

Utilitarianism in Classic Islamic Jurisprudence

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Abstract

Islamic jurisprudence has developed a special utilitarian method for both understanding Shari'a and applying it in unprecedented situations. The concept of Maslaha is the cornerstone of Islamic legal philosophy for three reasons: (1) the close link between Maslaha and religious Islamic texts, (2) the methodology of categorizing Maslaha is one of the main subjects of Usoul al-Figh, and (3) it greatly affects Islamic law rulings and reasoning. Classic Muslim jurists have divided Maslaha up based both on its role in society and its relation to the religious texts (the Qur'an and Sunnah). Per the first standard, Maslaha are divided into three categories: necessities, needs, and embellishments. Per the second standard, Maslaha are also divided into three categories: ones that the Qur'an or Sunnah explicitly consider, ones that they explicitly dismiss or cancel, and ones that they do not mention at all. The method of considering Maslaha in decision making can be summarized into two steps: first is that Maslaha should promote one or all of the five goals of Shari'a. Second, Maslaha should not cause the loss of a bigger utility or result in great harm. The case of theft at the time of Umar ibn Al-Khattāb and his decision provide both an example that shows Maslaha in governmental and judicial practice and a principle in Islamic jurisprudence that can be used as a benchmark for future cases.

Keywords: Maslaha, Utilitarianism, Maqasid, Usoul al-Figh

1. Introduction

Maslaha (benefit or utility) is a cornerstone of Islamic legal philosophy. Its derivations from the sacred texts put a limit on utilitarianism that prevents it from contradicting clear textual Islamic rulings. However, that did not stop Islamic jurists from developing a utilitarian method that is both rational and universal. This paper will survey *Maslaha* classifications according to both the religious texts (the Qur'an and Sunnah) and rational thinking.

If a classically trained Islamic lawyer read Bentham's writings on utilitarianism, I believe they would most likely find many of the terms and concepts familiar. Terms like "happiness" (*Sa'dah*), "utility" (*Nafi'*), and "benefit" (*Maslaha*) would not be so strange because they have long been used by Muslim jurists and theologians regarding both ethical and legal questions. This paper aims to highlight utilitarian elements in the Islamic jurisprudential realm. This does not necessarily mean taking a comparative approach; rather, I prefer a descriptive approach that extracts certain utilitarian elements. My approach in this paper will be punctuated by many quotes from significant Muslim scholars that, hopefully, will enhance the depth of the subject and open the door for future studies to focus on these important passages of Islamic jurisprudential writing.

2. Maslaha: The Cornerstone of Islamic Legal Philosophy

Maslaha is a cornerstone of Islamic legal philosophy for three reasons (Nimrī, 2015, p. 148). First is its close link with Islamic religious texts.

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This point will be illustrated further in the *Reconciliation between the Divine and the Mortal* section. Secondly, it relates to different fields of Islamic knowledge. *Maslaha* has been discussed in relation to Islamic theology and the principles of Islamic jurisprudence (*Usoul al-Figh*).

In Islamic theology, one question has been: was *Shari'a* (God's law) put in place for the benefit (*Masaleh*) of the people or not? Imam al-Shāṭibī, one of the great Muslim scholars who extensively discussed *Maslaha*, says: “[a]nd before diving in the subject [*Maslaha*] we should introduce a theologian postulate on this issue. That is to be using *Sharaie'* (divine laws) for the benefit of people in this life and the hereafter together. And this is a claim that needs evidence to prove its accuracy; however, this is not the place for it. And this claim was disagreed about in *Ilm al-Kalām* (Islamic theology), and al-Razi claimed that Allah's rulings are unjustifiable² and so are His actions, and that Mu'tazila had agreed that Allah's rulings are for attaining people's benefits, which is the choice of the majority of late jurists” (Shāṭibī, 2002, p. 4).

In the principles of Islamic jurisprudence, *Maslaha* is discussed and arranged according to its power to shape the outcome of any juristic reasoning. The methodology of categorizing *Maslaha*, which will be treated later in this paper, is considered one of the main subjects of *Usoul al-Figh* (the Principles of Islamic Jurisprudence). Thirdly, it must be clear by now that *Maslaha* affects Islamic legal rulings and reasoning. Therefore, any close observer of Islamic jurisprudence can see *fatwas* (legal and religious opinions) that are based on *Maslaha* as both a theological foundation of Islamic law and a juristic tool in the hands of scholars and judges.

