the adaptability of Islamic law in facing changing societies. Showing how the theory is to be implemented without violating the *Sharīᶜa* constitutes the most important contribution of al-Ghazālī's legal doctrine. The detailed principles of the theory will be analyzed in the next chapter.

---

118 See al-Ghazālī, *Shifāᵓ al-Ghalīl*, 177, 217, 207, 216-217.

CHAPTER II

MUNĀSABA IN AL-GHAZĀLĪ'S LEGAL REASONING ON THE ADAPTABILITY OF ISLAMIC LAW

Al-Ghazālī's theory of legal causation (*al-taʿlīl*) on the basis of *munāsaba* represents his advanced investigation on the problem of putting into effect the meaning and purpose behind the *Sharīʿa*. Within the context of the theory of *munāsaba*, the rationalization of the ruling aims at understanding the principles of the *Sharīʿa* through the use of human reason. This reasoning serves as the basis for an understanding of the law's humanity and its potential to adapt to a developing society. Since the theory of *munāsaba* is concerned with the formulation of legal causation as regards matters for which the *Sharīʿa* has no direct textual basis (*bi-ʿayn al-ḥukm*), the theory is mainly addressed to the causation which relies on *munāsib mulāʾim* and *munāsib gharīb*.[119] His reasoning on the basis of *munāsib mulāʾim* contributes to the principle of causation regulating rulings for which the *Sharīʿa* has no direct basis, but provides the genus of meaning indicated in a different ruling. By this principle, the causes of several rulings can be determined on the basis of their similarity to the genus of meaning already established in the *Sharīʿa*. The meaning, representing the causes, can be extended to arrive at a ruling on any new cases which have the same attributes. Furthermore, al-Ghazālī's reasoning on the basis of *munāsib mursal*, to indicate acceptable but undefined public interests (*munāsib gharīb*), contributes a legal principle to the context of the theories determining the legal status of cases for which the *Sharīʿa* provides no precedent (*al-aṣl*). This reasoning seeks a rationalization of the ruling on the basis of the human

---

[119]As already mentioned in the previous chapter, al-Ghazālī classifies causation by *munāsaba* by asking whether it is dictated by the meaning of a direct textual basis (*biʿainihi*) and called *munāsib muʾaththir*, or is indicated by the genus of meaning existing in an indirect basis (*fī jinsihi*) and called *munāsib mulāʾim*, or is indicated by no similar meaning established in the *Sharīʿa* and therefore called *munāsib gharīb*. See, "*Maṣlaḥa* in al-Ghazālī's Theory of *Munāsaba*," in this thesis, 56-60.

understanding of the general intent behind rulings in the *Sharīʿa*. Such reasoning enables the jurist to decide given cases under the direction of the *Sharīʿa* principles.

Munāsib muʾaththir, on the other hand, is considered by al-Ghazālī to be less important because it is determined by the direct texts (*athar*), rather than being based on reasoning by *munāsaba*. The meaning as the objective cause finds its basis in that which the text explicitly dictates to be the objective cause. This reasoning is thus not determined by a rationalization based on an understanding of the meaning implied by the text. It is understandable then that al-Ghazālī considers *munāsib muʾaththir* to fall under the category of causation which has a textual basis (*taʾthīr*).[120] This is to be excluded from his discussion of *munāsaba* which mainly deals with causation on the basis of reasoning. He indicates that the category of *munāsib muʾaththir* is only to be employed as a bridge for understanding *munāsaba* which is not guided by direct textual indications.[121] It is reasonable to consider, then, that al-Ghazālī's elaboration of the theory of *munāsaba* is concerned primarily with the first two kinds, namely, *munāsib mulāʾim* and *munāsib gharīb*.

These three kinds of causation by *munāsaba* are not absolutely distinct. They rather represent a relative and interrelated categorization which requires particular analysis for their identification. An understanding of the types of *munāsaba* finds its significance in al-Ghazālī's clarification of their different applications and his argument for the authoritativeness of some. To understand al-Ghazālī's theory of causation by *munāsib mulāʾim* and *munāsib gharīb*, it is necessary to analyze his examples. His particular explanation of *munāsib mulāʾim* and *munāsib gharīb*, especially *munāsib mursal* or *maṣlaḥa mursala*, which he claims to be free of liberal rationalizing, must be

---

120 Al-Ghazālī, *Shifāʾ al-Ghalīl*, 145.

121 It is stated that *munāsib muʾaththir* is introduced simply to assist in an understanding of the meaning of *munāsib mulāʾim*. See al-Ghazālī, *Shifāʾ al-Ghalīl*, 144-5.

investigated. Furthermore, how these two types of reasoning by *munāsaba* are applied under the guidance of the principles of the *Sharīᶜa*, and without violating those principles, constitutes the most salient characteristic of al-Ghazālī's legal causation. This will also be studied in what follows. The following section deals with these matters.

A. *Munāsib Mulāᵓim* (Public Interest Stipulated in Genus)

Al-Ghazālī defines *munāsib mulāᵓim* as an expression of the understanding of the meaning inferred in a given case which has a similarity to the genus established in the *Sharīᶜa*. Causation by *munāsib mulāᵓim* means the rationalization of a given case on the basis of a *maṣlaḥa* for which the *Sharīᶜa* provided the genus through a different ruling. This causation, therefore, consists of reasoning for identifying the cause which is not dictated by a direct textual basis, but rather indicated on an indirect basis. For example, the *Sharīᶜa*'s ruling that the widow (*thayyib*), in the case of remarriage, is free from the necessity of having a guardian (*ḥaqq al-ijbār lil-walī*) is not accompanied by a clarification of its cause. The rationalization of this ruling results in the idea that the authority of the guardian is related to the condition of "youth" (*al-ṣighār*); if the widow is deemed to have "maturity" (*al-bulūgh*), she is to be freed from the guardian. This rationalization is considered as *munāsib mulāᵓim* because it has support in the genus of the meaning implied in a different ruling which concerns the orphan: if the orphan is mature enough to take care of his wealth, he may be freed from the necessity for a guardian.[122] Again, the ruling that women do not have to make up for prayers missed during menstruation can be rationalized in consideration of "preventing difficulty", because the prayers are performed repeatedly. This reasoning has some grounds in the

---

[122] Al-Ghazālī, *Shifāᵓ al-Ghalīl*, 149; for the verse, "Make trial of orphans until they reach the age of marriage (*balaghū al-nikāḥ*), if then you find sound judgment in them, release their property to them...," see Ali, *The Holy Qur'an* (4: 6), 180.

genus of a meaning implied in several *Sharīᶜa* rulings, which indicates that the possibility of hardship allows to mitigation of or release from duties.[123]

Reasoning by *munāsib mulāʾim* in a new case can be exemplified as the investigation of the legal status of consuming a small amount of an intoxicant other than wine (*khamr*), such as *nabīdh.*[124] Such a drink is prohibited under reasoning by analogy, on the basis of the prohibition of drinking even a small amount of wine. Although drinking a little of either wine or *nabīdh* may not intoxicate, it is prohibited under the reasoning that drinking a little leads to drinking more, which is then intoxicating. This reasoning is considered to have its basis in the *Sharīᶜa* ruling which prohibits a man and a woman being together in seclusion (*khalwa*), which may lead to fornication which is prohibited. The ruling on seclusion and the ruling on drinking a little of intoxicants are different rulings, but they do provide a similar genus of meaning: actions which may lead to doing what is prohibited by the *Sharīᶜa,* themselves are prohibited.[125] The legal decision regarding the prohibition of drinking a little *nabīdh* represents reasoning on the basis of *munāsib mulāʾim.* It is guided by a principle on which the *Sharīᶜa* has provided the genus through a different ruling. The example suggests that the ruling for which the *Sharīᶜa* does not mention the governing cause may be rationalized by understanding its inferred meaning which is similar to the genus of meaning already existing in other rulings. The meaning, representing the grasped objective cause, may then be extended for identifying the ruling of a given case which has similar attributes.

---

123 Al-Ghazālī states that such mitigating rulings include concessions for travelers, the sick, or others in similar circumstances, who are allowed to perform the shortened prayers and to leave out several obligations; al-Ghazālī, *Shifāʾ al-Ghalīl*, 149.

124 *Nabīdh* is an intoxicating beverage, E. W Lane in his *Lexicon*, explains that *nabīdh* is "made of dates, or of raisins, which one throws into a vessel, or skin of water, and leaves until it ferments and becomes intoxicating," E. W. Lane, *Arabic-English Lexicon,* ed. Stanley Lane Poole, II (England: The Islamic Texts Society, 1877), 2757.

125 Al-Ghazālī, *Shifāʾ al-Ghalīl*, 152.

Substantively, reasoning by *munāsib mulā'im* is not very different from reasoning by *munāsib mu'aththir* because the latter also refers, indirectly, to the *naṣṣ*. Reasoning by both *munāsib mu'aththir* and *munāsib mulā'im* constitute techniques of reasoning which are tied to the sources (the texts of the *Qur'ān* and the *Sunna*, and the consensus of the early Companions of the Prophet).[126] They are, however, distinguished one from the other. In the case of *munāsib mulā'im*, the given basis does not directly deal with the case in question, but rather is concerned with a different case which is governed, however, by a similar principle. The basis of *munāsib mu'aththir*, on the other hand, directly and particularly deals with the case under which the new case is subsumed. For example, the prohibition of drinking wine is textually accompanied by an explanation of its cause, viz. "intoxication". On the basis of this textual causation (*ta'thīr*), whatever intoxicates other than wine is also prohibited.[127] Thus, reasoning by *munāsib mu'aththir* is none other than deductive legal reasoning guided by direct textual indications. Compared to reasoning by *munāsib mu'aththir*, that of *munāsib mulā'im* is characterized by its determination on the basis of a rational understanding of *maṣlaḥa*, and is not dictated by a direct textual basis.

As such, al-Ghazālī's theory of *munāsib mulā'im* is clearly tied to the binding sources. Its closeness to the sources is, moreover, substantiated by the fact that the applications of al-Ghazālī's *munāsib mulā'im* are considered by other jurists, including al-Dabūsī, under their definition of *munāsib mu'aththir*. For example, the legal decision

---

[126] In the case of the consensus which is known as *ijmā' al-ṣaḥāba*, al-Ghazālī affirms that, like the texts (*al-naṣṣ*) of the *Qur'ān* and the *Sunna*, consensus also consists of rulings which have an intelligible *maṣlaḥa*. The rationalization of a given case on the basis of this kind of consensus will constitute the realization of reasoning by *munāsaba*. For example, the consensus that the superiority of the descendants' respective claims in inheritance is determined by the closeness of the relationship (*al-qarāba*) with the deceased person is intelligible, and this consensus is thus to be extended. On the basis of this, the question of whether or not both the grandfather and the brother are given their inheritance can be determined. This represents the realization of reasoning by *munāsaba*, by *munāsib mulā'im* to be precise. Just like *al-naṣṣ*, consensus may also have no intelligible meaning, though this kind of consensus represents only a small portion of the total consensus. See al-Ghazālī, *Shifā' al-Ghalīl*, 147-148.

