Themed section

Towards New Perspectives on

Ethics in Islam

Casuistry, Contingency, and Ambiguity

Guest editor

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The Ethical Turn in Legal Analogy: Imbuing the *Ratio Legis* with *Maṣlaḥa**

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Abstract

Al-Ghazālī's articulation that the purposes of the divine Law (*maqāṣid al-sharī'a*) are to attain *maṣlaḥa* for the five necessary elements of human existence was not only novel but had long-lasting influence on the way Muslim jurists understood the procedure of analogy (*qiyās*). The correctness of the *ratio legis* was determinable by its consequences in bringing about *maṣlaḥa*. This shift was possible only by intellectual shifts in understanding the relationship between ethics and law. This paper traces the development in conceptions of ethics and its impact on the procedure of analogy in three 5th/11th century predecessors of al-Ghazālī, namely al-Baṣrī, al-Dabbūsī, and al-Juwaynī. It shows that al-Ghazālī's definition of the purposes of the Law was developed based on previous conceptual shifts in the *ratio legis* from being a sign for the ruling to reflecting the ethical content of the divine injunction.

Keywords: Analogy, *Ratio Legis*, *Maṣlaḥa*, Ethics, al-Baṣrī, al-Dabbūsī, al-Juwaynī

Introduction

Notwithstanding broad agreement that, in the final analysis, God is the Creator of everything, Muslim scholars differ on what that means for human autonomy in their actions—ranging from views that human acts are preordained, to various conceptions of human acquisition of actions that God creates, to positions that admit free will in what a person chooses to perform. From a religious law perspective, however, some form of autonomy in and accountability for people's action is expected, or else the qur'anic accounts of the Day of Judgment would be meaningless and implementing in this life any of the prescribed punishments (*ḥudūd*) for transgressing a divine prohibition would be religiously senseless, though perhaps socially appropriate.

The notion of religious accountability (*taklīf*) raises the question of how one can best prepare for this Day of Judgment? Revelation informs human beings about matters of belief,

* I want to express sincere gratitude for the extensive feed-back I received on this paper from Ferial BOUHAFIA and the anonymous reviewer. Both were instrumental to improving the present essay, pointing toward additional scholarship to consult and ways to enhance the structure and clarity of my arguments. The remaining shortcomings fall solely upon me.

the cosmos, divine commands and prohibitions, and that obedience to God's decrees may be rewarded, whereas disobedience may be punished. Yet, the revealed Law¹ is finite in its material, whereas the possibilities of human acts and contingencies are infinite. The question, in short, is: Are humans held accountable in the Afterlife for all of their conduct in this world, or only for those acts for which God specifically prescribed a course of action in the revealed Law? Is the religious Law all-encompassing or is there a purely secular sphere to which it does not apply? If human responsibility toward God extends only to following the textually established laws, then all acts that Revelation does not *explicitly* address fall outside the purview of the divine Law, are assessed according to mundane standards, and have no repercussion on one's after-worldly destiny. The majority of Muslim scholars, however, do not endorse such an extreme position. Their intellectual endeavors in delineating human accountability in the eyes of God produced volumes of scholarship in the discipline of legal theory—*uṣūl al-fiqh*. Legal theory is the arena of Muslim scholarship that discusses, among other topics, the believer's moral obligations and how to discern them from the scriptural sources of the Law.² Fadel calls *uṣūl al-fiqh* 'moral theology' on account of its concern with the correct ethical conduct of humans from the perspective of God (FADEL 2008: 23-24). Legal theory deals not only with those situations mentioned in the Qur'ān and Ḥadīth but also those circumstances not directly addressed in Scripture. The latter inquiry is often resolved by recourse to legal analogy (*qiyās*), a practice that most Muslim jurists, irrespective of their theological leanings, support (ZYSOW 2013: 192-236). In the procedure of *qiyās*, a ruling (*ḥukm*) from a source (Qur'ān, Ḥadīth or Consensus [*ijmā'*]) is transferred to a situation that is not directly addressed in these sources on account of a common factor, the so-called *ratio legis* (*'illa*), which is present in the source (*asl*) and the unaddressed situation (*far'*).

Starting in the late 5th/11th century, one finds in Sunnī jurisprudence the tendency to identify the *ratio legis* with ethical considerations. Jurists articulate the link between the *'illa* and its ruling as a suitable (*munāsib*) association, recognizable by the ruling bringing about *maṣlaḥa* for the believer in this world (and the next); with attaining *maṣlaḥa* understood as God's purpose (*maqṣad*, *maqṣūd*) in revealing His Law to humankind. Identifying the *ratio legis* in ethical and consequentialist terms had a major impact on subsequent generations of Muslim legal theorists to this day. It became the dominant way to determine *rationes legis* in most works of legal theory, in particular among Shāfi'ī, Mālikī and Ḥanbalī jurists.³ It changed not only the way Muslim jurists understood the function of the *ratio legis* and, hence, analogical reasoning, but also jurists' comprehension of God's legislative intent for human society. As Zysow points out in his study of the epistemological dimension of legal theory, understanding the *ratio legis* as reflective of the divine legislative intent of revealed rulings

1 In this paper, the term 'Law', capitalized, is used to capture the Arabic *shar'*, *sharī'a*, and *sam'*, encompassing the rules and principles derived from the Qur'ān and prophetic *ḥadīths*, both of which are deemed to be divinely revealed or inspired and are here referred to as 'Revelation' and 'Scripture'.

2 Inquiring into humans' moral obligations as laid out in Scripture also involves investigations into the language of the revealed Law and its epistemological bases. Hence, *uṣūl al-fiqh* are sometimes studied through the lens of language or epistemology (cf. ALI 2000; GLEAVE 2012; VISHANOFF 2011; ZYSOW 2013).

3 As Ahmad Hasan shows, the impact of understanding the revealed law in terms of *maṣlaḥa* was lasting as well as spanning all four legal schools of Sunnī Islam (HASAN 1986: chapter 10 and chapter 13).

was not widely accepted prior to the late 5th/11th century. Rather, many influential legal theorists saw the *ratio legis* as a ‘sign’ for its ruling, disassociating it from any ethical purposive dimension (ZYSOW 2013: 192-236). The ethical turn in the procedure of analogy gave slow but steady rise to the genre of *maqāṣid al-sharīʿa*, which, for better or worse, dominates contemporary legal discourse (OPWIS 2019).

The first full-fledged formulation of the ethical and consequentialist character of the divine Law was articulated by the Shāfiʿī Ashʿarī scholar Abū Hāmid al-Ghazālī (d. 505/1111). He posited that the purpose of the Law (*maqṣūd al-sharʿ*) is *maṣlaḥa*, namely to protect for humankind their religion (*dīn*), life (*nafs*), intellect (*ʿaql*), offspring (*nasl*), and property (*māl*); what attains and preserves these elements on the level of necessity (*darūra*), need (*ḥāja*), and improvement (*taḥsīn*) is a *maṣlaḥa*, and intended by the Lawgiver, and what harms them is a *mafsada*, a detriment intended to be averted (AL-GHAZĀLĪ n.d.: II, 481-482). Al-Ghazālī justified defining God’s purpose as preserving these five elements of human existence with the scriptural prohibitions and harsh punishments for apostasy (*ridda*), retaliation (*qiṣās*), drinking wine (*sharb al-khamr*), fornication (*zinā*), and theft (*sariqa*) (al-GHAZĀLĪ n.d.: II, 482-483). The purpose of the Law is, thus, to protect and bring about good things (*maṣāliḥ*) for humans. By tangibly defining what these objectives are, al-Ghazālī linked the *ratio legis* of individual rulings to the ethical dimension of the divine Law.