3. *Reconciliation between the Divine and the Mortal*

Islam, both as a creed and body of law, holds itself as the best system or conduct manual for life, for it is the instructions of the Creator, who is all-knowing and all-wise. The Qur'an states this fact in many different chapters: “Indeed, We have revealed to you, [O Muhammad], the Book in truth so you may judge between the people by that which Allah has shown you. And do not be for the deceitful an advocate” (Qur'an, 04: 105). “Then We put you, [O Muhammad], on an ordained way concerning the matter; so follow it and do not follow the inclinations of those who do not know. Indeed, they will never avail you against Allah at all. And indeed, the wrongdoers are allies of one another; but Allah is the protector of the righteous” (Qur'an, 45: 18-19). And, “A clear proof has come to you from your Lord. Give full measure and weight, and do not cheat people out of their rights, and do not corrupt the land once it has been *set right*.³ This is better for you, if you are believers” (Qur'an, 07: 85).

These quotes show the background of any Islamic jurist. The fundamental base here is that God's law is the highest, most beneficial law that exists, and people must uphold it. Further, any legal product of mortals that contradicts God's law shall be abolished. The question that arises here is how could Muslim jurists develop a utilitarian understanding in such a religious realm? Well, I believe that two major factors prompted the rise of utilitarian understanding in classic Islamic jurisprudence. First is the theologian movement that established that God's rulings and actions are not arbitrary and are intended to look after and benefit the people. This movement created a space for rationalizing Islamic law. For example, although one cannot determine the wisdom behind praying five times a day, Muslim jurists can see the wisdom behind a 2.5% tax on a Muslim's total savings and wealth (*Zakat*). Therefore, a clear division between *Ibadat* (worship) and *Muamalat* (interpersonal transactions) is present in Islamic jurisprudence. It goes without saying that utilitarianism was developed only in spheres other than *Ibadat*. Second, although the religious texts are the primary source of Islamic law, Islamic legal thought recognized their limits and developed a process for deriving rules from the general frames of the texts and rational reasoning called *Ijtihād*. Contrary to the common misconception, most of *fiqh* (Islamic jurisprudence) is the product of *Ijtihād* in areas where the texts are not clear, or there is no text at all.

² Meaning that one cannot claim that there are specific reasons for certain acts of God.

³The Qur'an uses “*islaheha*,” which comes from the noun “*Salah*.” All of these terms, with *Maslaha*, share the same root of “*Salaha*.”

Thus, *Ijtihād* in itself is a rational method with a proper set of legal and linguistic rules that aim to achieve *accurate*⁴ rulings. As Imam Izz ibn ‘Abd al-Salām says: “Most of this life’s benefits (*Maslaha*) and harms is known by reason, so is most of *Sharai*’ (divine laws). Because it is not hidden from any intelligent person that before *Shari’a*, acquiring pure benefits and avoiding pure harms to one’s self and others is good and worthy of praise” (Ibn ‘Abd al-Salām, 2000a, p. 7). He also asserts that “prioritizing which is the most beneficial (most good) and after it which is less good, and fending off which is the most harmful and after it that which is less harmful is implanted in people’s nature by the Lord of all beings” (Ibn ‘Abd al-Salām, 2000a, p. 9). Further, one can see Muslim jurists discuss the rationalization of *Shari’a*. Imam Izz ibn ‘Abd al-Salām says that in case one did not know the *Maslaha* behind a certain Islamic rule: “The issue should be subjected to one’s mind assuming that the *Shari’a* did not state the rule. Then, he should base his [juristic] ruling on that for he will find it very rare that any rule breaks out [from revealed *Maslaha*]” (Ibn ‘Abd al-Salām, 2000a, p. 13). Elsewhere, he illustrates the Islamic jurisprudence stand on this by stating: “Happy is the one who looked into, with the light of acuity, the *Maslaeh* (benefits or utilities) that Allah put on Earth before He revealed His *Shar*’ (divine law). One identifies and distinguishes *Maslaeh* per their hierarchy, then subjects these *Maslaeh* to the *Shar*’: if there is an accordance, it is rational⁵; and if there is not, it is devotional” (Ibn ‘Abd al-Salām, 2000a, p. 276).