[127] Al-Ghazālī, *Shifā' al-Ghalīl*, 145-146.

that cats are clean (*suqūṭ al-najāsa*) is deemed by al-Ghazālī to be guided by *munāsib mulā'im*, while this is considered by al-Dabūsī to be under *munāsib mu'aththir*. This legal opinion is mainly based on the meaning implied in the Prophetic tradition concerning the status of cats, "Cats are among the animals which accompany you." The affirmation that cats stay around us indicates a difficulty in avoiding them, which leads to the necessity of our recognizing their cleanliness. Thus, an understanding of the cleanliness of cats is not directly governed by a textual basis, but is rather indicated by the principle of establishing what is needed and removing what leads to difficulty, a principle inferred from several other rulings. This reasoning is considered *munāsib mulā'im* by al-Ghazālī, though it is seen to be under the general category of *munāsib mu'aththir* by some other jurists.[128]

However, in practical terms, *munāsib mulā'im* is not simply an implementation of the genus of meaning from a different ruling which is assumed to share some similarity with the meaning of a given case. To identify *munāsib mulā'im*, al-Ghazālī suggests, the meaning of the existing basis which is already established in a different ruling must be examined to see whether or not it conforms to the meaning customarily used by the *Sharī'a*. Consequently, the existence of a certain meaning in a text, presumably indicating its similarity with the given case, does not necessarily produce the status of *munāsib mulā'im*. For the reasoning to be under *munāsib mulā'im*, the understanding of the genus of meaning must accord with an understanding of the *Sharī'a* meaning over all as usually followed. Otherwise, the understanding of the meaning will be considered strange (*gharīb*) because the *Sharī'a* does not recognize it.

Thus there may be a reasoning by *munāsaba* for which the *Sharī'a* provides the basis, but that basis is understood to provide a strange meaning (*munāsib gharīb*) through

---

128 On the examples of *munāsib mulā'im* which are called *munāsib mu'aththir* by other jurists, see al-Ghazālī, *Shifā' al-Ghalīl*, 178-187.

disregard for the custom of the *Sharīᶜa*. For example, to regard the legal opinion that widows are free of their guardians as being based on their "having married" (*mumārasa*), is considered as a strange causation. Although it is possible to argue that the causation is based on the analogy of grown up and mature orphans, an analysis of the basis indicates that the legal opinion about widow is a strange interpretation of the basis in question. From the injunction "Make trial of orphans until they reach the age of marriage (*balaghū al-nikāḥ*), if then you find sound judgment in them, release their property to them...,"[129] it is not to be understood that liberation of orphans is based on their age of marriage, it is rather to be understood to mean that their liberation, in fact, requires their maturity in dealing with and taking care of their wealth. The former interpretation is considered to constitute a strange meaning, while the latter is deemed to provide a more relevant meaning. For the latter has support in the custom of the *Sharīᶜa* which requires the maturity of a person in applying God's commands. On the basis of this, the ruling that the widows are free of the supervision of guardians is to be rationalized, not by their "having married", but with reference to their "youth (*ṣighār*) or maturity (*bulūgh*)". The causation "having married" is based on a strange meaning of the basis which leads to a strange causation (*munāsib gharīb*) and thus to rejection.[130]

Moreover, as a given case may also involve various interpretations, determination of *munāsib mulāᵓim* should be the result of probing (*al-sabr*) and of successive elimination (*al-taqsīm*) of other interpretations. Such reasoning involves dialectical disputation through which the various possibilities may be proposed and examined, so as to arrive at the ultimate understanding of the meaning behind the case. An interpretation is accepted if it can be shown to accord with the meaning customarily used in the *Sharīᶜa*, otherwise it is considered "strange" and thus rejected. The elimination of the possibilities

---

[129] See the verse in Ali, *The Holy Qur'an* (4: 6), 180.

[130] Al-Ghazālī, *Shifāᵓ al-Ghalīl*, 150, 153-4.

must lead to a choice which has the more relevant meaning as maintained in the *Sharīᶜa* and has a stronger evident in existing rulings of a similar genus. For example, the *Sharīᶜa* ruling that the murderer cannot inherit from the killed person may be rationalized in several ways. If it is interpreted to have the cause "to cancel the intent of one who wants to take his right before the time (*istiᶜjāl*)," the rationalization is deemed strange because the *Sharīᶜa* provides no basis which implies a similar meaning (*lā yulāʾim*). This idea is thus to be eliminated from the determination of *munāsib mulāʾim*. If the ruling is rationalized to have the cause "to punish him who has committed a crime," for example, it finds some textual grounds as regards the principles of punishment for a crime. Therefore, the latter rationalization is acceptable. As long as there is no other rationalization which has a stronger meaning, the rationalization is followed and may be extended to other cases which have similar attributes.[131]

As such, among the most important characteristics of al-Ghazālī's theory of *munāsib mulāʾim* is that this is a kind of reasoning which seeks legal justification from principles already established in the *Sharīᶜa*. A given case is to be rationalized in the light of its conformity with the principles already existing in the *Sharīᶜa*. A case may consist of several possible meanings, but the rationalization must be concerned with only those which have a similar meaning in the *Sharīᶜa*. The meaning for which the *Sharīᶜa* provides no similar genus is to be disregarded. For example, as regards the *Sharīᶜa* ruling that selling four kinds of articles (wheat, barley, dates, salt) must fulfill three requirements, viz. similarity in weight, hand to hand transaction, and substitution (*al-mumāthala, al-taqābuḍ and al-ḥulūl*), the governing cause of the ruling needs to be determined.[132] According to al-Ghazālī, the cause of this ruling is the "honor" (*ḥurma*)

---

[131] Al-Ghazālī, *Shifāʾ al-Ghalīl*, 155.

[132] For the Prophetic tradition, "... *wa al-burr bi al-burr wa al-shaᶜīr bi al-shaᶜīr wa al-tamr bi al-tamr wa al-milḥ bi al-milḥ mathalān bi mathal sawāʾan bi sawāʾ yadan bi yad*," see Muslim, *Ṣaḥīḥ Muslim*, 252.

and the "nobility" (*ʿizz*) of these articles, in the sense that they grow in respected places (*munbiʾ ʿan al-hurma*). The way to gain what is honored is restricted; hence they are tied by several requirements. The restriction implicitly leads people to demand that which is deemed to possess honor, and this then elevates it to a higher rank.

Rationalization of the ruling of the four articles as such is deemed to have its basis in the *Sharīʿa*'s ruling which regulates the lawfulness of intercourse (*istiḥlāl al-buḍʿ*). The lawfulness of intercourse, meaning marriage, depends on several things: dowry (*ʿiwaḍ*), guardian (*walī*) and witnesses (*shahāda*). Although the requirements for marriage are different from those of selling the four articles, both kinds of requirements imply a similar purpose: to restrict the way to attain that which has honor.[133] Interpreting the meaning of the requirement which governs the sale of these articles means considering only a certain aspect of them. This aspect is made the basis of the ruling because it is justified by a principle implied in an existing ruling of the *Sharīʿa*. Other aspects of these articles, such as their being measured by capacity (*kaylī*) or measured by weight (*waznī*), as rationalized by other jurists, are to be disregarded because these are not supported by any basis in the *Sharīʿa*. This example demonstrates that determination of *munāsib mulāʾim* may constitute a rationalization of a given case in the light of a similarity of its meaning with a meaning implied in a different case, although this procedure results in disregarding its other aspects.

Thus, reasoning by *munāsib mulāʾim* involves several aspects of argumentation. On the one hand, an interpretation of the basis must be guided by the principles customarily used in the *Sharīʿa* rulings. When the basis is understood as a strange meaning, the interpretation is considered as incorrect and cannot be extended to other cases. Moreover, the understanding of the meaning of a given case must also reflect an

---

[133] Al-Ghazālī, *Al-Mustaṣfā*, II, 98; idem, *Shifāʾ al-Ghalīl*, 151-152.

understanding of the meaning customarily used in the *Sharīᶜa*. Its meaning must be seen in the light of its similarity with the overall meaning of the *Sharīᶜa*. On the other hand, as for the selection of possibilities, reasoning by *munāsib mulāᵓim* must be based on the strongest possible meaning. This suggests that if several possibilities appear in the course of argumentation, the strongest one must be identified. The availability of an existing basis, which apparently indicates the genus of meaning of the given case, or a certain interpretation of a new case, does not necessarily create the attribute of *munāsib mulāᵓim*. Determining *munāsib mulāᵓim* must reflect the ultimate understanding of the meaning which conforms with the custom of the *Sharīᶜa's* principles. Conversely, a textual basis might be presumed to have no reasonable meaning whereby to provide guidance for a new case, but further analysis may show its relevance to that new case.

As regards the determination of *munāsaba*, al-Ghazālī states that it is identified through a rational analysis (*al-naẓarī al-ᶜaqlī*). One's conclusion about the identification of *munāsaba* can even be examined and challenged by the defendant. This requires a dialectical methodology which employs, to a great extent, the jurists' argumentation. Dialectical disputation (*mujādala*) for determining the strongest rationalization is characteristic of al-Ghazālī's theory of *munāsaba*. Each example he uses to explain the theory is presented in the form of a dialectical argumentation.[134]

Insisting on the authortativeness of reasoning by *munāsib mulāᵓim*, al-Ghazālī maintains that this reasoning is based on a definite (*qaṭᶜī*) textual indication. Given the definiteness, the reasoning is valid and authoritative. He insists that this reasoning is not substantially different from reasoning by *munāsib muᵓaththir* (causation on the basis of direct texts). Therefore, the authoritativeness of the former follows from that of the latter,

---

134 In contrast to al-Ghazālī, al-Dabūsī maintained that determination of the attribute of *munāsaba* is not subject to reason, but is determined by the jurist's inclination (*al-wuqūᶜ fī al-nafs wa qabūl al-qalb lahu, wa ṭumaᵓnīnat al-qalb ilayh*): cited in al-Ghazālī, Shifāᶜ al-Ghalīl, 142. For al-Ghazālī's position and his critique of al-Dabūsī on this point, see idem, 142-143.

which is justified in terms of the validity of reasoning by analogy (*qiyās*). Al-Ghazālī claims that the realization of this type of reasoning in legal decisions is unanimously accepted by the proponents of reasoning by analogy (*fuqahāʾ al-qāʾisīn*). Even Abū Zayd al-Dabūsī, whom he formerly criticized because he is believed to have rejected reasoning by *munāsaba* unless such reasoning is based on direct indications in the *Sharīʿa* (*muʾaththir*), used to base his legal decisions on *munāsib mulāʾim*.[135]

We can see that, in fact, al-Ghazālī's idea is not different from that of al-Dabūsī. Both jurists agree that, fundamentally, the basis of this reasoning is sound, like that of reasoning by *munāsib muʾaththir*. Al-Dabūsī considers this reasoning under his definition of *munāsib muʾaththir*, which al-Ghazālī calls it *munāsib mulāʾim* and the validity of which he equates with the validity of reasoning by *munāsib muʾaththir*. Several legal opinions al-Dabūsī regards as determinations of *munāsib muʾaththir* belong, in fact, to the category of *munāsib mulāʾim*, though the former saw it under the category of *munāsib muʾaththir*. Al-Dabūsī affirms in fact that such reasoning is a matter of obligation (*wujūb al-ʿamal*). Some other jurists such as al-Dabūsī's predecessors, Abū al-Ḥasan al-Karkhī (d. 340) and al-Jaṣṣās al-Ḥanafī, and later jurists such as Fakhr al-Islām al-Bazdawī (d. 482) and his brother Abū Yusr, also define *munāsib muʾaththir* as including *munāsib mulāʾim* as used by al-Ghazālī. Like al-Dabūsī, however, they too use this reasoning under their definition of *munāsib muʾaththir*.[136]

Al-Ghazālī claims that reasoning by *munāsaba* was already done by the Companions of the Prophet. He believes that the Companions understood the rulings of several cases on the basis of the meaning behind their textual grounds. The Prophetic tradition concerning the legal status of kissing while fasting, he says, is an example.

---

135 Al-Ghazālī, *Shifāʾ al-Ghalīl*, 177.

136 For further information on their ideas on reasoning by *naṣṣ* and the meaning of *munāsaba*, see Shalabī's work *Taʿlīl al-Aḥkām*, which has a brief but useful discussion of the subject, 198-255.