Taking *maṣlaḥa* into consideration allowed al-Ghazālī to decide cases that were not expressly regulated in the scriptural sources of the Law. He argued that *maṣlaḥa*, or more precisely the scripturally unattested *maṣlaḥa* (*maṣlaḥa mursala*), as an expression of God’s legislative intent, is a valid criterion, or *ratio legis*, to determine rulings for such cases. A ruling that brings about *maṣlaḥa*, thus, accords with the objectives of the divine Law. Moreover, al-Ghazālī operationalized the inferred purpose of the Law by employing the criterion of suitability (*munāsaba*) as a way to correctly identify the *ratio legis* of divine rulings. Determining the correct ruling by whether or not it brings about and preserves *maṣlaḥa* for the believer in this life, al-Ghazālī made an explicit connection between God’s legislative intent and the *ratio legis* in legal analogy,⁴ understanding the *ratio legis* as expression of the purpose of the Law.⁵ The *illa* in al-Ghazālī’s conception, thus, becomes a proxy for the ethical dimension of God’s Law.

That the goodness of a ruling is recognizable in the mundane consequences for the five listed objectives was a watershed moment in conceptions of legal analogy.⁶ While we have ample research on the impact of al-Ghazālī’s conception of God’s legislative intent on subsequent generations of jurists, we know less about how the *ratio legis* came to be imbued with *maṣlaḥa* as a tangible criterion for correctly identifying it. When looking at 4th/10th century jurists, we find, for example, the Shāfiʿī al-Qaffāl al-Shāshī (d. 365/976) expressing the view that the divine attribute of wisdom (*ḥikma*) entails that God’s Law was

4 Al-Ghazālī’s assertion that God’s Law is purposeful goes against the position of his Ashʿarī predecessors al-Bāqillānī (403/1012) and al-Mutawallī (d. 478/1085) that God’s perfection and omnipotence preclude that there is a purpose or reason (*illa*) for His action (FRANK 1983: 209-210).

5 Cf. al-Ghazālī’s section on identifying suitability as *ratio legis* (al-GHAZĀLĪ n.d.: IV, 620-624).

6 This essay is also an addendum to Hourani’s view that Muslim scholars held that there was no unifying ethical principle in divine rulings, though he admits that this position only holds for the formative period of Islam (HOURANI 1985: 57 and 62).

revealed for the *maṣlaḥa* of humans. Yet, in actual law-finding, he makes no connection between wisdom, *maṣlaḥa*, and the *ratio legis*.⁷ Similarly, the Ḥanafī scholar Abū l-Ḥasan al-Karkhī (d. 340/952) refers to the wisdom behind God’s rulings, calling it *ḥikmat al-ḥukm*, but he, too, does not operationalize it in the procedure of *qiyās* (EL SHAMSY 2014: 26-28). The Mu’tazilī-Ḥanafī jurist al-Jaṣṣāṣ (d. 370/980) explicitly rejects using *maṣlaḥa* as criterion to identify the *ratio legis*. He relegates concerns with *maṣlaḥa* to the field of theology, though mentioning that some jurists determine ‘illas by the *maṣlaḥa* attained (al-JAṢṢĀṢ 1981: 134-135; SHEHABY 1982: 40; OPWIS 2010: 19-20).

In the following, I seek to narrow the gap in our knowledge by presenting the thought of three 5th/11th century jurisprudents preceding al-Ghazālī on questions of ethical epistemology, divine purposiveness, and identifying the *ratio legis* in legal analogy.⁸ My aim is to offer a window into the intellectual history of the *maqāṣid al-sharī’a* and the transformations occurring in Islamic legal theory in the period prior to al-Ghazālī’s influential elaboration of this topic.⁹ The jurists examined are the Ḥanafī Mu’tazilī Abū l-Ḥusayn al-Baṣrī (d. 434/1044), the Ḥanafī Māturīdī Abū Zayd al-Dabbūsī¹⁰ (d. 430/1039), and the Shāfi’ī Ash’arī Imām al-Ḥaramayn al-Juwaynī (419-478/1028-1085). These three scholars represent different theological schools and all three favorably discuss analogical reasoning (*qiyās*). The procedure of analogy is key for extending the legal assessment¹¹ of divine rulings to cases about which scripture is silent. Jurists’ primary concern in analogical reasoning is to identify the *ratio legis*, an effort that lies at the heart of the relationship between ethical norms, legal norms, and how to discern them in the divine Law.

The two dominant theories of ethics current in the 5th/11th century—associated with the Mu’tazilī and Ash’arī schools of theology, respectively—differ in their assessment of human acquisition of moral knowledge, akin to the two positions of the Euthyphro dilemma. Starkly simplified,¹² Mu’tazilīs reject a discrepancy between this and the metaphysical world, between reason and revelation, and, thus, hold that God, being just, commands an act because

7 Al-QAFFĀL 2007: 26-27. Al-Shāshī seems to have been close to Mu’tazilī views on the role of the intellect in legal reasoning (cf. REINHART 1995: 20-21).

8 This paper does not mean to suggest that there were no other influences on al-Ghazālī’s thought coming from philosophy or theology, but rather it focuses on potential precursors within the genre of legal theory itself to explore the intellectual concerns of 5th/11th century jurisprudence.

9 Zysow rightly mentions that there was a shift toward a substantive understanding of the *ratio legis*, though not specifying a particular time frame (ZYSOW 2013: 254).

10 Al-Dabbūsī is variously spelled with one or two “b”. I adhere in this paper to the way it is rendered in the edition of *Taqwīm al-adilla* used, namely with *shadda* over the “b”.

11 Legal assessment (*ḥukm*) refers to judging an act prohibited, reprehensible, permissible, recommended or obligatory.

12 For in-depth discussions of the ethical theories of the time period, see HOURANI 1971; FAKHRY 1975; ID. 1991; VASALOU 2008; REINHART 1995; SHIHADÉH 2016; FARAHAT 2019. There is no established consensus on how to classify and designate the Mu’tazilī and Ash’arī approaches to ethics. Shihadeh uses “ethical realism” for the Mu’tazilī position and calls the Ash’arī approach “theological voluntarism” (SHIHADÉH 2016); Farahat terms the Mu’tazilī stand “natural law theory” and the Ash’arī position “divine command theory” (FARAHAT 2019: 8-10); others argue that both fall within the divine command theory, though Mu’tazilī theories constitute a modified command theory (AUSTIN, <<https://www.iep.utm.edu/divine-c/#H3>>).

it is good and He prohibits something because it is bad—a position akin to the second horn of the Euthyphro dilemma.¹³ Ash‘arīs, by contrast, are representative of the first horn of the Euthyphro dilemma, holding that an act is morally good because God commands it. This position derives from Ash‘arīs giving predominance in their theology to God’s omnipotence and transcendence, their epistemological skepticism, and their understanding of God’s speech as inseparable from God.¹⁴ The Māturīdī position on moral knowledge lies somewhere in between these two, holding that God is sovereign absolutely and that God’s command establishes what is good on account of His wisdom (*hikma*). Yet, Māturīdīs derive from this the existence of a stable system of norms that is discernable by the intellect (RUDOLPH 1997: 332).

Al-Ghazālī, as stated above, imbues the *‘illa* with ethical characteristics that are in line with God’s legal objectives. Looking at the legal writings of al-Baṣrī, al-Dabbūsī, and al-Juwaynī provides insights into the factors and intellectual currents upon which al-Ghazālī builds to achieve this ethical turn in legal analogy. In the following, I examine the legal works of these 5th/11th century jurists for their understanding of the role of the intellect in grasping good and bad (*taḥsīn wa-taqbīḥ*) and the impact of that understanding on the legal status of acts as well as how they see the relationship between divine legislative intent and identifying the *ratio legis* in analogy.¹⁵ Exploring the ethical dimension of legal analogy also yields insights into positions on moral autonomy. While Frank claims that proponents of ethical values stemming from God’s command alone thereby abdicate moral reflection, we will see below that the picture is more complex when ethical considerations enter the determination of the *ratio legis* (FRANK 1983: 214).¹⁶

Abū l-Ḥusayn al-Baṣrī (d. 436/1044)

The Mu‘tazilī Ḥanafī jurist Abū l-Ḥusayn al-Baṣrī detailed his legal theory in the *Kitāb al-Mu‘tamad fī uṣūl al-fiqh*. God’s Law, al-Baṣrī affirms, is laid down for a purpose and objective, because God’s speech and that of His Prophet is not senseless (*‘abath*) and, thus, must intend meaningful information (al-BASRĪ 1964-65: 180 and 916). In line with Mu‘tazilī ethics, al-Baṣrī states that God’s command (*amr*) informs humans about the goodness of what

¹³ For an account of the Euthyphro dilemma and its influence on conceptions of language in Islamic jurisprudence, see FARAHAT 2016: 581-605, for Mu‘tazilī conceptions 584-591; FARAHAT 2019: 134-142.