These quotations from Imam al’Ezz ibn ‘Abd al-Salām illustrate a very interesting approach that takes into consideration utility before God’s law. Before God’s law, people were in state of relying only on their reason and motives, which are implanted by God in Islamic tradition. Any *Maslaha* discovered in that states most likely to be universal because, as Muslim scholars stated earlier, human behavior is directed toward avoiding harm and acquiring good. The universality element is one of the major platforms that Mill and Bentham used to advocate for utilitarianism. Furthermore, Muslim scholars use *Maslaha* in that state to identify rational utilities that can be categorized and hierarchies in *Shari’a*. I believe this is worth noting because calculating utility has been the main focus of jurisprudential writings for a long time, at the expense of exploring other utilitarian approaches in other spheres. Here, we have stumbled upon a utilitarian methodology in the guise of a religious law, which, as far as I am concerned, was not present in any previous religious law. The previous factors created a reconciliation between divine law and the understanding of mortals one basis that does not contradict any clear textual Islamic ruling that a utilitarian stance may result in. God’s law has the higher ground. However, a juristic utilitarian approach was developed to discover utility in both divine and mortal law.

4. Classifying *Maslaha* Rationally

Classic Muslim jurists approached the issue of classifying *Maslaha* in two ways: according to its importance to human beings through rational reasoning and according to its relation to the divine texts (the Qur’an and Sunnah). These different classifications do not contradict each other; rather, they help shape the concept of *Maslaha* by drawing on all possible views.

That being said, classic Muslim jurists have concluded that *Shari’a* has five main goals related to achieving *Maqasid*. These are the preservation of religion, life, lineage, intellect, and property (Al-Bouti, 1973, p. 119). Through the lens of these goals, classic jurists rationalize many Islamic legal rulings. No text from the Qur’an or Sunnah explicitly states that *Shari’a* is aiming for these goals. This classification was a later development by the great Muslim scholar Al-Ghazali (Died 1111 AD) (al-Ghazālī, p. 251). This evidences a utilitarian movement that started to conceptualize Islamic law in a utilitarian frame. I am introducing the five goals here because it is important to identify the first class of *Maslaha*: necessities (*Dharuriyyat*).

Necessities (*Dharuriyyat*) are the first type of *Maslaha*. Determining what is considered a necessity is strongly connected to the five goals. The dominate view is that a *Maslaha* is a necessity when it becomes necessary to the establishment of any of the five goals (Al-Bouti, 1973, p. 119). The other, less popular opinion disagrees, instead holding that the five goals are in fact *Maslaha* that resemble necessities.

⁴Please note that I am using “accurate” loosely here because Muslim scholars are actually more focused on reaching a ruling that is the closest to what God wants, or what would please God the most, although no one can determine God’s intent for sure.

⁵ Referring to *Shari’a* ruling.

From my point of view, this is an epistemological disagreement that has not impacted the discussion on *Maslaha*. The point remains that, for example, penalties on murder are a necessity, for without them life and wealth will be in constant danger.

The second type is needs (*Hajiyat*). *Maslaha* here is not essential for achieving any of the five goals; however, it is important, as neglecting it could lead to hardship. In other words, needs are utilities that are not vital to society, but whose absence will lead to suffering that do not affect the achievement of one of the five goals. For example, expanding and upholding new types of contract and financial transactions are not necessary for preserving wealth; however, by not doing so a heavy burden and hardship will be put on people's shoulders. The third type is embellishments (*Tashsiniyat*). This kind of *Maslaha* is concerned with actions and deeds that improve the community and elevate it to a higher status. Neglecting this kind of *Maslaha* should not cause any hardship or extreme need. For example, many Islamic rulings that specify a husband and wife's duties inside the household are embellishments, for they simply aim to improve quality of life.