Without giving a direct answer to the problem, the Prophet is reported to have said: "What do you think if you were to gargle (*tamaḍmaḍa*)?" According to al-Ghazālī, this tradition implies the explanation: "Why do you not understand that kissing is an act leading to sexual intercourse, just like gargling which leads to drinking," so that the ruling on kissing is like the ruling on gargling.[137] This tradition indicates that a new case may be decided on the basis of a similarity of its meaning to the meaning of a known ruling from a different case. The established ruling of a case of which the *Sharīʿa* indicates the meaning is to be extended to an unregulated case which is considered to have a similar meaning. This technique of making a ruling represents a rational analysis of the genus of meaning behind the ruling and comes under al-Ghazālī's definition of reasoning by *munāsib mulāʾim*.

Another instance through which al-Ghazālī seeks to show the use of *munāsib mulāʾim* by the Companions is concerned with the question of whether or not performing the pilgrimage (*ḥajj*) on another person's behalf is lawful. On this question too, the Prophet did not give a direct answer, but implied a principle on which the ruling may be based. He said, "What do you think if your father owes a debt and then you make the payment?"[138] This implies that the status of such a pilgrimage is like the status of payment for a debt, meaning its merits are acceptable. This tradition, al-Ghazālī indicates, is among those which provide the principle for making a ruling on the basis of an understanding of the underlying meaning; the similarity of the meaning of a new case to the meaning of the ruling even from a different case enables the first case to be decided according to the established ruling of the second case. Through his examples, al-Ghazālī

---

137 Al-Ghazālī, *Al-Mustaṣfā*, II, 79; idem, *Shifāʾ al-Ghalīl*, 191.

138 "*Araʾaita law kāna ʿalā abīka dayn fa qaḍaytahu* ?" al-Ghazālī, *Shifāʾ al-Ghalīl*, 191; idem, *Al-Mustaṣfā*, II, 79.

justifies the use and the authoritativeness of the theory of *munāsaba*, and especially of *munāsib mulā'im*.

With his examples, al-Ghazālī implies that his reasoning by *munāsib mulā'im* is, to some degree, like reasoning by analogy (*qiyās*). Having determined that the ruling implies a *maṣlaḥa* which is relevant to the ruling and thus has the attribute of *munāsaba*, the cause of the ruling may be extended to determine the ruling of a new case which has the same attribute. However, he suggests that *munāsib mulā'im* is to be distinguished from *qiyās*. According to al-Ghazālī, *qiyās* is an extension of the ruling from the original case, which is stipulated in the texts, to a *similar* case (*bi-'aynihi*) which is not stipulated in the texts. Reasoning by *munāsib mulā'im*, on the other hand, is primarily concerned with the extension of the ruling from the textually based case to a *different* case which is considered to have a similar meaning.[139] The emphasis in *munāsib mulā'im* is placed on the identification of a common meaning between two different cases, rather than on the identification of similar language between two cases. Identification of the genus of meaning requires intellectual exertion to a greater extent than does identification of similar language. *Munāsib mulā'im* is thus a step beyond regular reasoning by analogy.

While al-Ghazālī distinguishes reasoning by *munāsaba* in general from reasoning by *qiyās*, he claims the authoritativeness of the former to be derived from the authoritativeness of the latter. Whether or not his claim is justified, it may be argued that his conception of what is called *munāsaba* as including *munāsib mulā'im* is inevitably a kind of reasoning which uses the principles of *qiyās*. He implies that reasoning by *munāsib mulā'im* is not very different from *qiyās*. Arguing that his theory of *munāsib mulā'im* is directed by the sources, he contrasts it against *qiyās* only in view of its different types of their determinants; implicit and revealed basis. The statement that

---

[139] On the similarity between reasoning by *munāsaba* and *qiyās*, see al-Ghazālī, *Shifā' al-Ghalīl*, 217-218; on the authoritativeness of *munāsaba*, see idem, 177.

munāsaba is distinguished from *qiyās* is made in his *Shifāʾ al-Ghalīl.* In his later work *Al-Mustaṣfā,* he tells us that, principally, *munāsaba* comes in comprehended within *qiyās.* What the Companions mean by *qiyās* may include those legal decisions which are guided by specific objective causes in the texts, or those which are based on merely the similarity of meaning.[140] We may note here Kerr's criticism of al-Ghazālī's theory of *munāsaba* which he calls *istiṣlāḥ*: "What is thought to be *istiṣlāḥ* (by al-Ghazālī) is either a misunderstood case of *qiyās* or an unjustified resort to ill-defined subjective preferences."[141] Kamali also indicates that the proponents of *qiyās* consider that reasoning on the basis of generic meaning, which al-Ghazālī considers as *munāsib mulāʾim,* belongs to the general implementation of *qiyās.* Several examples from the practices of the Companions, which al-Ghazālī uses to justify his theory of *munāsaba* are, in fact, used by the proponents of *qiyās* to justify their reasoning.[142]

Apart from different interpretations of whether or not al-Ghazālī's *munāsaba* is a kind of *qiyās,* it is to be noted that, for al-Ghazālī, the *Sharīʿa* is to be implemented and extended through both its explicit textual basis (*taʾthīr*) and its rational meaning (*al-taʿlīl bi al-maʿnā*). His insistence on the use of reasoning by *munāsib mulāʾim* indicates his recognition that the *Sharīʿa* must be extended beyond the limit of the specific textual bases. Doing so, however, is never a truly independent reasoning. Al-Ghazālī's theory implies that *maṣāliḥ* are already incorporated, explicitly or implicitly, in the recognized sources. His *munāsaba* is a legal doctrine which seeks to make rulings through the use of rational analysis of *maṣāliḥ* which at the same time as basing the rulings on the sources. Thus, al-Ghazālī's principle of the adaptability of the law to changes stands in contrast to

---

140 "*Al-taʿlīl bi takhṣīṣ al-maḥall wa dūnahu al-mulāʾim wa dunahu al-munāsib al-ladhī lā yulāʾim wa huwa ayḍan darajāt wa law ʿalā ḍaʿf,*" al-Ghazālī, *Al-Mustaṣfā,* II, 80.

141 Kerr, *Islamic Reform,* 97.

142 Kamali, *Principles,* 275-276.

that of al-Ṭūfī, who uses the concept of *maṣlaḥa* not only to justify departures from the texts but goes even further to consider *maṣlaḥa* as a general rule. Arguing that *maṣlaḥa* is the first principle of the *Sharīᶜa*, al-Ṭūfī allows *maṣlaḥa* to take precedence over every other consideration. He maintains that in effect *maṣlaḥa* is a necessity and it is therefore preferable to other considerations.[143]

Al-Ghazālī himself realizes that discussion of the theory of *munāsaba*, under which *istiṣlāḥ* is subsumed, is a controversial issue. In this regard, he cites the position of different Muslim jurists. He says that the majority of Muslim jurists maintain that acceptable *munāsaba* is that which finds a similarity in the existing rulings of the *Sharīᶜa* (*mulāᵓim*); these jurists thus accept both *munāsib muᵓaththir* and *munāsib mulāᵓim*. Some others, on the other hand, hold that all *munāsaba* considerations are valid as the basis of rulings, without any requirements of similarity. This implies that jurists of the second group consider even *munāsib gharīb*, meaning consideration of *maṣlaḥa* for which the *Sharīᶜa* provides no similarity (*maṣlaḥa gharība*), as valid.[144] As regards of *munāsib gharīb* thus the jurists are not unanimous on its authoritativeness. For his part, al-Ghazālī himself takes the middle position; he accepts the use of this reasoning but not in its entirety. He affirms the validity of some rationalizations of *munāsib gharīb* which are covered by his concept of *munāsib mursal*. This affirmation is determined by his particular criteria in rationalizing, so that it does not represent a pragmatic legal decision. As we shall see later, his elaboration of *maṣlaḥa gharība*, or *munāsib gharīb*, is governed by the general customary meaning of the *Sharīᶜa* and largely free of mere arbitrary decision.

---

[143] Zayd, *Al-Maṣlaḥa*, 238-240.

[144] Al-Ghazālī, *Shifāᵓ al-Ghalīl*, 148.

B. *Maṣāliḥ Gharība* (Undefined Public Interests)

Al-Ghazālī's position on undefined public interest is among the controversial issues. Fahmī Muḥammad ᶜUlwān says that al-Ghazālī is ambivalent (*mutaraddid*) on whether or not to accept it.[145] Kerr observes that al-Ghazālī deems it to be one of the "imaginary" sources of reasoning. The use of this reasoning is limited to those are considered valid; if it deals with cases of necessities or needs (*ḍarūrāt* and *ḥājāt*). If it is concerned with benefits (*taḥsīnāt*), it is in question.[146] In contrast, according to Kamali, al-Ghazālī maintains the validity of undefined public interest, if it represents indispensable interests (*maṣlaḥa ḍarūriyya*). If it pertains to other categories of interests, namely *maṣlaḥa ḥājiyya* and *maṣlaḥa taḥsīniyya*, it is not valid.[147]

A close study of al-Ghazālī's works, especially of *Shifāᵓ al-Ghalīl*, shows that al-Ghazālī uses the term "*munāsib gharīb*", which simply means consideration of undefined public interest, in two different meanings. In fact, his changing interpretation of the term is followed by his changing interpretation of the status of undefined public interest. At the beginning of his work *Shifāᵓ al-Ghalīl*, he uses the term *munāsib gharīb*, or *maṣlaḥa gharība*, in the sense of general reasoning on the basis of new interests for which the *Sharīᶜa* provides indication neither in the particular nor in the genus of meaning. In explaining it thus, he rejects such reasoning because he considers it to imply a heresy. Later, arguing that undefined public interest may also include important aspects of peoples' interest which can be justified by the general meaning of the *Sharīᶜa*, his *munāsib gharīb* comes to signify two possibilities: undefined public interest which has support in the general meaning, or the custom, of the *Sharīᶜa*, and that which is strange or leads to

---

145 Fahmī Muḥammad ᶜUlwān, *Al-Qiyam al-Ḍarūriyya wa Maqāṣid al-Tashrīᶜ al-Islāmī* (Cairo: al-Hayᵓa al-Miṣriyya al-ᶜĀmma lil-Kitāb, 1989), 41.

146 Kerr, *Islamic Reform*, 92, 94.

147 Kamali, *Principles*, 352.

contradiction or threatens to change what already exists in the *Sharīᶜa*. Finally, he uses the term *munāsib gharīb* specifically to refer to the reasoning on the basis of strange *maṣlaḥa*, which is rejected. At the same time, he uses other terms such as "*al-munāsib al-mursal*", "*al-istidlāl al-mursal*", and "*al-maṣlaḥa al-mursala*", or "*istiṣlāḥ*" to indicate reasoning on an undefined case which is justified.[148]

The rest of this chapter deals with an analysis of al-Ghazālī's position on undefined public interest. In fact, he divides this interest into two categories: that which is rejected and that which is accepted. Consequently, our discussion too needs to be divided in accordance with this categorization. In this section, the term "*munāsib gharīb*" is used specifically to refer to the rationalization of undefined public interest on the basis of the *maṣlaḥa* deemed to be "strange", which is invalid and rejected. The term "*munāsib mursal*", on the other hand, is used to indicate such reasoning on undefined interest which is valid and accepted because it is known to have support in the general customary meaning of the *Sharīᶜa* rulings. Reasoning by *munāsib gharīb* is in a sense the direct opposite of reasoning by *munāsib mursal*. To understand the former, it is necessary to introduce the concept of the latter. The ramifications of al-Ghazālī's particular theory of the acceptability of undefined public interest follow from this.