¹⁴ The interplay between theology and linguistics has recently been highlighted by several scholars who discuss how different linguistic approaches influence conceptions of God’s speech. Considering speech as vocal form (*lafẓ*) leads Mu‘tazilī scholars to conceive of God’s speech as created accident, whereas Ash‘arī scholars understand speech as mental content (*ma‘nā*) and, thus, hold that God’s speech is eternal (KEY 2018: 75; FARAHAT 2019: 96-115; ALI 2000: 30-31; GLEAVE 2012: 29-44).

¹⁵ I hope that this essay contributes to what Shihadeh calls the “sorely understudied” significance of metaethical discussions in *uṣūl al-fiqh* (SHIHADÉH 2016: 387-388).

¹⁶ Farahat, like myself, points out that, counterintuitively, it is the Mu‘tazilī approach to the knowledge of ethical norms that absolves humans from moral autonomy (cf. FARAHAT 2019: chapter 4, and 225-226).

is commanded,¹⁷ and His interdiction (*nahy*) informs them about the badness (*qubḥ*) of the interdicted (al-BAṢRĪ 1964-65: 56). In addition, command and prohibition inform people about their *maṣlaḥa* and *mafsada*, respectively. God's wisdom and omniscience makes it inconceivable that He fails to fulfil an obligation and, hence, al-Baṣrī argues, it is obligatory upon God to inform humans about their *maṣlaḥas* and *mafsadas* (al-BAṢRĪ 1964-65: 869-870, 908-910, and 982; SHIHADDEH 2016: 386). In short, the purpose of revelation is to inform people about their *maṣlaḥas* and *mafsadas*. How al-Baṣrī conceives of the relationship between *maṣlaḥa* and command can be seen when he discusses the epistemological bases of assessing acts.

The Legal Assessment of Good and Bad Acts

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Al-Baṣrī states that some acts can be assessed by the intellect (*‘aql*) alone (al-BAṢRĪ 1964-65: 824),¹⁸ others are made known only by the Law, and some are known both rationally and revelatory (al-BAṢRĪ 1964-65: 370). The intellect, according to al-Baṣrī, assesses acts of the religiously accountable individual (*mukallaḥ*) either as good (*ḥasan*) or bad (*qabīḥ*). Good, he says, encompasses the legal assessment of permissible (*mubāḥ*), recommended (*mandūb*), and obligatory (*wājib*), and bad comprises acts that are prohibited (*muḥarram*, *maḥzūr*) and reprehensible (*makrūh*) (al-BAṢRĪ 1964-65: 8). Crucial to the relationship between the ethical and legal status of an act is blame (*dhamm*).¹⁹ An act is good when the person capable and conscious of its performance²⁰ deserves no blame for doing it. An act for which its agent incurs blame is bad (al-BAṢRĪ 1964-65: 8-9 and 364). Bad is, for example, injustice (*zulm*), lying (*kadhb*), ingratitude for beneficence (*kufr al-ni‘ma*), ignorance (*jahl*), harming oneself or another (*maḍarra ‘alā l-naḥs aw ‘alā l-ghayr*), and transgression against another's property (*taṣarruf fī mulk al-ghayr*) (al-BAṢRĪ 1964-65: 868-869 and 871). Al-Baṣrī understands bad as a consequence of weighing benefit and harm. He classifies transgression against someone else's property as bad because the owner has more right to benefit from it than the non-owner; it is bad because it harms the owner (al-BAṢRĪ 1964-65: 875).

Weighing benefit against harm also leads to assessing the legal status of acts. Good acts are of two types: either a preponderance of evidence exists that leads a person to perform the good act or such preponderance is absent. Preponderant evidence to engage in an act may indicate obligatoriness in that the intellect requires performing the act, such as thanking the benefactor (*shukr al-mun‘im*) and being fair (*inṣāf*), or the preponderant good act may not be obligatory to perform, such as being generous (*tafaḍḍul*) or being kind (*iḥsān*) (al-BAṢRĪ

17 Al-Baṣrī illustrates this by saying that killing a particular person who is an idolator is only known to be good by God's command “kill the idolators (*fa-qṭulū l-mushrikīn*)” (Qur’ān 9:5).

18 In this section, I am only presenting al-Baṣrī's position on the assessment of acts. He also states that the intellect alone is able to establish knowledge, such as the knowledge about God, His attributes, His self-sufficiency, and that He does no evil (al-BAṢRĪ 1964-65: 886-887).

19 It should be noted that al-Baṣrī does not mention ‘praise’ as a factor determining the evaluation of acts.

20 The insane, sleeping, forgetful or child is not under *taklīf* and, hence, absolved of blame or praise for acts committed (al-BAṢRĪ 1964-65: 364).

1964-65: 868).²¹ Acts for which there is no preponderance for either performing or omitting are permissible (*mubāḥ*). These acts, according to al-Baṣrī, are nonetheless assessed as good because they are of benefit (*maṣfaʿa*, *naḥf*), such as the permissibility of eating food (al-BAṢRĪ 1964-65: 868; REINHART 1995: 40-41). Attaining benefit is the objective (*gharaḍ*) that motivates to perform permissible acts (al-BAṢRĪ 1964-65: 868-870). They are permissible because the intellect does not detect an indication for their badness (al-BAṢRĪ 1964-65: 869).²² Whether or not an act is obligatory to perform depends, however, not so much on the goodness of the act but on the factor of harm. Al-Baṣrī states that the intellect establishes that it is obligatory to avert harms (*maḍārr*) and procure benefits (*manāfiʿ*). When the intellect determines that something leads to an overwhelming benefit, then it is good and obligatory to do, such as averting harm by drinking a bitter medicine (al-BAṢRĪ 1964-65: 583-584 and 870). Something that is simply good, he says, does not incur obligation. Only when badness, in form of harm, is associated with it, is it obligatory to omit the act (al-BAṢRĪ 1964-65: 872). In short, while people's actions are guided by attaining benefits and averting harm, rational obligation to act is only established when thereby harm is avoided. The evaluation of acts is driven not by their beneficence but by their harmfulness.

The same rationale of assessing acts, al-Baṣrī insists, applies to religious injunctions. The divine Law informs humans that obedience to God's commands leads to *maṣlaḥa* (in the form of reward) and disobedience to *mafsada* (in the form of punishment). Hence, God's commands are good, and obligatory to perform. By contrast, God's prohibitions are signs indicating harm, that the acts are bad, and performing them incurs blame. Since matters of the Law (*sharʿiyyāt*) are *maṣlaḥas*,²³ al-Baṣrī holds that people are rationally obliged to obey God's injunctions in order to attain *maṣlaḥa* and avert *mafsada* (al-BAṢRĪ 1964-65: 584, 586, and 725). In the same manner that harm is a criterion for rationally assessing acts, acts that pertain to the revealed Law receive their legal assessment in relation to disobedience (*maʿṣiya*) to God, which leads to harm in the form of punishment in the Afterlife. Failing to perform a good act is only a form of disobedience when it is commanded. Hence, divine commands, according to al-Baṣrī, do not include recommended acts (*mandūb*) (al-BAṢRĪ 1964-65: 56-61 and 365-366; FARAHAT 2019: 191-194). Similarly, acts that are bad and for the performance of which one deserves blame include not only prohibited acts (*maḥzūr*, *muḥarram*) but also matters classified as reprehensible (*makrūh*) or sinful (*dhanb*). Yet only the first category, the prohibited, incurs God's threat of punishment (*waʿd*) for disobedience (al-BAṢRĪ 1964-65: 9),²⁴ the other two, according to al-Baṣrī, are acts that God dislikes (*kāriḥ*) (al-BAṢRĪ 1964-65: 365-366).