These three classifications show a vivid understating of utility's role in society. I will also add that this classification was developed to create a method for calculating utility. Muslim jurists felt there was a need to produce a scale that they could use to decide moral or legal questions.

5. Classifying *Maslaha* by Its Relation to the Text

The previous methodology illustrated a rational approach to utility's place and role both in society and Islamic law, but now we will see a methodology that reflects the terms of a reconciliation between human rationality and divine law. The core of this different methodology is categorizing *Maslaha* solely on the basis of textual consideration. In this view, utilities are divided into three types: those that the Qur'an or Sunnah explicitly consider, those that they dismiss or cancel, and those that they do not mention at all.

First: Considered *Maslaha* (*Mu'utabarah*):

In this category, any *Maslaha* that is explicitly considered or upheld by the religious texts is included. For example, the *Maslaha* (utility) that Islamic inheritance laws promote is a considered *Maslaha* because the divine law has recognized and upheld it. One might ask how the Islamic utilitarian understanding reacts if, by the utilitarian account, we find that abolishing Islamic inheritance laws results in more utility than upholding them. And the answer is quite clear because the *Maslaha* of Islamic inheritance laws is upheld textually. Therefore, per the terms of reconciliation, God's law trumps any utilitarian account that contradicts it. However, there could be situations where Islamic jurisprudence came up with solutions that weigh both God's law and the utilitarian account.⁶ It is appropriate here to remind the reader that the methodology of Imam al'Ezz ibn 'Abd al-Salām stated earlier can assist in discovering the utility behind a certain rule of Shari'a.⁷

Second: Cancelled *Maslaha* (*Mulghah*):

In this category, any *Maslaha* that is explicitly cancelled or nullified by the religious texts is included. For example, the *Maslaha* that usury (*Riba*) achieves and promotes is dismissed and unworthy of consideration because the divine law has nullified it. It is important to note here that Shari'a has prohibited several transactions that their harm is not clear for everyone (Nimrī, 2015, p. 148). Imam ibn Taymīyah says: "[and] the Prophet, peace be upon him [Muhammad], has prohibited things whose corruption is not clear because they lead to pure corruption, like he prohibited small amounts of wine for it calls for more. That is similar to *Riba al-Fadl*⁸ because the wisdom behind prohibiting it is unclear. Because a sane person does not sell a *dirham*⁹ for two *dirhams* unless their qualities are different, like the one *dirham* is intact and the two *dirhams* are broken, or the one *dirham* is molded or from a rare currency and so forth. Thus, the wisdom behind prohibiting [*Riba al-Fadl*] was unclear to Ibn Abbas and Muawiyah and others" (Ibn Taymīyah, 1951, p. 117).

Third: *Maslaha* that is not mentioned in the texts (*Mursalah*):

⁶As one sees with Umar ibn Al-Khattāb on page 7.

⁷ See page 3.

⁸*Riba al-Fadl* is a type of usury that does not involve paying more in exchange for time, but rather involves the unequal trading of different quantities of the same commodity (gold, silver, wheat, barley, dates, or salt), typically because the quality of the smaller quantity is superior.

⁹ Coinage that was most likely made from silver.

This category is the widest of all three because it includes all utilities that are not addressed in the texts. However, if a *Maslaha* is not addressed positively or negatively, that does not mean that Islamic jurisprudence would necessarily support it. This type of *Maslaha* requires an *Ijtihad* (effort) before presenting it as a justification for a specific judgment. *Maslaha* of this kind goes back to the rational reasoning that Imam al'Ezz ibn 'Abd al-Salām mentioned earlier. However, it differs slightly in that a jurist does not completely put themselves before *Shari'a*; rather, he or she aspires to utilities that are in harmony with God's law. Imam al-Juwaynī says: "But I do not invent or contrive a thing. Rather, I observe *Shari'* ruling, then I invoke a meaning/wisdom that suits what I saw and observed. And that is the way to act in new cases that scholars have not answered yet" (al-Juwaynī, 1979, p. 196). He enforces this idea by adding that: "We do not innovate policies for kingdoms that do not have a reliance on the *Shari'* of the Prophet, peace be upon him" (al-Juwaynī, 1979, p. 189).