Munāsib Mursal (Acceptable Public Interests)

Munāsib mursal is defined as reasoning on a given case on the basis of its *maṣlaḥa*, for which the *Sharīᶜa* provides no precedents (*aṣl muᶜayyan*) but which is considered to conform with the general meaning, or the custom, of the *Sharīᶜa*. Reasoning by *munāsib mursal* signifies taking into account a *maṣlaḥa* which appears only in a new case without any support from a precedent in the *Sharīᶜa*. This reasoning, however, is justified as long as it is deemed to be parallel to the customary meaning of the

---

[148] See al-Ghazālī, *Shifāʾ al-Ghalīl*, 177, 207; 212, 217; 216-217.

Sharīᶜa. The recognition of *munāsib mursal* is defended by the argument that the absence of specific textual proof does not mean the absence of a principle behind the texts, which also functions as binding proof. Identification of *munāsib mursal* is not very different from identification of *munāsib mulāᵓim*. Both techniques of reasoning use the meaning of the *Sharīᶜa* as their basis. They are, however, differentiated in the sense that the types of meaning they use as their basis are different. *Munāsib mulāᵓim* has its basis in the genus of meaning indicated by a specific through different ruling. *Munāsib mursal*, on the other hand, has its basis in the general meaning of the *Sharīᶜa* which is not inferred from any specific, existing ruling, but which rather constitutes a conclusion based on the overall meaning of the entire corpus of rulings of the *Sharīᶜa*. Thus, in the case of *munāsib mulāᵓim*, it is possible to indicate a particular ruling which provided the basis, while in the case of *munāsib mursal*, it is impossible to do so.

Munāsib mursal depends on the reasoning that undefined public interest has some ground in the general meaning in the *Sharīᶜa*. It seeks its reference in the *maṣāliḥ* (interests) inferred from the *Sharīᶜa* rulings in general, and thus represents the realization and the extension of the *maṣāliḥ* which are clearly recognized by the *Sharīᶜa*. As already clarified, the *maṣāliḥ* are generally classified into three categories, namely *ḍarūriyya*, *ḥājiyya*, and *taḥsīniyya*. The first category represents the *maṣlaḥa* of the *Sharīᶜa* which pertain to such indispensable matters as the maintenance of religion, life, intellect, progeny, and property, which are all considered to be the pillars of community. The neglect of these interests will lead to disruption of the community. This kind of *maṣlaḥa* is not understood from a single conclusive statement in the *Sharīᶜa*, but is concluded from several *Sharīᶜa* rulings. The second category pertains to the needs of people the neglect of which leads to hardship in life. This kind of *maṣlaḥa* is deduced from several *Sharīᶜa* rulings concerning mitigating rules which serve to reduce hardship and support flexibility of the law in accommodating realities. The third category of interests represents the

benefits, which improve the character of the *Sharīᶜa*, this category is also deduced from several rulings concerning benefits.

Munāsib mursal, which too signifies consideration of undefined public interests, does not have a specific category of its own for the obvious reason that it can fall into any of these three categories of *maṣlaḥa*. On the scale of the three categories of *maṣāliḥ*, the *munāsib mursal*, which falls under the category of indispensable interests (*ḍarūriyya*) and the category of necessities (*ḥājiyya*) serve to indicate the strong reasonable meaning of *maṣlaḥa*. An analysis of these categories of *maṣlaḥa* leads further to acceptance of their use as the basis of deciding a ruling on a given case. In these categories of *maṣāliḥ*, reasoning is considered to have the strong attribute of *munāsaba*, and is called *al-munāsib al-ḥaqīqī al-ᶜaqlī* (simply meaning an understanding of interests which arrives at certainty and reasonability). *Taḥsīniyya*, on the other hand, has a less important meaning of *maṣlaḥa* in it. Its further analysis may lead one to decide that what originally appeared as *maṣlaḥa* is in fact not *maṣlaḥa* at all. Reasoning on the basis of this kind of *maṣlaḥa* thus arrives at a lesser meaning of the attribute of *munāsaba*, which is called *al-munāsib al-khayālī al-iqnāᶜī* (meaning an understanding of interests which arrives at presumption and satisfaction).[149]

However, it must be acknowledged that the conformity of new cases with these three categories of general meaning in the *Sharīᶜa* does not necessarily lead to the validity of the new cases. For al-Ghazālī, it is only when the cases are considered to fall within the scope of the interest governed by *munāsib ḥaqīqī ᶜaqlī* as including *ḍarūriyya* and *ḥājiyya* that the extension of the *Sharīᶜa* ruling to these cases is valid. In so far as an analysis of undefined public interest leads to the opinion that the given case conforms to the *Sharīᶜa*'s maintenance of these two categories of *maṣāliḥ*, the new case is adapted and

---

[149] Al-Ghazālī, *Shifāʾ al-Ghalīl*, 172.

deemed to be covered by *munāsib mursal*. Such reasoning, therefore, signifies determining a new case on which the *Sharīᶜa* provides neither specific basis nor the genus of meaning inferred from a different ruling, but rather provides a general meaning inferred from the entire rulings of the *Sharīᶜa*.[150] If undefined cases are merely concerned with *munāsib khiyālī iqnāᶜī* as including *taḥsīniyya*, the extension of the *Sharīᶜa* ruling to the new case is in question. The extension is allowed only for those cases in which the *Sharīᶜa* has established a specific basis which indicates their similar meaning. Other cases for which there if no such basis cannot be decided merely on the presumption of their conformity with the general meaning concerning *taḥsīniyya*. In other words, it is not allowed to secure an interest pertaining to *taḥsīniyya* which appears only in a new case without precedence in the *Sharīᶜa*. Al-Ghazālī asserts that securing such interest would amount to creating a new *Sharīᶜa* on the basis of reason and what is good according to it (*waḍᶜ li-al-Sharᶜ bi al-raᵓy wa al-istiḥsān*), which is invalid.[151]

The rationale of the idea that *maṣlaḥa taḥsīniyya* cannot be extended without specific basis is that it has the least certainty and reasonable meaning to be employed to determine the cause. The rationalization of the existing rulings concerning this category of *maṣlaḥa* serves in understanding *munāsaba* only when they are interpreted in general. Analysis of particular rulings will not show how they can serve as attributes of *munāsaba* because their aspect of *maṣlaḥa* is not clear. Therefore, this kind of *maṣlaḥa* is not to be extended to new cases unless it is directly indicated by a textual basis (*naṣṣ* or the consensus). Securing this category of *maṣlaḥa*, which appears only in new cases, is not permitted.[152]

---

[150] Al-Ghazālī, *Shifāᵓ al-Ghalīl*, 209-210.

[151] Al-Ghazālī, *Shifāᵓ al-Ghalīl*, 205-208.

[152] For further details on al-Ghazālī's reasons for objecting to an extension of the *Sharīᶜa* value of *taḥsīniyyāt* to undefined public interest, see his *Shifāᵓ al-Ghalīl*, 173-176.

Al-Ghazālī's view that the valid but undefined interest is that which pertains to *maṣlaḥa ḍarūriyya* and *maṣlaḥa ḥājiyya* indicates his position of holding to only the clear, or certain, meaning of the *Sharīᶜa*. Concerning *ḍarūriyya*, an example he gives is that of a situation when the enemies of Muslims attack the Muslims, and use Muslim prisoners as a cover to protect themselves; in such situation, killing Muslim prisoners is justified. In principle, the Muslim prisoners cannot be killed because killing innocent Muslims is prohibited. However, if Muslims refuse to act for fear of killing these prisoners, the enemy will kill an unlimited number of innocent Muslim people, including the prisoners, which will lead to the disruption of the community. Under the reasoning that securing the life of people is among the aims of the *Sharīᶜa* and belongs to the category of *maṣlaḥa ḍarūriyya*, it is permitted to kill Muslim prisoners, disregard the prohibition against killing. In this case there is a conflict of interest between killing the prisoners to maintain the life of the community as a whole, and abstaining from killing to save the prisoners. However, to have the prisoners killed is considered to be more in keeping with the spirit of the law than to lead the whole community to destruction. It is believed that in the case of conflicting interests, the intent of the *Sharīᶜa* certainly is to reduce bloodshed (*taqlīl al-qatl*). The interest of this case pertains to the life of the community, which is among indispensable matters (*ḍarūriyya*) and is thus validated.[153]

An example of a legal opinion on a new case dealing with *maṣlaḥa ḥājiyya* is al-Ghazālī's approval of the marriage of a young daughter as a means to release her parents from the cost of her maintenance. A poor father or a guardian (*walī*) can marry off his young daughter in order to release himself from the obligation of maintenance. This opinion contradicts the principle that marriage is intended to ensure progeny which requires the maturity of the daughter. Such a marriage is, however, considered as valid

---

[153] "*Min al-uṣūl al-mawhūma: al-istiṣlāḥ*," al-Ghazālī, *Al-Mustaṣfā*, I, 139.

for it fulfills a need (*ḥāja*).[154] Consideration of new interests which represent securing the needs of people so as to prevent hardship in life is justified. Such reasoning is considered to be regulated by the attribute of *munāsib ḥaqīqī ʿaqlī* which is accepted. This reasoning refers to the *Sharīʿa*'s rules which provide peoples' interests, the neglect of which leads to hardship in the community.

In contrast, the extension of a ruling to a new case on the basis of *maṣlaḥa taḥsīniyya* is not valid. The ruling that selling a dog is prohibited, which arrives at *taḥsīniyya*, for example, cannot be extended. The rationalization of this ruling results in several ideas which lead to uncertainty (*lā taḥṣul al-thiqa bihā*). One may argue that the governing cause of the ruling is the dog's "impurity" (*binajāsatihī*), while another person may say that the cause is the "ignobility and depravity which is particular to a dog" (*khissa wa radhāla*). Possible causes may be proposed without limitation because the aspects of *maṣlaḥa taḥsīniyya* in this case is not indicated by the *Sharīʿa*, and our reason offers various competing interpretations. Al-Ghazālī affirms that while making any interpretation is in itself not prohibited, its extension to a new case is not valid. Therefore, on the basis of the prohibition of selling dogs, to say that whatever the *Sharīʿa* deems impure (*najāsa*) is prohibited from being sold is not allowed. That the cause of the prohibition is "impurity" in this case is not a strong basis. It is only when a cause is indicated by a specific textual basis that the extension of the ruling is allowed. Such reasoning, however, would not be considered as reasoning by *munāsib mursal,* but rather as *munāsib muʾaththir*, because it would be dictated by the meaning of a specific source.[155]

---

[154] Al-Ghazālī, *Shifāʾ al-Ghalīl*, 166; idem, *Al-Mustaṣfā*, I, 140. According to Mālik, the marriage of a young daughter before she can have sexual intercourse (*al-waṭʾ*) is prohibited, given that this would lead to her harm. See al-Raysūnī, *Naẓariyya*, 78; see also this thesis, 20

[155] Al-Ghazālī, *Shifāʿ al-Ghalīl*, 206-207.

In fact, al-Ghazālī changes his opinion in his later work *Al-Mustaṣfā,* in which he allows only that undefined public interest which is under the scope of *maṣlaḥa ḍarūriyya.*[156] He now seems to suggest that undefined public interest may be adapted without any support in a particular textual basis in so far it is concerned with indispensable matters. It seems that the later controversy regarding al-Ghazālī's views about undefined public interests is the result of his having changed his mind on this question. One who studies only *Shifāʾ al-Ghalīl* will arrive at the conclusion that al-Ghazālī considers undefined public interests relating to both *maṣlaḥa ḥājiyya* and *maṣlaḥa ḍarūriyya* as valid. However, al-Ghazālī's *Al-Mustaṣfā,* composed after *Shifāʾ al-Ghalīl*, represents his final opinion on the determination of a ruling which concerns undefined public interest, and in this work he seems to consider such interests in the category of *maṣlaḥa ḥājiyya* to be invalid. Undefined public interest which appears only in a new case, in the sense that the *Sharīʿa* has no precedent, is limited here only to the *maṣlaḥa ḍarūriyya.*

Moreover, the adaptation of the *Sharīʿa* to undefined interests should not only belong to the category of *ḍarūriyyāt,* they should also represent universal interests (*ḍarūra kulliyya*). New *maṣlaḥa ḍarūriyya* whose benefits belong to a limited number of people are rejected. For example, as noted above, al-Ghazālī approves killing Muslim prisoners who are used as a cover by the enemy. The interest here is a case of *maṣlaḥa ḍarūriyya,* further, it pertains to all people of the community, and is thus a *kulliyya.* Such an interest is differentiated from that which benefits only a certain group, or limited number, of people. For instance, if a group of people, in the absence of food (*maḥmaṣa*), decide to sacrifice one of them in order that the rest can eat, the *maṣlaḥa* would fall under the category of *ḍarūriyya,* but the beneficiaries would be only limited number of people.[157]

---

[156] Al-Ghazālī, *Al-Mustaṣfā*, I, 141.