21 The word *iḥsān* means to do something good (*ḥasan*) to somebody else. To reflect that al-Baṣrī does not deem *iḥsān* obligatory, I opted for the translation of 'being kind.'

22 Al-Baṣrī adds that such actions are only permissible if the Law also does not indicate that there is harm or badness in them, saying that if there were a *mafsada* connected with the act, then God would surely have indicated that.

23 Matters of the Law are *maṣlaḥas* in the sense that Revelation is a source of benefit and well-being for humans.

24 Yet, al-Baṣrī does not use the criterion of blame to describe the prohibited act. Proscribed, according to al-Baṣrī, is that which one is prevented from doing through deterrence (*zajār*), i.e., threat of punishment (al-BAṢRĪ 1964-65: 9).

We see that, structurally, al-Baṣrī equates people's rational obligation to procure benefit and avert harm from themselves with their obligation to act upon God's commands as a way to attain *maṣlaḥa* and to refrain from what God prohibits to avoid *mafsada*. Obedience and disobedience to divine commands lead to *maṣlaḥa* and *mafsada*, respectively. In matters of the Law, just as in matters determined by the intellect alone, people are obliged to act upon what leads to benefit and *maṣlaḥa*.

However, al-Baṣrī emphasizes that while the intellect is able to know that *maṣlaḥa* is good and *mafsada* is bad, it is not able by itself to establish what constitutes a *maṣlaḥa* or *mafsada* from a religious perspective.²⁵ Only God, al-Baṣrī asserts, informs humans about their religio-legal (*sharʿī*) *maṣlaḥas* and *mafsadas* and what is connected to them. For example, only through revelation is it known that prayer is obligatory, drinking wine prohibited, not fasting on the first day of Ramaḍān blameworthy, and trading wheat usuriously prohibited. These religio-legal *maṣlaḥas* and *mafsadas*, according to al-Baṣrī, are acts the status of which cannot be assessed rationally by considering praise and blame deserved for the action; rather they are acts by the performance of which the agent worships God in accordance with the Sharʿa (al-Baṣrī 1964-65: 370, 702, 723-724, 888, 890, and 908). Since the intellect cannot arrive at knowledge of religious *maṣlaḥas* and *mafsadas* (as opposed to mundane benefit and harm), it is incumbent upon God to inform humans about them (al-Baṣrī 1964-65: 908). Divine commands inform humans that acting in accordance with the commanded is a *maṣlaḥa* (al-Baṣrī 1964-65: 403). Yet, it is not the commanded act itself that is a *maṣlaḥa*;²⁶ rather, al-Baṣrī says, the command is a motivating factor (*bāʿith*) to do what is commanded, in the same way as divine prohibition motivates one to omit the prohibited act (al-Baṣrī 1964-65: 107 and 181). The believer attains *maṣlaḥa* by carrying out God's command as an act of worship and obedience (al-Baṣrī 1964-65: 707, 710, and 711).

Some matters, al-Baṣrī states, receive their assessment from a combination of intellect and Revelation. It is known by the intellect, for example, that engaging in commercial transactions is good and, hence, permissible. Some of the conditions surrounding such transactions, however, like the prohibition against usury (*ribā*), are only known from Revelation (al-Baṣrī 1964-65: 370). Another such ruling is the Qur'anic prohibition against saying 'fie' to one's parents. It is known rationally that respecting (*taʿẓīm*) parents is good whereas abusing them is an offence and, thus, bad and prohibited (al-Baṣrī 1964-65: 780 and 741).²⁷ In this latter case, intellect and Revelation both prescribe the same ruling. While there is overlap between what the revealed Law enjoins and the assessment of that same matter by the intellect, such as the goodness of commercial transactions, in the area in which the intellect is not able to assess the moral value of an act independently from Revelation, the believer has to follow the divine injunctions. It is only through obedience to God's commands that the believer attains *maṣlaḥa* and salvation in the Afterlife. Autonomous rational

²⁵ The intellect is able, however, to establish procedures to recognize valid legal rulings and their applicability in specific situations (al-Baṣrī 1964-65: 879-881).

²⁶ Command informs about a *maṣlaḥa* even if the believer does not act upon the command (al-Baṣrī 1964-65: 180).

²⁷ Al-Baṣrī also uses the negative imperative to not say 'fie' to one's parents (Q. 17: 23) as example that the intellect can establish obligation by means of analogical reasoning.

evaluation of the moral content of Revelation can be suspended because of the knowledge that God only commands the good.

In short, al-Baṣrī affirms that God's Law is purposeful, that divine commands refer to acts that are good and lead to *maṣlaḥa*, whereas divine prohibitions refer to acts that are bad and lead to *mafsada*. Yet, the question remains whether or not the goodness of the commanded action—or badness in case of prohibition—is reflected in the *ratio legis* of the ruling.

Identifying the Correct *Ratio Legis*

Al-Baṣrī discusses the concept of *illa* primarily within the context of legal analogy (*qiyās*). Only the Law, he says, provides religio-legal *illas*, either through an explicit text of Qur'ān, recurrent Sunna and Consensus, or, as is the case with the majority of *rationes legis*, through signs that are known probabilistically, such as singular *ḥadīths*, textual implication (*tanbīh*) or deduction (*istinbāt*) (al-BAṢRĪ 1964-65: 772 and 774-775). A *ratio legis*, according to al-Baṣrī, can be a sign (*amāra*) or indication (*dalāla*) (al-BAṢRĪ 1964-65: 772). Although al-Baṣrī remarks that there must be a 'connection' (*ta'alluq*) between a sign (*amāra*) and what it is a sign for, he provides no further information on this relationship (al-BAṢRĪ 1964-65: 695). The main way to correctly identify a *ratio legis* is by its efficacy (*ta'thīr*) on the ruling. Efficacy is indicated in the texts either explicitly,²⁸ by context or by a characteristic describing the *ratio legis*, all of which only make sense to be mentioned if they provide information about the *illa*.²⁹ When the texts are not explicit, then the efficacy can be determined by co-presence and co-absence (*tarḍ wa-'aks*) between the *illa* and its associated ruling (al-BAṢRĪ 1964-65: 784-785).

The ruling of a source text is applied in analogy when the *illa* of the source text obtains in another situation (al-BAṢRĪ 1964-65: 716). According to al-Baṣrī, it is obligatory to act upon the ruling established by analogy; an action that leads to *maṣlaḥa* (al-BAṢRĪ 1964-65: 704, 706, 707, 710, and 713). Nevertheless, al-Baṣrī does not conceive *maṣlaḥa* as an indicant for the correctness of the *ratio legis*. The relationship between *ratio legis* and *maṣlaḥa* is such that establishing the existence of the *illa* effects the ruling and thereby establishes or prompts *taḳlīf* to follow the ruling, which, upon discharge of one's religious responsibility through performing of the act, leads to *maṣlaḥa*.³⁰ In al-Baṣrī's conception, the *illa* itself is only connected to *maṣlaḥa* insofar as it is an aspect or grounds (*wajh*) of *maṣlaḥa*, it is a sign (*amāra*) that accompanies the configuration of *maṣlaḥa*, or a motivating factor (*bā'ith*) to

28 Namely by linguistic indications, such as the words *fa-*, *li-*, *li-ajl* or *kaylā* (al-BAṢRĪ 1964-65: 775).

29 For example, the characteristic of reaching maturity (*bulūgh*) for ending guardianship over minors, or the context of the *ḥadīth* that the murderer does not inherit (al-BAṢRĪ 1964-65: 775-881).