6. Considering *Maslaha* in Decision Making

After exploring the different types of *Maslaha*, it is now important to answer the question of how a classic Muslim jurist considers, values, or counts a utility. The question presumes that a scholar will face two or more choices and will have to decide which to choose. Both choices have utility and the jurist is absolutely sure that neither of them are mentioned, positively or negatively, in the Qur'an or Sunnah. I will answer this question in two steps, but first, a brief introduction. The jurist must know that to judge a utility they need good knowledge of any related sciences and expertise. Imam al'Ezz ibn 'Abd al-Salām says: "The utilities of this life and their means, and the harms of this life and their means, are known through: common sense, experiments, habits, and learned assumptions. If something is unclear, one should search it in its sources" (Ibn 'Abd al-Salām, 2000a, p. 13). Further, the Imam believes other divine laws may guide important utilities: "If a *Maslaha* is great, God almighty will uphold it in every *Shari'a*. Also, if a *Mufسادah* (corruption/harm) is great, He will prohibit it in every *Shari'a*. If *Masaleh* (utilities) and *Mafasid* (harms) vary in importance, *Shari'a* will vary in arrangement" (Ibn 'Abd al-Salām, 2000a, p. 61).

First Step: *Maslaha* should promote one or all of the five goals

The first step for a classically trained Muslim jurist in the process of examining a *Maslaha* is making sure the *Maslaha* in question is promoting one or all of the five goals of *Shari'a*. If it contradicts one or all of the goals, it will be dismissed (Nimrī, 2015, p. 148). For example, let us imagine a situation where a law is drafted to reduce government spending. This law will save the country a large sum of money and strengthen the financial status of the state. However, it will have a certain and immediate negative impact on healthcare providers and definitely result in loss of life. The *Maslaha* of reducing spending here will not be considered for it goes against the goal of preserving life, which is one of the five goals that *Shari'a* was established to protect and advance. It is worth mentioning that this becomes very problematic if the spending is necessary not only to save money, but to prevent a bigger loss of life in the near future.

The five goals of *Shari'a* also play a major role in preparing a jurist to decide on such matters. As Imam al'Ezz ibn 'Abd al-Salām says: "And whoever follows the goals of the *Shari'a* in acquiring benefits and preventing harms, he will gain a combined knowledge that will enable him to know which *Maslaha* cannot be dismissed and which *Mufسادah* should not be approached, even if there is no specific text, consensus, or *Qiyas*.¹⁰ For understanding *Shari'a* itself requires that. And that is similar to whoever lives with a wise, kind, honorable person with the primary understanding of what the latter loves and hates in every case. Then, the first person is faced with a *Maslaha* or a *Mufسادah* and he does not know what [the wise person] saying it will be like. Surely, due to his familiarity with the wise person's habits and ways, he will know that he prefers that *Maslaha* and hates the *Mufسادah*" (Ibn 'Abd al-Salām, 2000b, pp. 314-315).

Second Step: The *Maslaha* should not cause the loss of a bigger utility or result in great harm

This step might seem logical and simple at first but is actually quite sophisticated because it includes several connected elements. Balancing *Maslaha* in this question requires the discussion of two issues: (a) preventing the loss of a bigger *Maslaha*; and (b) preventing greater harm.

¹⁰ Islamic juristic analogy.

Preventing the loss of a bigger *Maslaha*: The question that arises here is: what are the measures by which we can decide if one *Maslaha* is bigger or greater than another? Fortunately, Islamic jurisprudence provides three measures to do just that. First is the classification of necessities, needs, and embellishments. A *Maslaha* that is believed to be an embellishment cannot be established or advanced at the expense of a need or necessity (Al-Bouti, 1973, p. 252). This classification makes it easier to form a judgment because it builds a base that everyone agrees on, which is that necessities are more important than embellishments. Putting more effort into identifying the *Maslaha*'s importance to society is more beneficial than a purely utilitarian calculation where several social elements are likely to be left out. One might question whether scholars are strongly obligated to follow the classification of necessities, needs, and embellishments. The answer is that indeed they are required to stay within the lines of this classification. Imam al'Ezz ibn 'Abd al-Salām, for example, says: "It is not to any of the *Mujtahideen*¹¹ to go astray of the arrangements of *Masaleh* and *Mafasid*...because that is the opposite of the *Shari'a* method" (Ibn 'Abd al-Salām, 2000a, p. 276).