[157] Al-Ghazālī, *Shifāʾ al-Ghalīl*, 249; see idem, *Al-Mustaṣfā*, I, 141.

Not being a *maṣlaḥa kulliyya,* such an interest is not recognized. Thus, considerations merely of *maṣlaḥa ḍarūriyya,* without being related to *maṣlaḥa kulliyya,* are invalid basis for legalizing undefined interests.

Further, determination of *maṣlaḥa ḍarūriyya kulliyya* must be based on definiteness (*qaṭᶜiyya*), not simply on assumption. This requires the jurist's analysis of whether or not the hoped for interest will occur. An analysis which leads to the belief that the interest will certainly occur is deemed to have the authority to be followed. The example regarding the killing of Muslim prisoners, the interest that Muslims would consequently be able to attack the enemy is considered to be certain of achievement. This killing, although it sacrifices innocent Muslim prisoners, is therefore allowed because it is certain to serve *maṣlaḥa ḍarūriyya kulliyya qaṭᶜiyya.*[158] But if, for instance, then the interest of shooting at the Muslim prisoners does not necessarily enable the Muslims to destroy the enemy because there is fortress which is still there to protect the enemy, thus the *maṣlaḥa* is not definite here. This cannot be taken as a basis for identifying *maṣlaḥa mursala.*[159]

Munāsib Gharīb (Unacceptable Public Interests)

In explaining *munāsib gharīb,* al-Ghazālī gives several examples from which important principles can be inferred. Among the most important factors al-Ghazālī notes for determining his *munāsib gharīb* are: that the interests (*maṣāliḥ*) do not pertain to the whole community (*laysat kulliyya*); that the interests are not definite (*laysat qaṭᶜiyya*); that the interests are known to conflict with another but stronger one, so that the stronger is to take precedence (*yajib tarjīh al-ʾaqwā*); that the interests are deemed to contradict the revealed texts or custom of the *Sharīᶜa* (*ᶜādat al-Sharᶜ*). If reasoning on an undefined

---

158 Al-Ghazālī, *Al-Mustaṣfā*, I, 141.

159 Al-Ghazālī, *Al-Mustaṣfā*, I, 142.

interest leads to one of these factors, the result is to be considered under the category of *munāsib gharīb,* and is thus rejected. Al-Ghazālī insists that the determining of a legal decision for an undefined *maṣlaḥa* relies mainly on *ijtihād* (personal reasoning) so that the jurist may argue on the basis of his personal opinion. A jurist's determination being subject to reason, can be examined by another jurist. The opinion which is considered to be based on the strongest analysis and is safe from critique is to be accepted.

An example of a causation which lacks the element of a universality of interest is the famous case of people on a sinking ship. When it is realized that the ship will sink unless one person is removed, taking into account the interests of the majority would mean allowing the killing a person in order to save a number of people. According to al-Ghazālī, consideration of peoples' interest by such reasoning, i.e. sacrificing one person to ensure the safety of a number of people by sheer preference of numbers, is a "strange" *maṣlaḥa* (*maṣlaḥa gharība*) because the *Sharīʿa* provides no indications in favor or against. Analyzing this opinion, al-Ghazālī concludes that the opinion is invalid. The *maṣlaḥa* this opinion claims to secure would benefit only a limited number of people. To abstain from killing one person in the ship will lead to the death of a particular group of people, and the *maṣlaḥa* is thus not of a general import (*laysat kulliyya*). This opinion is seen as against the *Sharīʿa* principle of securing the life of innocent people. Furthermore, al-Ghazālī explains that the sacrifice of a person in such circumstances is not covered by the *Sharīʿa*'s prescription on murder by retaliation (*qiṣāṣ*). Retaliation is intended to secure the life of the people in general, while the opinion being considered here requires a crime to be committed. Hence there is no reason to justify the opinion which allows the sacrifice of an innocent person in order to secure the interest of particular group of people.[160]

---

[160] Al-Ghazālī, *Shifāʾ al-Ghalīl*, 246-248; idem, *Al-Mustaṣfā*, I, 141.

This example illustrates the important principle that determining undefined *maṣlaḥa* in consideration of the sheer weight of numbers is unacceptable. Al-Ghazālī implies that the interests of the greater number of people are not always more important than those of one or two people because the former may otherwise outweigh the latter. The interest of one person is not always less important that those of a number of people because the latter may not outweigh the former. Therefore, it would not be allowed to sacrifice one innocent person from the ship to save the rest of the people, since the *maṣlaḥa* of securing life is to be applied without discriminating against a particular person. It would also not valid to consider this opinion in consideration of securing the life of a Muslim through killing of a protected Non-Muslim (*dhimmī*), or securing the life of a God-fearing learned person (*ʿālim taqī*) by killing of an unwise wanton person (*fāsiq ghabī*).[161]

The case of the ship is different from another case in which consideration of numbers is allowed in order to save communities as a whole. The example al-Ghazālī uses is a situation where the enemies of Muslims attack them and in order to protect themselves use Muslim prisoners as a cover. In this case, killing Muslim prisoners is allowed to give preference to a larger number of people over a few, because the interests pertains to the entire community. For otherwise, the enemy will kill an unlimited number of innocent Muslim people including the prisoners, thus causing the destruction of the community.

The justification of the killing of Muslim prisoners implies that the weight of numbers should represent considerations of universal interest, otherwise it would be a case of "strange" *munāsaba* which is invalid. Al-Ghazālī states that the principle which is used in this case is different from that which is used in the first case concerning the

---

161 al-Ghazālī, *Shifāʾ al-Ghalīl*, 247.

invalidity of killing a person on the ship. It is argued that the interest of killing prisoners pertains to the entire Muslim community which constitutes a universal (*kulliyya*), and besides it represents an essential and definite interest (*ḍarūra qaṭᶜiyya*). The interest of killing a person on the ship, on the other hand, is limited to those who are on the ship, and is thus not among the universal interests (*laysat kulliyya*). To abstain from killing one person on the ship will lead to the death of a limited number of people, while to abstain from killing the prisoners will lead to the destruction of the entire Muslim community.[162]

Furthermore, the requirement that considerations of undefined *maṣlaḥa* must reflect a definite *maṣlaḥa* (*qaṭᶜiyya*) means that what is not definite would be categorized under *munāsib gharīb*. Al-Ghazālī illustrates this principle by saying that if the enemies of Muslims use Muslim prisoners as a cover for themselves, but if the enemies themselves are inside the fortress, the Muslims are not allowed to shoot at Muslim prisoners. In this case, the interest of shooting at Muslim prisoners does not necessarily enable the Muslims to kill the enemies because the fortress remains to protect the latter. If it is known that the Muslims are not able to bring about the interest, it remains indefinite (*laysat qaṭᶜī*). The reasoning of the case which results in the permission of shooting at the Muslim prisoners is strange (*gharīb*), and invalid. All reasoning which leads not to define *maṣlaḥa* but merely to presumption (*ẓanniyya*) falls under the category of *munāsib gharīb*.[163]

With yet another example, al-Ghazālī affirms that preferring a weak interest over the stronger one is also a kind of *munāsib gharīb*. Justifying beating of an accused to make confess to his crime is a strange reasoning because this contradicts another interest which is stronger. One may argue that because in cases such as theft or murder the

---

[162] Al-Ghazālī, *Al-Mustaṣfā*, I, 141.

[163] Al-Ghazālī, *Al-Mustaṣfā*, I, 141.

criminals usually tend to hide their guilt rather than to reveal it, beating the accused is consider a *maṣlaḥa*. According to al-Ghazālī, the reasoning as such is not valid. Both wealth (in the case of theft) and life are protected by the *Sharīᶜa*; their harm is thus to be avoided. Included in the principle of the protection of life is the principle of punishing only the criminal, while criminals are determined by evidence. On the basis of this, to beat an accused person is considered by al-Ghazālī as strange reasoning because this means that one is punished before the crime has been proved, and that securing wealth is preferable over securing life. One may argue that the beating is done because there are indications that the person was around the place before or after the lost of wealth, so that the accused person is known to have stolen it. Al-Ghazālī replies, but if he is known to have stolen, then he must be punished on the basis of the crime, if the evidence is not apparent yet, then to punish him only on the basis of accusation is impropei because this is a punishment under imaginary evidence.[164]

In case of conflicting interests, the interests are to be weighed.[165] In the case of an accusation, the interest of securing wealth at the expense of bodily injury, which occurs without evidence, must be weighed against that of preventing harm to the body at the expense of wealth. The latter is considered by al-Ghazālī to be the stronger one. Preferring the latter, on the one hand, is in line with the practice of the Companions. As already mentioned, the consensus or the practice of the Companions is decisive, like the existence of the *naṣṣ* (the *Qurᵓān* and *Sunna*), because both are deemed to be valid sources subsumed under the general term "*athar*". On the other hand, al-Ghazālī argues that in case of contradicting interests, the identification of that which is stronger is determined through an analysis of which interest has more grounds in *Sharīᶜa's* custom

---

[164] Al-Ghazālī, *Al-Mustaṣfā*, I, 141. For further elaboration of his argument rejecting the practice of beating the accused, see idem, *Shifāᵓ al-Ghalīl*, 227-233.

[165] "*ᶜInda taᶜāruḍ maṣlaḥatayn wa maqṣūḍayn, ... yajib tarjīḥ al-aqwā,*" al-Ghazālī, *Al-Mustaṣfā*, I, 144.

(*ʿādat al-Sharʿ*). In this regards, preferring the latter is deemed to keep the general principle of the *Sharīʿa* about preventing bodily injury without established criminal proofs.

In fact, determining an interest (*maṣlaḥa*) which has grounds in the *Sharīʿa's* custom is not a simple task. Al-Ghazālī indicates that such an effort must represent a deep analysis of the case in the light of its relationship to the general principles of the *Sharīʿa*. Moreover, this may involve consideration of circumstantial facts, which may lead to a change in interpreting the case. For example, the legal decision that the drinker may be punished with the penalty for a slanderer (*ḥadd al-muftarī*) is valid. This decision seems to apparently contradict the *Sharīʿa*, but it is justified under reasoning by *munāsib mursal*. Al-Ghazālī is aware, however, that a critic might say: "drinking has its own penalty and is different from slander, so how can the penalty for slander be applied to one who does not commit it ?; this is a strange ruling which has no grounds in the *Sharīʿa*." To his imagined interlocutor, al-Ghazālī replies that the analysis must incorporate the facts. The drinkers have already debased (*istaḥqarū*) the prescribed punishments of drinking. This fact makes drinking a new case which requires a different punishment. It seems that this case follows the principle that when an original ruling cannot be applied, then an alternative ruling may be given. A higher penalty, but representing the lightest one, which is properly applied to the case of drinking is the penalty of the slanderer. The implementation of this penalty is further justified by the consideration that the drinkers are intoxicated and usually known to lend themselves to slander. The idea that an act which usually leads to a goal is in the position of the goal itself is parallel to the *Sharīʿa's* custom. In fact, concerning the ablutions for example, the *Sharīʿa* considers "sleeping" as "impure" because the former usually brings about the latter.[166] Thus, punishing the drinker by the penalty of the slanderer is in line with some of the *Sharīʿa*'s principles.