30 Al-Baṣrī does not elaborate on whether there is a connection between the *illa* and *taḳlīf*. It seems that the relationship is only indirect, in that the presence of the *illa* indicates that the ruling is in effect and, thus, has to be followed (barring impediments, like inability to perform the action). For example, the presence of the new moon at the beginning of Ramaḍān is the *ratio legis* (usually in this case called *sabab*) that puts into effect the ruling of fasting, and in this indirect way the presence of the new moon relates to the religious accountability of the believer. The *illa* could be understood as an aspect or configuration (*wajh*) of *taḳlīf*, in the same way as al-Baṣrī understands it to be an aspect or configuration of *maṣlaḥa* (see below).

obey God's command (al-BAṢRĪ 1964-65: 714-715).³¹ The *ratio legis* itself is not identifiable by looking at the *maṣlaḥa* that the obedient believer will receive. The correct *ratio legis* of a ruling is not determined by ethical considerations or mundane consequences of benefit or harm.

What happens when the Law is silent? Al-Baṣrī clearly allows for the possibility that there is no authoritative text for a given situation (*lā naṣṣ fīh*), yet he insists that for every incident inevitably a ruling can be found. Such a ruling, however, would not be established by the intellect. When no scriptural evidence can be found, one needs to take recourse to the procedure of legal analogy (al-BAṢRĪ 1964-65: 743-744 and 773-775). In matters that fall within the purview of the revealed Law, the intellect's role is limited to identifying the *ratio legis* indicated by Revelation. Here, al-Baṣrī exhibits confidence in the intellect to determine the *rationes legis* that effect divine rulings.³²

We see that although al-Baṣrī assigns a positive role to the intellect in assessing the moral value of acts, he limits this activity to areas that are beyond the realm of the religious, and with the caveat that religious (*sharʿī*) rulings have priority over those determined independently by the intellect (cf. al-BAṢRĪ 1964-65: 743-744 and 773-775). Only by obedience to the divine word can people reach otherworldly reward. A divinely commanded action is good, obligatory to perform, and when acted upon leads to *maṣlaḥa*. While al-Baṣrī refers to people's purposes in the area of interpersonal transactions (*muʿāmalāt*),³³ he does not designate these mundane purposes with the term *maṣlaḥa*. Different from al-Ghazālī, al-Baṣrī uses the term *maṣlaḥa* and *maṣṣada* only in reference to otherworldly reward and punishment. For mundane benefits and harms, he usually employs words derived from the triliteral roots *ḥ-f-ʿ* and *ḍ-r-r* (al-BAṢRĪ 1964-65: 869-871). In al-Baṣrī's conception, *maṣlaḥa* is connected to the *ʿilla* of a ruling only through the criterion of obedience to God's command not by assessing the ruling's mundane consequences. While al-Baṣrī accepts human autonomous moral evaluation according to consequences measured by benefit, harm, and blame in matters that the Law does not address, he does not conceptualize the *ʿilla* of revealed rulings as a rationale of why God prescribed a particular ruling. The *ʿilla* is not connected to the moral value or the purpose of the divine ruling, it is only a sign (*amāra*) or indication (*dalāla*) for it. Al-Baṣrī does not inquire into why God prescribed a particular course of action—it is enough to know that God only commands what is good and what, through obedience, is a *maṣlaḥa* for humankind. God's being a moral agent obviates further inquiry into the moral

31 The *ʿilla* is an aspect of *maṣlaḥa* insofar as the validity of the ruling depends on a condition that specifies under which circumstances or at which time the *mukallaf* should act upon the command. For example, fulfilling the obligation of prayer leads to *maṣlaḥa* if its condition of ritual purity is fulfilled.

32 This confidence, as Farahat points out, is based on the Muʿtazilī understanding of continuity between the physical and metaphysical that leads to universal rules that apply to God and humans alike (FARAHAT 2019: 67-68).

33 For instance, al-Baṣrī says that the objective (*gharaḍ*) of buying is attaining ownership; the act of witnessing aims at obliging the judge to pass judgement; divorce (*ṭalāq*) aims at separation and dissolving the bond of marriage; and the objective of manumission is liberation (al-BAṢRĪ 1964-65: 184).

status of the commanded act.³⁴ How divine rulings are good in this world remains beyond the frame of his legal-theoretical inquiry.

Al-Baṣrī's position that God commands what is good and that obedience to God's commands results in otherworldly *maṣlaḥa* raises questions about the limits of *taklīf*. Are acts that become rationally obligatory because they avert harm outside the sphere of *taklīf*, and, hence, outside of *maṣlaḥa*? This implication in al-Baṣrī's thought would leave room for human moral autonomy in matters outside the religious sphere.

Abū Zayd al-Dabbūsī (d. 430/1039)

The legal work of the Ḥanafī jurist Abū Zayd al-Dabbūsī, *Taqwīm al-adilla*, significantly influenced articulations on legal theory of later Ḥanafī scholars, such as Muḥammad b. Aḥmad al-Sarakhsī (d. 483/1090, 490/1096 or 495/1101) and Abū l-Ḥasan 'Alī b. Muḥammad al-Pazdawī (d. 482/1089) (BEDIR 2004: 234-235). Al-Dabbūsī is said to have belonged to the Māturīdī school in theology, though, as Bedir shows, he was close to Mu'tazilī positions in some of the areas that are also of interest here, such as the role of rational proofs and whether the intellect can establish legal obligation (BEDIR 2004: 233-243). In the following, I will focus on al-Dabbūsī's understanding of command and prohibition in their relationship to good, bad, and obligation as well as his conception of the 'illa as part of legal analogy (*qiyās*).

The Legal Assessment of Good and Bad Acts

Notably absent from al-Dabbūsī's discussion of ethical norms and divine ordinances is the criterion of blame or praise as well as reward or punishment. Where al-Baṣrī articulated good, bad, and obligatory in relation to blame and disobedience, al-Dabbūsī does not refer to either social or divine blame or praise. Rather, in Māturīdī fashion, he connects the goodness and badness of divine command and prohibition to God's wisdom (*ḥikma*) (RUDOLPH 1997: 332-334). Divine command, al-Dabbūsī explains, means that making what is commanded occur has been made obligatory for humans by God (al-DABBŪSĪ 2001: 44). A divine command is necessarily good (*ḥasan*) since, according to al-Dabbūsī, in light of God's wisdom it is inconceivable that God would command humans to perform the commanded act unless it is good in the mind of God (*'inda Llāh*) (al-DABBŪSĪ 2001: 44). Since God is not foolish (*lā safah lah*), what God commands, al-Dabbūsī says, cannot ever be bad (al-DABBŪSĪ 2001: 44 and 57). Something is called bad (*qabīḥ*), by contrast, when, in accordance with God's wisdom, it ought not occur; and, hence, God issues an interdiction (*nahy*) against performing it (al-DABBŪSĪ 2001: 50). Divine prohibition indicates the badness of the prohibited action just as command indicates the goodness of the commanded.³⁵

³⁴ A similar conclusion that blindly following God's commands is only possible if those commands are "ready-made judgments of another moral agent" has been made by FARAHAT (2019: 134).

³⁵ The fact that prohibition means that the act ought not exist, does not mean, however, that by its non-existence the act becomes good, since non-existence cannot be a reason (*'illa*) for assessing it as good (al-DABBŪSĪ 2001: 50). Here, we see again that al-Dabbūsī does not define good and bad with regard to reward or punishment.