The second measure that Islamic jurisprudence provides is the extent of the *Maslaha*'s beneficiary scope. As Dr.al-Bouti says: "It is unreasonable to dismiss an achieved benefit for a large group of people to preserve what only benefits one person or a small group of people. Further, it is likely the individual will not suffer by advancing the group's *Maslaha* instead of his or her own, for they will most likely be included [in the large group of people]" (Al-Bouti, 1973 p. 252). For example, the utility that results from opening upland to allow the public to benefit from its grass and water is larger than giving it to one individual. Note that both *Maslaha*s here are of the same degree, meaning that they are both classified as needs. Now if an individual's property is threatened, this makes it a necessity, which trumps the other *Maslaha*. Also, if people were in immense need of water and grass, that would turn the *Maslaha* into a necessity and so forth.

The third measure is the *Maslaha*'s possibility of happening in reality. In other words, its chances of existing and advancing the goals behind it. If one of the utilities that is presented in front of the Islamic scholar is less likely to be achieved, Islamic jurisprudence rules that the scholar should not consider it and prevents him or her from going any further. Needless to say, if the uncertain *Maslaha* has a high possibility of causing harm, then Islamic jurisprudence will stand against it also.

Preventing greater harm: It would be redundant at this point to say that Islamic jurisprudence does not support any act that results in pure harm with no beneficial outcome. Therefore, the discussion here is centered on balancing *Maslaha* that could result in some harm. The first possibility is when a *Maslaha* benefits a few people but causes widespread harm. In this case, Islamic jurisprudence has a rule that says "Preventing *Mufسادah* (harm/corruption) is prior acquiring *Maslaha*" (al-Zarga, 1989, p. 205). As the rule says, Islamic *fiqh* principles do not support seeking this *Maslaha*, for its harm outweighs its benefits. The second possibility is when a *Maslaha*'s beneficial scope is very wide, yet there is the possibility of some harm being caused. This issue is often debated in the *Maslaha* context. The debate centers on whether a Muslim scholar should apply the previous rule, or if the greater scope of benefits justifies the amount of harm that will accrue. The first side of the debate strongly hangs on the rule that argues that as long as there is the possibility of harm, one should not move forward because preserving the current status of the community, with minimum harm present, from any other damage or harm is a priority. After that, a society may consider other ways to benefit that are harmless.

The other side of the debate argues that it is almost possible to find utilities that are purely beneficial and do not entail any harm. Further and most importantly, some believe that there are *Masaleh* that bring some *Mafasid* (harm, corruption, or loss), but are considered by *Shari'a* because of their significant positive impact. To explain this stance, let us look at what Imam ibn Taymiyah said: "And if the *Mufسادah* of *Bai' al-Garur*¹² is [most likely] causing hostility and hatred and taking people's money unjustly, it is known that if this *Mufسادah* was faced with predominant *Maslaha*, the *Maslaha* shall avail. Similarly, horse and camel racing and archery were permitted with exchanges of money due to the legitimate *Maslaha* behind them, even though other [activities] are prohibited with exchanges of money. This is similar to one's entertainment: if it has no benefit behind it, it is wrong and void.

¹¹ Senior Muslim religious scholars.

¹² *Bai' al-Garur* is a term used to describe a sale contract that includes selling the unknown, the unspecified, or the non-existent at the time of the contract. The validity of such a contract varies depending on the risk involved and the legal school (*Madhub*).

And if it includes a benefit—which is what the Prophet, peace and prayers be upon him, mentioned: ‘Every entertainment for man is unrighteous, except shooting his arrow, training his horse, and playing with his wife. They [the three acts] are righteous.’—it becomes right. It is also known that the harm that people suffer by prohibiting these transactions [referring to *Bai’ al-Garur*] is much more severe than what one might be concerned with regarding hostility or taking people’s money unjustly, because *al-Garur* (unknowingness) [is present] in these transactions, as explained earlier, and there is an immense need for these transactions. And the immense need outweighs the insignificant *Garur*. And the whole *Shari’a* is built on whether the *Mufsadah*, which justifies prohibition, is faced with predominate need; [if so] the prohibited becomes permissible” (Ibn Taymīyah, 1951, pp. 132-133). This quotation explains several rulings concerning *Shari’a* that might seem at first to cause some harm because society’s immense needs were not taken into consideration. Moreover, I believe that Ibn Taymīyah was not only stating his scholarly opinion, but was also explaining the dominate principle that all schools of Islamic jurisprudence uphold and follow.