---

[166] Al-Ghazālī, *Shifāʾ al-Ghalīl*, 212-214.

The most important characteristic of al-Ghazālī's notion of *munāsaba* is that it cannot contradict the revealed sources. Once it is determined that a reasoning on the basis of *maṣlaḥa* contradicts the texts, it is deemed to fall under the category of *munāsib gharīb* and is rejected. For example, as already noted, the opinion that a ruler who breaks the fast of Ramaḍān should not pay the financial penalty of freeing a slave or distributing alms, but rather must fast for two consecutive months, is a strange reasoning. The decision is based on the consideration that the usual penance would be no sacrifice for the rich man. Al-Ghazālī condemns this reasoning because it stands in sharp contrast to the textual sources which verify the *maṣlaḥa* concerning the case. The decision is thus invalid. To allow the making of rulings by such reasoning, al-Ghazālī says, will open the door for changing all the penalties and their textual sources in the *Sharīᶜa* in accordance with changing situations. Moreover, if this judgment is known by the ruler as the product of a reasoning which contradicts the sources, this will lead the ruler not to trust the jurist any longer because he may assume that the jurist's judgments are commonly based on such reasoning.[167]

Al-Ghazālī's objection to giving a judgment in favor of an unusual penance for the ruler must not be seen as being in contradiction to his acceptance of an unusual penalty for the drinker as mentioned above. We have seen that in the case of the drinker, a substitute penalty is sought after the existing facts indicate that the usual penalty is inapplicable. In this situation, the case of the drinker becomes a new case which needs a different judgment. That the drinker is then given the punishment of a slanderer constitutes a decision for an undefined public interest. In fact, this reasoning has some grounds in the *Sharīᶜa*'s general principles of punishment as already clarified. This reasoning is thus deemed to be in line with the sources and is not *munāsib gharīb*. In contrast, an unusual penance in the case of a ruler who breaks his fast during Ramaḍān is

---

[167] Al-Ghazālī, *Shifāʾ al-Ghalīl*, 219; idem, *Al-Mustaṣfā*, I, 139.

being sought even though the penalty which is prescribed by the *Sharīʿa can* be applied. Seeking a substitute punishment for the ruler thus means a departure from the prescribed ruling. The reasoning is based on *maṣlaḥa,* but at the same time it contradicts a principle of the *Sharīʿa,* and is therefore considered strange reasoning.

These examples demonstrate that some undefined public interests are to be rejected. When these interests do not pertain to all people, or are not definite, or conflict with what is stronger, or contradict the customary meaning of the *Sharīʿa*, the considerations of *maṣlaḥa* are classified under *munāsib gharīb* and are not valid. Determining whether or not a particular interest pertains to all people, and whether or not it represents a definite interest, depends mainly on rational determination. The jurist must evaluate these two matters with his own knowledge and through circumstantial evidence. Consequently, the *maṣāliḥ* can neither be enumerated nor predicted in advance because they may change according to time and circumstances. An undefined interest may be considered to pertain to all people in one case, and only to some in another; it may be deemed to serve an indefinite interest at one time, and a definite one at another.[168] On the other hand, determining the stronger of the conflicting *maṣāliḥ,* and determining whether or not a *maṣlaḥa* contradicts the law, are subject matters to an investigation of the sources. An analysis of these two aspects will occupy a jurist's reasoning, which is mainly to be guided by the existing principles of the *Sharīʿa.*

As such, the principles al-Ghazālī uses to determine the valid or invalid undefined public interest (*maṣāliḥ gharība*) represent consideration of circumstantial elements and the maintenance of customary meaning of the *Sharīʿa.* Jurists' consciousness regarding

---

168 The idea that a definite interest may become an indefinite one, or otherwise, is substantiated by al-Ghazālī's example concerning the Muslim enemies who use Muslim prisoners as their cover (*tatarras bil-muslimīn*). In the beginning, it is said that, in certain conditions, to kill Muslim prisoners on such occasion is an indefinite interest (*ẓanniyya*). But in a later discussion, al-Ghazālī suggests that under different conditions, the interest may be considered as a definite one (*ʿind al-qaṭʿ*), or as indefinite but close to a definite one (*ẓann qarīb min al-qaṭʿ*), see al-Ghazālī, *Al-Mustaṣfā,* I, 141-142.

actual circumstances may lead a case to be differently understood and decided, and this serves a basis for understanding the flexibility of the Islamic law. The maintenance of the *Sharīᶜa* meaning is a determinant which substantiates the reasoning so that it is secure from pragmatic tendencies. The implementation of these principles thus means the extension of the *Sharīᶜa* value in cases for which the *Sharīᶜa* is silent.

The idea that an undefined interest must be seen in the light of its conformity with the general meaning customary used in the *Sharīᶜa* implies that the absence of specific textual basis does not mean the impossibility of seeking particular link in the sources. Here, it is suggested that the customary meaning of the *Sharīᶜa* becomes the basis. This meaning is inferred from an understanding of the entire principles, intents and values in the *Sharīᶜa*. Therefore, the basis of determination of undefined interest is not like that is used for making a ruling by *munāsib mulāᵓim*, to which the *Sharīᶜa* provides a particular genus of meaning through a different case. The general meaning is very abstract and requires jurists' deep experience in grasping the meaning behind the *Sharīᶜa* legislation. Apart from the difficulty of grasping the general meaning, or the customary meaning of the *Sharīᶜa*, all this indicates that al-Ghazālī's theory of *munāsaba* for determining rulings on eventualities is not an independent reasoning, and is thus never used for an arbitrary legal decision.

CONCLUSION

Al-Ghazālī's theory of *munāsaba* is a method of reasoning on the basis of the meaning behind the *Sharīᶜa*. This theory proposes a legal solution to the problem of making rulings on cases for which the *Sharīᶜa* provides no direct textual indication. Arguing that the *Sharīᶜa*'s legislation is in accordance with public interest (*maṣlaḥa*), al-Ghazālī contends that a ruling which lacks a clear indication of its cause (*ᶜilla*) in the *Sharīᶜa* may be rationalized through an understanding of its *maṣlaḥa*, which is similar to the *maṣlaḥa* of other rulings already established in the *Sharīᶜa*. The *maṣlaḥa* may then be considered as the governing cause of the ruling, which may, in turn, be extended to any new case which has similar attributes but no direct textual indication. As a further manifestation of his conviction that the *Sharīᶜa* ensures public interest, al-Ghazālī expounds the legal doctrine that certain public interests for which the sources provide no similar example may be adapted to Islamic law under the direction of the general meaning of *Sharīᶜa* rulings. Generally speaking, al-Ghazālī's doctrine of *munāsaba* implies an understanding that the *Sharīᶜa* is not merely an institution of obedience, but also an instrument of human welfare. Considerations of public interest, which determine welfare, are justified because they are believed to stand in line with the general principles of the *Sharīᶜa* legislation.

Among the most important of al-Ghazālī's legal doctrines on the adaptation of the *Sharīᶜa* to new developments is his notion of reasoning by *munāsib mulāʾim* and *munāsib gharīb*. *Munāsib mulāʾim* is concerned with the adaptation of the law to public interests which have some grounds in the generic meaning of an existing ruling in the *Sharīᶜa*. This enables the jurists to decide every eventuality which has a *maṣlaḥa* similar to that of rulings already stipulated in the *Sharīᶜa*. Consideration of *munāsib mulāʾim* thus enables the jurist to define the legal status of any given case for which the *Sharīᶜa* has no precedent (*aṣl*) but

only a similarity in genus to an existing ruling. To acknowledge the validity of this reasoning is to see the rulings in the *Sharīᶜa* in the light of their function as particular prescriptions on which other cases which are different but have similar attributes may be decided. For al-Ghazālī *munāsib mulāᵓim* is a kind of reasoning which is based on definite sources. Comparing this reasoning to reasoning by analogy (*qiyās*), he affirms that the former's authoritativeness follows from the authoritativeness of *qiyās*.

Al-Ghazālī's theory of *munāsib gharīb* is proposed as a technique of reasoning for deciding the legal status of any new cases which have neither direct indications nor similarities in the *Sharīᶜa*. It is to be noted that al-Ghazālī's use of the terms "*munāsib gharīb*" or "*maṣlaḥa gharība*" has various meanings, and he is not consistent in explaining the concept. At first, he uses the terms to indicate the general consideration of *maṣlaḥa* in matters where the *Sharīᶜa* provides no basis in favor or against. Later, however, the terms come to signify reasoning on the basis of a new *maṣlaḥa* which is "strange" and contradicts the *Sharīᶜa*, or threatens to introduce changes in it and is therefore rejected. At the same time, he introduces the concept of *munāsib mursal* to indicate reasoning on the basis of a new *maṣlaḥa* which can be justified in terms of the general meaning of the *Sharīᶜa* and is therefore valid.

Al-Ghazālī's theory of *munāsib mursal*, subsumed under the general reasoning on the basis of new and undefined public interest, is a significant contribution to legal theory. It enables the jurist to adapt some new aspect of public interest to Islamic law. In making a ruling in these cases, the jurists must be guided by the general meaning of the *Sharīᶜa* which is not incorporated in a particularity or genus of an existing ruling. Rather, such meaning inferred from the custom of the rulings of the *Sharīᶜa* as a whole. This theory, on the one hand, leads to the idea that the *Sharīᶜa*, besides being an aggregate of particularities and genera of ruling, also comprises principles of the law in general. On the other hand, it becomes clear that the adaptation of the law to new developments is never based on an

arbitrary decision because the jurist must find grounds in the general meaning of the *Sharīᶜa* in order to adapt new rulings to it.

Given that the determination of *munāsib mursal* refers to the general meaning behind the *Sharīᶜa's* rulings, *munāsib mursal* is not different from *munāsib mulāʾim.* Both kinds of reasoning are governed by the meaning of the *Sharīᶜa,* not by reason's determination of what is good or bad. They are differentiated only in the sense of their type of basis, not in the essence. In the sense that in case of *munāsib mulāʾim* the meaning is implied in a particular genus of existing ruling which is possible to identify, while in the case of *munāsib mursal* the meaning is inferred from the rulings in general and cannot be easily identified. The application of *munāsib mursal,* therefore, goes beyond that of *munāsib mulāʾim.* The former requires the jurists' understanding of the principles, values, and the spirit of the *Sharīᶜa* as a whole, on the basis of which they may decide whether or not the case conforms to the *Sharīᶜa.* Al-Ghazālī suggests that its implementation is subject to *ijtihād* and constitutes a matter of probability (*ẓanniyya*), not certainty (*qaṭᶜiyya*). Having insisted that they are substantially similar, al-Ghazālī equates the authoritativeness of *munāsib mursal* to the authoritativeness of *munāsib mulāʾim,* which in turn is justified by the authority of *qiyās* in general.

To al-Ghazālī, the idea that the *Sharīᶜa* provides the meaning and principles which are concerned with human interests is the result of an inductive survey of revelation. It is known, he argues, that the *Sharīᶜa* rulings customarily imply intelligible intents which pertain to human welfare. Although he acknowledges that the meaning of some rulings in the *Sharīᶜa* is unextractable (*al-taḥakkumāt al-jāmida*), he maintains that this represents only a small number of rulings (*majrā al-shādh al-nādir).* Since it is customary for *Sharīᶜa* rulings (*ghālib ᶜādat al-Sharᶜ*) to provide intelligible meaning, that custom is to be followed. For al-Ghazālī, *taḥakkum* does not mean that the rulings have no meaning, but rather that they have a less intelligible meaning. Thus, he argues in effect that all rulings serve to

illustrate the meaning. It should be clear that al-Ghazālī's understanding of the meaning behind the *Sharīᶜa* is not deduced from the discredited theological position concerning God's obligation as regards His creatures, or from the Muᶜtazilī theory of reason's determination of good and bad; it is understood rather from the direction, intent, and purpose of the *Sharīᶜa* which God customarily attaches to His rulings.