In line with a Mu‘tazilī approach to ethics, al-Dabbūsī affirms that the divine command is good and commanded because it is good. Like al-Baṣrī, he holds that divine command establishes the obligation to perform what is commanded, though his understanding of the interaction between inherently good or bad acts and divine communication is more complex than that of his Mu‘tazilī contemporary. Al-Dabbūsī divides acts into two broad categories:³⁶ Into one category fall acts that are good or bad in themselves (*‘ayn al-fi‘l*) as indicated by their conventional meaning (*fi waḍ‘ih*), such as that the word ‘exaltation’ (*ta‘ẓīm*) has a meaning that is good whereas the word ‘ignorance’ (*jahl*) means something bad. Al-Dabbūsī also includes in this category some acts commanded by God, such as prayer, since prayer is an act of exaltation (al-DABBŪSĪ 2001: 44). The second category comprises acts that are good and bad on account of the meaning that the Law gives them through command (e.g., fasting, performing the pilgrimage) or prohibition (e.g., performing prayer without ablution),³⁷ or on account of meanings that the Law associates with them (goodness of fighting infidels, badness of *ribā* and of prayer on usurped land).³⁸ Acts that are good or bad in themselves, al-Dabbūsī says, can be rationally assessed on the basis of their conventional meaning and establish obligation to perform or omit unless there are impediments or countervailing factors.³⁹ Acts that are good on account of revealed information are only obligatory to perform as long as the meaning that makes them obligatory remains obligatory. Their evaluation may change according to circumstances. For example, *jihād* against nonbelievers is good because it is commanded by the Law but ceases to be good—and, hence, no longer commanded—once the infidels convert to Islam (al-DABBŪSĪ 2001: 46). Similarly, the obligation to pray over the deceased ceases, al-Dabbūsī explains, if the dead person is an infidel or a highway robber (al-DABBŪSĪ 2001: 46).⁴⁰ Bad acts follow the same pattern (al-DABBŪSĪ 2001: 44, 52, 53, and 455).

Al-Dabbūsī understands the assessment of ethical norms to be context-bound. While the intellect is able to assess some acts as good and bad in themselves according to their conventional meaning, acts commanded or prohibited by God have to be evaluated within the context in which they are commanded, and their assessment may change according to

36 Al-Dabbūsī differentiates between four categories (al-DABBŪSĪ 2001: 44-53), of which only the first category comprises inherently good acts; the assessment of the other three is dependent on some information that the Law provides or associates with the act. For brevity’s sake I grouped the latter three together.

37 Al-Dabbūsī considers prayer without ablution to be prohibited on the grounds that the obligation to prayer with ablution entails the prohibition of omitting the obligation (see al-DABBŪSĪ 2001: 48-49). A more detailed discussion is found in KURNAZ 2016: 113-119, in particular 115.

38 Al-Dabbūsī’s categorization that some acts are good/bad because they are associated with something that is qualified as good/bad is also expressed by ‘Abd al-Jabbār (d. 415/1025) (SHIHADEH 2016: 392).

39 Al-Dabbūsī emphasizes that the intellect, for which he uses the term *ra’y*, is only an authoritative proof (*hujja*) when there is no information from the Law (al-DABBŪSĪ 2001: 268).

40 Al-Dabbūsī does not clarify the circumstances of the death of the highway robber. If the highway robber died as a result of executing the *ḥadd* punishment, the crime would have been expiated and one would expect that funeral prayers be permissible.

circumstances.⁴¹ It is here where human intellectual activity is demanded to assess the goodness and badness of an act. Apart from acts that are inherently good, moral assessment means to determine that a particular act under particular circumstances accords with divine command and prohibition and has to be acted upon or omitted. One may say that in al-Dabbūsī's scheme of ethics, the area of human moral autonomy, independent of Revelation, is rather limited. Most of human inquiry into the ethical and legal status of acts occurs within the realm of activities about which the Law informs. Let us turn now to whether or not the evaluation of good and bad, obligatory and prohibited influences al-Dabbūsī's understanding of the procedure for performing legal analogy.

Identifying the *Ratio Legis*

Throughout his discussion of *qiyās*, al-Dabbūsī emphasizes that analogical reasoning is a rational endeavor (al-DABBŪSĪ 2001: 278). The jurist reflects upon the textual sources and their rulings in order to extend the ruling of the source to situations not textually ruled upon (al-DABBŪSĪ 2001: 260, 268, and 306).⁴² Analogy does not have to be based on certain knowledge (*ʿilm*) but it suffices, says al-Dabbūsī, that the correctness of the analogy be overwhelmingly probable (*ghālib al-raʾy*) (al-DABBŪSĪ 2001: 269). Like al-Baṣrī, al-Dabbūsī holds that it is obligatory to transfer the ruling to the new case. Acting upon the result of *qiyās*, which for al-Dabbūsī is an authoritative proof (*ḥujja*), constitutes obedience to God (al-DABBŪSĪ 2001: 260).

Is the obligation to act upon the analogically derived ruling related to an ethical value in the *ratio legis*? Al-Dabbūsī states that the *ʿilla* is a sign (*amāra*) and a distinctive marker (*ʿalam*) for the textual ruling. Its presence in the derivative case makes the two situations similar to one another and warrants transfer of the textual ruling to the new case (al-DABBŪSĪ 2001: 292 and 306). Yet, it is not the presence of the *ʿilla* or *ʿalam* that necessitates the ruling, rather, al-Dabbūsī emphasizes that it is the Law which sets it as *ratio legis*, i.e., a sign or marker, for the ruling (al-DABBŪSĪ 2001: 387), thereby avoiding the implication of a causal relationship independent from God. Instead of a necessary causality between the *ʿilla* and its ruling, al-Dabbūsī, like al-Baṣrī, understands this relationship as one of efficacy (*taʿthīr*).⁴³ The *ʿilla* of a ruling, al-Dabbūsī says, is indicated by its efficacy to bring about the ruling (al-DABBŪSĪ 2001: 307-308). Only when there are effective characteristics (*awṣāf muʿaththira*), the effect of which is established by the Law, does the jurist analogize the textual ruling to other situations that are not scripturally regulated. In contrast to al-Baṣrī, al-Dabbūsī describes what he means with efficacy in more detail. He says that by thoroughly studying

⁴¹ In this point, al-Dabbūsī seems to side with the Ashʿarī interpretation of divine commands that the signification of commands is primarily understood from its context (*qarīna*), not the speaker's intention (see ALI 2000: 30-32).

⁴² Considering analogical reasoning as a mental activity also leads al-Dabbūsī to say that only those rulings that can be comprehended rationally are subject to analogy (al-DABBŪSĪ 2001: 306).

⁴³ As Zysow states, "[t]he term 'effectiveness', however, appears in a variety of usage in the literature of *uṣūl al-fiqh*" (ZYSOW 2013: 205). Although al-Baṣrī, al-Dabbūsī, and al-Juwaynī all use the term *taʿthīr*, each of them has a slightly different conception of it, with al-Baṣrī understanding it more as formal criteria and al-Dabbūsī and al-Juwaynī more along substantive lines. A thorough scholarly analysis of the term and its usage awaits scholarly attention.

the meanings of the authoritative texts (*ma‘ānī l-nuṣūṣ*) (al-DABBŪSĪ 2001: 268),⁴⁴ the jurist discerns the *ratio legis* by an indicant that distinguishes it from non-effective characteristics (al-DABBŪSĪ 2001: 302). This distinguishing factor, al-Dabbūsī explains, is something that indicates that characteristic’s propriety (*ṣalāh*) and its relevance (*mulā’ama*) for the ruling. He says that ‘propriety’ means that something is relevant and not inconsistent (*ghayr nābin*); a characteristic is relevant when it concurs with and is in agreement with characteristics identified and analogies established by the Prophet and the first generations of Muslims (*salaf*) (al-DABBŪSĪ 2001: 304). Unfortunately, al-Dabbūsī does not elaborate further on how to recognize relevance in concrete terms, only saying that one acts upon a relevant characteristic when it is also effective on the ruling (al-DABBŪSĪ 2001: 304). Efficacy, thus, remains the most important factor to correctly identify the ‘illa, though efficacy is discerned by its propriety and relevance to the ruling, as opposed to mere co-presence and co-absence or concomitance (*dawarān*),⁴⁵ which al-Dabbūsī expressly rejects as indications of the correct *ratio legis* (al-DABBŪSĪ 2001: 304 and 307).⁴⁶

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Although al-Dabbūsī does not further explain what he means by propriety, relevance or efficacy, many of his examples of analogical reasoning reveal that in addition to these characteristics, the ‘illa has a deeper meaning. This is evident, for example, when he articulates the difference between the terms *sabab* and ‘illa. *Sabab*, according to al-Dabbūsī, is something that leads to something else; it is a means to a ruling but does not entail the ruling itself (al-DABBŪSĪ 2001: 371). When, however, the *sabab* entails the ‘illa, then it is like the ‘illa of the ‘illa (al-DABBŪSĪ 2001: 378). For example, travel, al-Dabbūsī says, is the *sabab* that entails the license (*rukḥṣa*) to omit prayer or fasting, whereas the ‘illa for legitimate omission of these obligatory acts is the hardship (*mashaqqā*) associated with travel. Hence, hardship is the real ‘illa (al-DABBŪSĪ 2001: 382) or one may call the *sabab* the occasion and the ‘illa the rationale or wisdom behind the ruling.