7. Umar ibn Al-Khattāb and the Famine Year

It is narrated that in 638 CE, the Arabian Peninsula suffered a great famine due to a severe drought (Ibn Sa’ad, p. 283). That was in the time of Umar ibn Al-Khattāb (born 583 CE—died 644 CE) the second Caliph of the Rashidun Caliphate, and one of the senior companions of Prophet Muhammad. The famine took its toll on everyone, including Umar. Under these circumstances, a theft case was brought before Umar. A camel was stolen from its owner and the thief killed it for food. The punishment for theft is clear in Islamic law: If all of the provisions of *Hadd al-Sarigah* are established, the right hand of the thief shall be severed. Umar, however, decided to compensate the plaintiff with two camels from the state treasury. He concluded by saying: “We do not cut during a famine year” (bin Humam, p. 243).

It is crucial to note that there is no text from the Qur’an or Sunnah that states that famine years have different rulings. In addition, although there are many verses in the Qur’an that cover the merciful nature of Islam (Qur’an, 22: 78; 21:107), they are general and had not been developed as a jurisprudential framework in the time of Umar. Although one might argue that one of the conditions of executing the penalty for theft is the absence of necessity, I believe this condition was not developed at the time and all that existed were general guidelines on justice and mercy. I am noting this here because it will clarify Umar’s approach to this case. Umar’s decision indicates that he took one of two approaches to the law, both with utilitarian elements. The first was asking these questions: Where is the *Maslaha*, the benefit, in cutting off the hand of a person who was pushed to steal by hunger and necessity? Will that produce the most utility for society?

The second was asking these questions: What is the *Maslaha* behind *Hadd al-Sarigah*? Will executing the punishment under famine circumstances preserve wealth? Or is it possible that it could threaten people’s lives? Both approaches have utilitarian elements because they give deep consideration to the *Maslaha* behind the law and the harm that may result from executing the punishment in this situation. There is no question that Umar ibn Al-Khattāb strongly believed that theft was a morally despicable behavior, and he did not state that the theft in this case was justified. Even if one believes that Umar’s decision was a direct application of the mercy and justice guidelines of the Qur’an, one must agree that Umar did not uphold absolute mercy as an end to all rulings, for he knew that could lead to greater harm. Also, let us not forget that he was dealing with a divine law—a clear textual rule from *Shari’a*.

8. Conclusion

Islamic jurisprudence has developed a special utilitarian method for both understanding *Shari’a* and applying it in unprecedented situations. The concept of *Maslaha* is the cornerstone of Islamic legal philosophy for three reasons: (1) the close link between *Maslaha* and religious Islamic texts, (2) the methodology of categorizing *Maslaha* is one of the main subjects of *Usoul al-Figh*, and (3) it greatly affects Islamic law rulings and reasoning. Classic Muslim jurists have divided *Maslaha* up based both on its role in society and its relation to the religious texts (the Qur’an and Sunnah). Per the first standard, *Maslaha* are divided into three categories: necessities, needs, and embellishments. Per the second standard, *Maslaha* are also divided into three categories: ones that the Qur’an or Sunnah explicitly consider, ones that they explicitly dismiss or cancel, and ones that they do not mention at all. The method of considering *Maslaha* in decision making can be summarized into two steps: first is that *Maslaha* should promote one or all of the five goals of *Shari’a*.

Second, *Maslaha* should not cause the loss of a bigger utility or result in great harm. Lastly, the case of theft at the time of Umar ibn Al-Khattāb and his decision provide both an example that shows *Maslaha* in governmental and judicial practice and a principle in Islamic jurisprudence that can be used as a benchmark for future cases.

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