Thus, al-Ghazālī's principle of *munāsaba* represents a legal construction by which the *Sharīᶜa* can be extended in terms of its meaning. Through *munāsaba*, a ruling and a new case are interpreted in the light of an interest which is parallel to those already safeguarded by the *Sharīᶜa*. This theory enables the jurist to establish the status of contemporary problems by human reasoning which however is free of sheer liberal pragmatism. To al-Ghazālī, the meaning of the *Sharīᶜa* must guide the application of human reasoning in its effort to understand the aspects of *maṣlaḥa* inhering in a given case. To do so would help prevent secularization. Given that the theory proposes a mechanism for an extension of the law through reliance on the meaning behind the rulings, *munāsaba* represents a form of reasoning by analogy (*qiyās*) which is directed by the cause (*ᶜilla*) as inferred from the meaning of the *Sharīᶜa* rulings. *Munāsaba*, however, as al-Ghazālī emphasizes, is not categorized as *qiyās*; a reasoning which is directed by the cause as indicated on a textual basis, but rather it is subsumed under reasoning by indications (*istidlāl*).

In practice, public interest may change over time, which may result in different rulings on a similar case for the obvious reason that the case in question may contain different meanings or interests. It is here that the jurist is required to carefully analyze a given case so that he may indicate the aspect of *maṣlaḥa* and *maḍarra* which may change, and whether this will lead to a change of the ruling and the extent that the ruling might change. Neglecting to do so would mean the jurist's being unjust in making his ruling, and this contradicts the aims of the *Sharīᶜa*.

Compared to the theory of *maṣlaḥa* by al-Ṭūfī, for example, that of al-Ghazālī may be preferred because it strongly appreciates the authority of the existing principles of the *Sharīᶜa*. Arguing that the main intent of the *Sharīᶜa* is to secure peoples' interest, al-Ṭūfī insists that any conflict between such interest and the literal application of the law will lead to the interest taking precedence over the latter. Al-Ghazālī's theory of *munāsaba*, for its part, proposes a legal doctrine by which a jurist may make a ruling for an undefined public interest on the basis of a rational analysis in which the general meaning of the *Sharīᶜa* will determine the content of the ruling. His theory of *munāsaba* is thus secure from liberal tendencies because public interest is made to stand in line with the meaning implied in the *Sharīᶜa*. Thus, *munāsaba* is a safeguard from rigidity but simultaneously prevents reasoning on the basis of secular tendencies.

SELECTED BIBLIOGRAPHY

A. Arabic Sources

ᶜAbduh, Muḥammad. *Taqrīr: Faḍīlat Muftī al-Diyār al-Miṣriyya fī Iṣlāḥ al-Maḥākim al-Sharᶜiyya.* Ed. Muḥammad Rashīd Riḍā. Cairo: Maṭbaᶜat *al-Manār,* 1317/1900.

Abū Sinna, Aḥmad Fahmī. *Al-ᶜUrf wal-ᶜĀda fī Raʾy al-Fuqahāʾ.* Cairo: Maṭbaᶜat al-Azhar, 1947.

Abū Yūsuf, Yaᶜqūb b. Ibrāhīm. *Kitāb al-Kharāj.* Cairo: al-Maktaba al-Salafiyya, 1976.

Al-Āmidī, Sayf al-Dīn Abū Ḥasan. *Al-Iḥkām fī Uṣūl al-Aḥkām.* 4 Vols. Cairo: Maṭbaᶜat al-Maᶜārif, 1914.

Al-ᶜAskarī. *Kitāb al-Awāʾil.* Madīna: n.p., 1386/1966.

Al-Ashᶜarī, Abū Yaḥyā Zakariyyā. *Ghāyat al-Wuṣūl ilā Lubāb al-Uṣūl.* Cairo: ᶜĪsā al-Bābī al-Ḥalabī, n.d.

Aṣgharī, sayyid Muḥammad. *Al-Qiyās wa-Sayr al-Takwīn.* Cairo: Dār al-Ḥuqūq al-Islāmī, 1982.

Baalbaki, Rohi. *Al-Mawrid: Qāmūs ᶜArabī - Inklīzī.* Beirut: Dār al-ᶜIlm lil-Malāyīn, 1992.

Baltājī, Muḥammad. *Manhaj ᶜUmar Ibn al-Khaṭṭāb fī al-Tashrīᶜ.* Cairo: Dār al-Fikr al-ᶜArabī, 1970.

Al-Baṣrī, Abū Ḥusayn Muḥammad b. ᶜAlī. *Al-Muᶜtamad fī Uṣūl al-Fiqh.* 2 Vols. Ed. Shaykh Khalīl al-Mays. Beirut: Dār al-Kutub al-Islāmiyya, 1404/1983.

Bazdawī, Fakhr al-Islām Aḥmad b. Muḥammad. *Kanz al-Wuṣūl ilā Maᶜrifat al-Uṣūl,* with *Kashf al-Asrār ᶜalā Aṣl al-Imām Fakhr al-Islām ᶜAlī al-Bazdawī.* 4 Vols. Beirut: Dār al-Kitāb al-ᶜArabī, 1394/1974.

Al-Bukhārī, ᶜAbd al-ᶜAzīz b. Aḥmad. *Kashf al-Asrār ᶜalā Aṣl al-Imām Fakhr al-Islām ᶜAlī al-Bazdawī.* 4 Vols. Beirut: Dār al-Kitāb al-ᶜArabī, 1394/1974.

Al-Būṭī, M. S. R. *Ḍawābiṭ al-Maṣlaḥa fī al-Sharīᶜa al-Islāmiyya.* Beirut: Muʾassat al-Risāla, 1977.

Al-Dabūsī, Abū Zayd ᶜUbayd Allāh b. ᶜUmar. *Kitāb al-Taʾsīs al-Naẓar.* Cairo: al-Maṭbaᶜa al-Adabiyya, n.d.

Al-Fāsī, ᶜAlāl. *Maqāṣid al-Sharīᶜa al-Islāmiyya wa-Makārimuhā.* Al-Dār al-Bayḍāʾ: Maktabat al-Waḥda, n.d.

Al-Ghazālī, Abū Ḥāmid Muḥammad. *Al-Mankhūl min Taᶜlīqāt al-Uṣūl.* Ed. M.H. Hītū. Damascus: Dār al-Fikr, 1400/1980.

--------. *Al-Mustaṣfā min ᶜIlm al-Uṣūl.* 2 vols. Cairo: al-Maktaba al-Tijāriyya, 1937.

--------. *Shifāᶜ al-Ghalīl fī Bayān al-Shabh wal-Mukhīl wa-Masālik al-Taᶜlīl.* Ed. Ḥamd ᶜUbayd al-Kabīsī. Baghdād: Maṭbaᶜat al-Irshād, 1390/1971.

Ibn al-Ḥājib, ᶜUthmān b. ᶜUmar. *Mukhtaṣar al-Muntahā.* Istanbul: Al-Maktaba al-Islāmiyya, 1310.

Ibn Ḥazm, Muḥammad ᶜAlī b. Aḥmad. *Al-Iḥkām fī Uṣūl al-Aḥkām.* Cairo: Maṭbaᶜat al-Imām, n.d.

Ibn Mājah, Muḥammad b. Yazīd al-Qazwinī. *Sunan Ibn Mājah.* Istanbul: Cagri Yayinlari, 1401/1981.

Ibn Taymiyya, Taqī al-Dīn Aḥmad b. ᶜAbd al-Ḥalīm. *Masʾalat al-Istiḥsān.* Trans. and ed. George Makdisi in *Arabic and Islamic Studies in Honor of H. A. R. Gibb.* Leiden: E. J. Brill, 1965.

---------. *Al-Siyāsa al-Sharᶜiyya.* Beirut: Dār al-Maᶜārif, n.d.

Al-Isnawī, Jamal al-Dīn Abī Muḥammad ᶜAbd al-Raḥīm. *Al-Tamhīd fī Takhrīj al-Furūᶜ ᶜalā al-Uṣūl.* Ed. Muḥammad Ḥasan Hītū. Beirut: Muʾassasat al-Risāla, 1404/1984.

Jamāl al-Dīn, Muṣṭafā. *Al-Qiyās: Ḥaqīqatuhu wa-Ḥujjiyyatuhu.* Najaf: Maṭbaᶜat al-Nuᶜmān, n.d.

Al-Jurjānī, ᶜAlī Aḥmad. *Ḥikmat al-Tashrīᶜ wa-Falsafatuhu.* Cairo: Dār al-Kutub, 1938.

Al-Juwaynī, Imām Ḥaramayn. *Al-Burhān fī Uṣūl al-Fiqh.* Ed. ᶜAbd al-ᶜAẓīm Dīb. 2 Vols. Cairo: Dār al-Anṣār, 1400/1980.

--------. *Al-Waraqāt fī Uṣūl al-Fiqh.* In Jalāl al-Dīn al-Maḥallī, *Sharḥ al-Waraqāt fī Uṣūl al-Fiqh.* Cairo: n.p.

Al-Kabīsī, Ḥamd ᶜUbayd. "*Muqaddimat al-Taḥqīq.*" In al-Ghazālī, *Shifāᶜ al-Ghalīl fī Bayān al-Shabah wal-Mukhīl wa-Masālik al-Taᶜlīl.* Ed. Ḥamd ᶜUbayd al-Kabīsī, Baghdād: Maṭbaᶜat al-Irshād, 1971.

Al-Khallāf, ᶜAbd al-Wahhāb. *Maṣādir al-Tashrīᶜ al-Islāmī fīmā lā Naṣṣa fīh.* Kuwait: Dār al-Qalam, 1398/1978.

--------. *ᶜIlm Uṣūl al-Fiqh* . Kuwait: Dār al-Qalam, 1398/1978.

Mālik, Ibn Anas. *Al-Muwaṭṭaʾ.* Cairo: Muṣṭafā al-Bābī al-Ḥalabī, 1370/1951.

Maḥmaṣanī, Subḥī. *Falsafat al-Tashrīᶜ fī al-Islām.* Beirut: Maṭbaᶜat Dār al-Kashshāf, 1952.

Al-Muslim, Abū al-Ḥusayn b. al-Ḥajjāj al-Nisābūrī. *Mukhtaṣar Ṣaḥīḥ Muslim.* Ed. Muḥammad N. al-Albanī. Beirut: al-Maktab al-Islāmī, 1402/1982.

Al-Naᶜīm, ᶜAbd al-ᶜAzīz. *Uṣūl al-Aḥkām al-Sharᶜiyya.* Cairo: Dār al-Ittiḥād al-ᶜArabī, n.d.

Al-Qāḍī al-Nuᶜmān, Ibn Muḥammad. *Ikhtilāf Uṣūl al-Madhāhib.* Ed. Muṣṭafā Ghālib. Beirut: Dār al-Andalus, 1393/1973.

Al-Qalqashāndī, Aḥmad b. ᶜAlī. *Subḥ al-Aᶜshā fī Ṣināᶜat al-ʾInshāʾ.* Cairo: al-Muassasat al-Miṣriyya al-ᶜAmma, 1383/1962.