The fact that al-Dabbūsī understands the ‘illa of a ruling to be associated with some underlying reason stems, I argue, from his approach to the ethics of command and prohibition. God commands something to be performed on account of His wisdom that its existence is good, whereas what, based on His wisdom, should not occur is bad and prohibited from being performed. These two underlying justifications find expression in the *ratio legis*, though al-Dabbūsī does not explain the relationship between the justifications and *ratio legis* in tangible terms. The fact that commanded and prohibited acts have underlying reasons also explains why one and the same act may receive different evaluations according to context. The above-mentioned example of prayer over the deceased stops being good, commanded, and obligatory when the underlying reason for its goodness is not present, as in the case of the dead highway robber—though why that reason is absent is not spelled out. Could it be that al-Dabbūsī conceives of ‘illas or underlying reasons in terms of *maṣlaḥas*?

⁴⁴ Although al-Dabbūsī emphasizes here that the meanings of the texts are informing about the effective characteristics that constitute the ‘illas of rulings, he does not elaborate on how to analyze or understand meanings. The emphasis of his identification of the *ratio legis* is on efficacy, not on semantics.

⁴⁵ Al-Dabbūsī uses the term concomitance (*dawarān*) in the sense of *tarḍ wa-‘aks*, co-presence and co-absence.

⁴⁶ Al-Dabbūsī also rejects the validity of analogy of resemblance (*qiyās al-shabah*), the practice of which he attributes to the Ḥashwiyya (al-DABBŪSĪ 2001: 305).

Although al-Dabbūsī does not refer explicitly to divine legislative intent as relating to *maṣlaḥa*, he holds that God’s wisdom entails that there is purpose in God’s creation, including His Law, or else, he says, the Law would be frivolous (*‘abath*) (al-DABBŪSĪ 2001: 459). Moreover, he argues that since the world was created for human *maṣlaḥas* (al-DABBŪSĪ 2001: 463), a divine prohibition must mean that it was issued in order to attain a greater good (*ṣalāh*) than would have been achieved by leaving the matter merely permissible (al-DABBŪSĪ 2001: 459). Furthermore, al-Dabbūsī states that God does not prohibit engaging in any of the mundane matters that the intellect deems permissible unless the prohibition entails *maṣlaḥas* for humankind (al-DABBŪSĪ 2001: 459). The divine wisdom behind the revealed rulings, thus, leads to *maṣlaḥas*.

While al-Dabbūsī does not explicitly link the *ratio legis* of divine rulings to either mundane or otherworldly *maṣlaḥas*, he does seem to suggest that legal requirements are related somehow to God’s wisdom. He—in contrast to al-Baṣrī—frequently uses the term *maṣlaḥa* to refer to legal *‘illas* as well as mundane benefits. He mentions, for example, that being a minor is the *‘illa* for guardianship (*wilāya*), which is instituted on account of the *maṣlaḥas* connected with this institution (al-DABBŪSĪ 2001: 315). These *maṣlaḥas* are rationally knowable. Al-Dabbūsī states that an intelligent person does not, without any knowledge, blindly accept the *maṣlaḥas* he is ordered to pursue (al-DABBŪSĪ 2001: 272). He, thus, implicitly confers some moral autonomy to evaluate the commanded action in terms of their mundane *maṣlaḥa*.

The mundane *maṣlaḥas* that al-Dabbūsī has in mind bear resemblance to the five necessities (*ḍarūrāt*) as later formulated by al-Ghazālī. Al-Dabbūsī links divine prohibitions to averting harm and mentions as examples the following prohibitions: excess eating due to the harm (*ḍarar*) it contains; transgressing against the property (*māl*) of others to protect (*ṣiyāna*) the right of the owner and avert harm (*ḍarar*) from him; fornication (*zinā*) to prevent neglecting to raise one’s offspring; drinking wine due to loss of intellect (*naqṣ al-‘uqūl*) and neglect of remembering God that it entails (al-DABBŪSĪ 2001: 459).⁴⁷ Moreover, he explains that God’s wisdom also permits people to transgress a divine prohibition in case of necessity (*ḍarūra*) when thereby a greater harm is averted, such as eating carrion in case of starvation (al-DABBŪSĪ 2001: 459). While al-Dabbūsī conceives of this wisdom in terms of averting harm and bringing about good, he shies away from proclaiming that the correctness of the *‘illa* can be identified by *maṣlaḥa* or mundane consequences. He no more than admits that the *ratio legis* can be identified by its propriety (*ṣalāh*), relevance (*mulā’ama*), and congruence (*muwāfaqa*) with *rationes legis* as identified and used in legal analogies by the early Muslim community.

In *Taqwīm al-adilla*, al-Dabbūsī lays out his understanding of how to assess the ethical value of acts. Acts are evaluated according to their inherent, rationally graspable meaning or according to the meaning that is associated with them in light of divinely furnished information. For the latter, good and bad depends on being commanded or prohibited by God, and divine command leads to legal obligation. This obligation also obtains in an analogous case; the correctness of the analogy is established by identifying the *ratio legis* of the ruling.

⁴⁷ Al-Dabbūsī also lists in this context the divine prohibition against gambling (*qimār*), eating pork, animals of prey, and other food “naturally repulsive” to humans.

Although the *ratio legis* is primarily identified by its *efficacy* (*ta'thīr*), on the meta-level rulings are laid down in accordance to God's wisdom. His wisdom, moreover, is found in that divine rulings bring about *maṣlaḥa* and good (*ṣalāh*) for humankind. In comparison with al-Baṣrī, one notices a marked expansion in the concept of *maṣlaḥa*. Al-Dabbūsī views the purpose of God's Law to be aimed at the existence of mundane *maṣlaḥas* and at averting harm in this world for the believer. Acts the meaning of which is imparted by divine revelation are assessed as good not only because God commands them, but also because they have tangible beneficial effects. How God's wisdom is reflected in the 'illa of rulings is still rather undeveloped. Yet, al-Dabbūsī's work represents a step toward operationalizing the ethics of the divine intent in the *ratio legis* and the procedure of legal analogy (*qiyās*).