Al-Qarāfī, Aḥmad b. Idrīs. *Sharḥ Tanqīḥ al-Fuṣūl fī Ikhtiṣār al-Maḥṣūl fī al-Uṣūl.* Ed. Ṭāhā ᶜAbd al-Raʾūf. Cairo: al-Maktaba al-Kulliyya al-Azhariyya, 1973.

Al-Raysūnī, Aḥmad. *Naẓariyyat al-Maqāṣid ᶜind al-Imām al-Shāṭibī.* Ribāṭ: Dār al-Amān, 1991.

Riḍā, Rashīd. *Shubuhāt al-Naṣārā wa Ḥujaj al-Islām.* Cairo: Dār al-Manār, 1367.

---------. *Yusr al-Islām wa Uṣūl al-Tashrīᶜ al-ᶜĀmm.* Cairo: Maṭbaᶜat al-Nahḍa, 1956.

Al-Sarakhsī, Muḥammad b. Aḥmad Abū Sahl. *Uṣūl al-Sarakhsī.* 2 Vols. Ed. Abū al-Wafā al-Afghanī. Cairo: Maṭābiᶜ Dār al-Kitāb al-ᶜArabī, 1373/1904.

Al-Shāfiᶜī, Muḥammad b. Idrīs. *Kitāb al-Umm.* 7 Vols. Cairo: al-Maṭbaᶜa al-Kubrā al-Amīriyya, 1325.

---------. *Al-Risāla.* Ed. Muḥammad Sayyid Kīlānī. Cairo: Muṣṭafā al-Bābī al-Ḥalabī wa Awlāduhu, 1403/1983.

Al-Shalabī, Muḥammad Muṣṭafā. *Taʿlīl al-Aḥkām ʿArḍ wa Taḥlīl li-Ṭarīqat al-Taʿlīl wa Taṭawwurātih fī ʿUṣūr al-Ijtihād wa al-Taqlīd.* Cairo: Maṭbaʿat al-Azhar, 1947.

Al-Shawkānī, Muḥammad b. ʿAlī b. Muḥammad. *Irshād al-Fuḥūl ilā Taḥqīq al-Ḥaqq min ʿIlm al-Uṣūl.* Cairo: Muṣṭafā al-Bābī al-Ḥalabī wa Awlāduhu, 1937.

Al-Shaybānī. *Al-Aṣl.* Vol. IV. Hyderabad Dakkan: Dāʾirat al-Maʿārif al-ʿUsthmāniyya, 1386/1966.

Al-Shāṭibī, Abū Isḥāq Ibrāhīm. *Al-Iʿtiṣām.* Vol. I. Cairo: Maṭbaʿat al-Manār, 1332/1914.

-------- . *Al-Muwāfaqāt.* Cairo: al-Maktaba al-Tijāriyya al-Kubrā, n.d.

Al-Sijistānī, Abū Dāwūd. *Sunan Abū Dawūd.* Vol. II. Ḥims: M. ʿAlī al-Sayyid, 1388/1969. English Trans. Aḥmad Ḥasan. Lahore: Ashraf Press, 1984.

Al-Subkī, Tāj al-Dīn. *Ṭabaqāt al-Shāfiʿiyya al-Kubrā.* 6 Vols. Beirut: Dār al-Maʿrifa, n.d.

Al-Tirmidhī, al-Imām Muḥammad b. ʿIsā. *Sunan al-Tirmidhī: al-Jamīʿ al-Ṣhaḥīḥ.* Ed. ʿAbd al-Raḥmān Muḥammad ʿUthmān. Beirut: Dār al-Fikr, 1983.

Turābī, Ḥasan. *Tajdīd Uṣūl al-Fiqh.* Beirut: Dār al-Fiqr, 1980.

ʿUlwān, Fahmī Muḥammad. *Al-Qiyam al-Ḍarūriyya wa Maqāṣid al-Tashrīʿ al-Islāmī.* Cairo: al-Hayʾa al-Miṣriyya al-ʿĀmma lil-Kitāb, 1989.

Zayd, Muṣṭafā. *Al-Maṣlaḥa fī Tashrīʿ al-Islamī wa Najm al-Dīn al-Ṭūfī.* Cairo: Dār al-Fikr al-ʿArabī, 1384/1964.

B. English Sources

Books:

Anderson, Norman. *Law Reform in the Muslim World.* London: The Athlone Press, 1976.

Bosworth, C.E. and J. Schacht. *The Legacy of Islam.* London: The Clarendon Press, 1974.

Coulson, J. N. *Conflict and Tension in Islamic Jurisprudence.* Chicago: University of Chicago Press, 1969.

-------. *A History of Islamic Law.* Edinburgh: Islamic Survey, 1964.

Fakhry, Majid. *Islamic Occasionalism and its Critique by Averroes and Aquinas.* London: George Allen and Unwin, 1958.

Fyzee, A. A. *Outlines of Muhammadan Law.* London: Oxford University Press. 1974.

Goldziher, Ignaz. *Muslim Studies.* Trans. C.R. Barberand and S. M. Stern. 2 Vols. London: George Allen and Unwin, 1971.

Heer, Nicholas (ed.). *Islamic Law and Jurisprudence.* Seattle: University of Washington Press, 1990.

Hourani, Albert. *Arabic Thought in the Liberal Age, 1798-1939.* London: Oxford University Press, 1962.

Iqbal, Muhammad. *The Reconstruction of Religious Thought in Islam.* Lahore: Sh. Muhammad Ashraf, 1982.

Kamali, Muhammad Hashim. *Principles of Islamic Jurisprudence.* Cambridge: Islamic Text Society, 1991.

Kerr, Malcolm H. *Islamic Reform: The Political and Legal Theories of Muḥammad ʿAbduh and Rashīd Riḍā.* Berkeley: University of California Press, 1969.

Khadduri, Majid. *Islamic Jurisprudence: Al-Shafiʿi's Risala.* Baltimore: John Hopkins Press, 1961.

Na`im, Abdullahi Ahmad. *Toward an Islamic Reformation.* New York: Syracuse University Press, 1990.

Posner, Richard A. *The Problems of Jurisprudence.* Cambridge: Harvard University Press, 1990.

Qadrī, Anwār Aḥmad. *Islamic Jurisprudence in the Modern World.* Lahore: Sh. Muhammad Ashraf, 1981.

Rahim, Abdur. *The Principles of Muhammadan Jurisprudence According to the Ḥanafī, Mālikī, Shāfiʿī, and Ḥanbalī Schools.* West port, Cann: Hyperion Press, 1981.

Rahman, Fazlur. *Islamic Methodology in History.* Karachi: Central Institute of Islamic Research, 1965.

Schacht, Joseph. *An Introduction to Islamic Law.* Oxford: The Clarendon Press, 1964.

-------- . *The Origins of Muhammadan Jurisprudence.* Oxford: Clarendon Press, 1959.

Rosen, Lawrence. *The Anthropology of Justice: Law as Culture in Islamic Society.* Cambridge: Cambridge University Press, 1989.

Watt, W. Montgomery. *Islam and the Integration of Society.* London: Routledge and Kegan Paul, 1961.

Articles:

Ali, Muhammad Mumtaz. "The application of the *Sharīᶜa*: Meaning and Methodology." *Islam and Modern Age* 20 (1989): 320-340.

Anderson, J.N.D. "Recent Developments in Sharīᶜah Law." *Muslim World* 40 (1950): 244-56.

Binder, Leonard. "Al-Ghazālī's Theory of Islamic Government." *The Muslim World* 45 (1955): 229-241.

Faruqi, Muhammad Y. "Consideration of *ᶜUrf* in the Judgment of the *Khulafāʾ al-Rāshidūn* and the Early *Fuqahāʾ*." *The American Journal of Islamic Social Sciences* 9 (1992): 483-498.

Frank, Richard. "Several Fundamental Assumptions of the Baṣra School of Muᶜtazila." *Studia Islamica* 58 (1983): 5-18.

Hallaq, Wael B. "The Development of Logical Structure in Sunni Legal Theory." *Der Islam* 64 (1987): 42-67.

-------- . "The Logic of Legal Reasoning in Religious and Non-religious Cultures: The Case of Islamic Law and Common Law." *Cleveland State Law Review* 39 (1987): 76-96.

-------- . "Logic, Formal Arguments and Formalization of Arguments in Sunni Jurisprudence." *Arabica* 18 (1986): 427-54.

-------- . "*Uṣūl Fiqh*: Beyond Tradition." *Journal of Islamic Studies* 3 (1991): 170-202.

-------- . "On Inductive Corroboration, Probability and Certainty in Sunni Legal Thought." In *Islamic Law and Jurisprudence: Studies in Honor of Farhat J. Ziadeh.* Ed. Nicholas Heer. Seattle: University of Washington Press, 1990, 3-30.

-------- . "The Primacy of the Qurʾān in Shāṭibī's Legal Theory." In *Islamic Studies Presented to Charles J. Adams.* Ed. W.B. Hallaq and Donald. P. Little. Leiden: E.J. Brill, 1991, 69-90.

-------- . "Was the Gate of *Ijtihād* Closed?" *International Journal of Middle East Studies* 16 (1984): 3-41.

Hasan, Ahmad. "The Principle of Istiḥsān in Islamic Jurisprudence." *Islamic Studies* 16 (1977): 347-363.

-------- . "Rationality of Islamic Legal Injunctions: the Problem of Valuation (*taʿlīl*)." *Islamic Studies* 13 (1974): 95-110.

Hourani, George. "Juwaynī's Criticism of Muʿtazilite Ethics." *Muslim World* 65 (1975): 161-74.

-------- . "The Basis of Authority of Consensus in Sunnite Islam." *Studia Islamica* 21 (1964): 13-60.

-------- . "Two Theories of Value in Medieval Islam." *Muslim World* 50 (1960): 269-78.

Makdisi, George. "The Juridical Theology of Shāfiʿī: Origins and Significance of *Uṣūl al-Fiqh.*" *Studia Islamica* 59 (1984): 5-47.

-------- . "The Non-Ashʿarite Shāfiʿism of Abū Ḥāmid al-Ghazālī." *Revue des Etudes Islamiques* 54 (1986): 239-257.

Makdisi, John. "Hard Cases and Human Judgment in Islamic and Common Law." *Indiana International & Comparative Law Review* 2 (1991): 191-219.

-------- ."Legal Logic and Equity in Islamic Law." *The American Journal of Comparative Law* 33 (1985): 63-92.

Mayer, Ann. "The Sharīʿa: A Methodology or a Body of Substantive Rules?" In *Islamic Law and Jurisprudence.* Ed. Nicholas Heer. Seattle: University of Washington Press, 1990, 177-198.

Nour, Alhaji A.M. "Qiyas as a Source of Islamic Law." *Journal of Islamic and Comparative Law* 5 (1974): 18-52.

Paret, R. "Istiḥsān and Istiṣlāḥ." *Encyclopedia of Islam.* Vol. IV, New edn. Leiden: J. Brill, 1978, 255-258.

Rosen, Lawrence. "Equity and Discretion in a Modern Islamic Legal System." *Law and Society* 15 (1980): 307-345.

Shehaby, Nabil. "*ʿIlla* and *Qiyās* in Early Islamic Legal Theory." *Journal of American Oriental Society* 102 (1982): 27-46.

Smith, Wilfred Cantwell Smith. "The Concept of *Sharīʿa* among Some Mutakallimūn." In *Arabic and Islamic Studies in Honor of H. A. R. Gibb.* pp. 581-602. Ed. George Makdisi. Cambridge: Harvard University Press, 1967.

Weiss, Bernard. "Interpretation in Islamic Law: the Theory of *Ijtihād.*" *American Journal of Comparative Law* 26 (1978): 198-212.

-------- . "Knowledge of the Past: the Theory of *Tawātur* According to Ghazālī." *Studia Islamica* 61 (1985): 81-105.