Imām al-Ḥaramayn al-Juwaynī (419-478 / 1028-1085)

The Legal Assessment of Good and Bad Acts

As expected from a leading Ash'arī scholar, al-Juwaynī denies that good (*ḥasan*) and bad (*qabīḥ*) are rationally discernible by themselves. Nothing in God's rulings, he says, is bad or good in itself (al-JUWAYNĪ 1979: 87). While he admits that the intellect requires one to avoid perils (*mahālik*) and take advantage of benefits (*manāfi'*), he says this does not apply to divinely revealed rulings (al-JUWAYNĪ 1979: 91). It is God's announcement of punishment and beneficence (*iḥsān*) as it relates to the religiously accountable (*mukallaḥ*) that leads to apprehending the ethical value of acts (al-JUWAYNĪ 1979: 91-92, 99, 101, 216, and 223).⁴⁸ Ethical assessment of matters of the Law are a function of God's communication, which, in turn, determines their legal status. Divine command (*amr*) imposes upon the *mukallaḥ* the obligation to act, unless there are contextual indications to the contrary (al-JUWAYNĪ 1979: 216).⁴⁹ The counterpart of command is divine interdiction (*nahy*), which, al-Juwaynī states, is a deterrent requiring the *mukallaḥ* to refrain from performing the prohibited act (al-JUWAYNĪ 1979: 283, 310, and 313).⁵⁰ Similar to al-Baṣrī, al-Juwaynī links the assessment of religio-legal acts to blame (*lawm*). The non-performance of divinely commanded and, thus, obligatory acts, he says, is blameworthy, as is the performance of prohibited acts (al-JUWAYNĪ 1979: 310 and 313). Acts that are legally recommended do not incur blame when omitted (al-JUWAYNĪ 1979: 310). A reprehensible act is one that the Law deters from doing, though, contrary to al-Baṣrī, al-Juwaynī holds that there is no blame for engaging in it (al-JUWAYNĪ 1979: 310). Only with regard to permissible acts does the *mukallaḥ* truly have a choice; he is neither required to perform or omit them nor deterred from performing them (al-JUWAYNĪ 1979: 313).

⁴⁸ Similar to al-Baṣrī, al-Juwaynī argues that, in light of the divine threat of punishment upon disobedience, it is rational for the *mukallaḥ* to obey God's ordinances.

⁴⁹ Command does not allow for choice in acting, and, hence, it does not encompass the category of permissible (*mubāḥ*) (al-JUWAYNĪ 1979: 222).

⁵⁰ Prohibition also encompasses legal invalidity (*fasād*) of the prohibited. In order to constitute obligation, the *mukallaḥ* must know about and be capable to perform the commanded and to refrain from the interdiction; the sleeping, forgetful, intoxicated and minor is not obliged to obey (al-JUWAYNĪ 1979: 105-106).

The jurist's task is to discover the legal assessment of acts through a linguistic and semantic analysis of the divine word.⁵¹ In line with Ash'arī conceptions of divine speech as inner speech (*kalām al-naḥs*),⁵² al-Juwaynī holds that the most important inquiry into the divine speech is not the syntactical structure (*ṣiḡha*) of the utterance (*lafẓ*) but its meaning (*ma'nā*) (al-JUWAYNĪ 1979: 327).⁵³ The signification of the meaning is understood from the context of the situation (*qarā'in al-aḥwāl*) and the way in which Arabs⁵⁴ conventionally understand language (al-JUWAYNĪ 1979: 211, 216, 221, and 329).⁵⁵

Al-Juwaynī goes a step further in his preference of contextual over linguistic meaning, arguing that investigating the context of divine meanings allows jurists to recognize the purpose or intention (*maqṣūd, gharaḍ*) behind God's Law. He frequently affirms that God has a purpose with laying down His Law, using formulations such as *maqṣūd al-khiṭāb* (al-JUWAYNĪ 1979: 470, 543, 810). This purpose, he emphasizes, is not recognized simply by the linguistic form of divine speech but has to be seen in its context (al-JUWAYNĪ 1979: 211 and 778-779).⁵⁶ Moreover, al-Juwaynī clearly links the purpose of a ruling to extend it to other situations, or, as he says "to generalize" it. He illustrates this point with the case of a father prohibiting his son from eating a particular weed because it is poisonous. That the weed is poisonous is not the father's purpose for prohibition, he says. Rather, it is the father's compassion and care to prevent harm (*ḍirār*) to his son that leads him to generalize the command (*ta'mīm al-amr*), prohibiting him from eating any poisonous substance (al-JUWAYNĪ 1979: 778). The importance of context for identifying a ruling's purpose and analogizing from it is also evident in the scriptural ruling on retaliation. Al-Juwaynī mentions that the purpose of retaliation (*qiṣāṣ*) is to protect against bloodshed and preserve life (*ṣiyānat al-damā' wa-ḥifẓ al-muhaj, al-ṣawn fī-l-naḥs*) (al-JUWAYNĪ 1979: 1208 and 1222). The same intention (*ma'nā*), he says, obtains when somebody is killed with a blunt object (*muthaqqal*);⁵⁷ hence, by analogy the killer is subject to retaliation (al-JUWAYNĪ 1979: 1208-1209).

51 It is noteworthy here that al-Juwaynī rejects the notion that command means that the opposite of the commanded is therefore prohibited, i.e., he rejects the *a contrario* argument (*mafhūm al-mukhālaḥa*) (al-JUWAYNĪ 1979: 313).

52 For detailed discussion of the different approaches to divine speech of Mu'tazilīs and Ash'arīs see FARAHAT 2019: 69-127; VISHANOFF 2011: 109-189.

53 Al-Juwaynī's examples demonstrate that the jurist has to look at the meaning in which the words are used. Despite his emphasis on linguistic convention, al-Juwaynī adds that it is God who provides linguistic instruction (*waliyy al-tawqīf*) (al-JUWAYNĪ 1979: 328).

54 Although al-Juwaynī does not clarify whom he means by the term 'Arab', it is probably safe to assume that the term refers to the Arabic speaking population of Mecca and Medina at the time of the Prophet.

55 See also Ali's succinct summary of how Mu'tazilīs and Ash'arīs conceive of the intention of divine speech (ALI 2000: 29-34); Farahat's presentation of the debates over divine speech (FARAHAT 2019: 96-127, for al-Juwaynī see 107-115); and Gleave's detailed elaboration of the importance of context for understanding speech (GLEAVE 2012: chapter 1, esp. 6-20).

56 The intention of the speaker, i.e., God, is not the same as the meaning of the speech as understood by the recipients.

57 Jurists differ over whether retaliation for homicide is only warranted when someone is killed with a weapon or sharp instrument (*jāriḥ*) or also when done with an instrument not commonly used when intending a fatal blow, such as a stool. The different assessment results from considering primarily the

These examples show that al-Juwaynī affirms that divine rulings are laid down for a discernable purpose. Investigating the meaning of rulings in their context leads one to grasp not only their legal status but also the purpose or reason underlying the prescribed action. This purpose plays a role in identifying the ruling's *'illa*. Al-Juwaynī's discussion of the procedure of analogy allows a further glimpse into the way in which the divine legal intent is associated with the *ratio legis* of revealed rulings.

Determining the Correct Ratio Legis

Al-Juwaynī restricts analogy (*qiyās*) to investigations (*naẓar*) that require rational reflection about the *ratio legis*, thus excluding what he calls textual implications (*mafḥūmāt*) in which linguistic conventions and usage may be seen to already include meanings other than in the original case (al-JUWAYNĪ 1979: 786, 449, 468, and 470).⁵⁸ When trying to determine the *ratio legis*, the jurist investigates the connection of the ruling to its meaning (*ma'nā*). He says that a ruling established in the revealed texts or by Consensus is connected to a meaning that is suggestive of it and suitable for it within the conventions of the Law (*ta'līq ḥukm bi-ma'nā mukhīl biḥ munāsib lah fī waḍ' al-shar'*) (al-JUWAYNĪ 1979: 782). This ruling is transferred upon confirming the same meaning in a situation about which the authoritative texts are silent and which is free from invalidating factors; the meaning has to be suitable (*munāsib*) for the ruling, suggestive (*mukhīl*) and informative about it (*mush'ir biḥ*) (al-JUWAYNĪ 1979: 787-788, 802, 879, and 891).

How does a jurist recognize and identify a suitable and suggestive meaning as *ratio legis* for the ruling? Unfortunately, al-Juwaynī is not forthcoming with concrete criteria by which one identifies suitability or suggestivity. Yet, he provides some indication that suitability in a *ratio legis* is connected to God's intention in laying down the ruling. Al-Juwaynī puts suitability on par with *maṣlaḥa*, saying that both *maṣlaḥa* and suitable meanings indicate the *ratio legis* of rulings. Contrary to al-Baṣrī for whom *maṣlaḥa* is attached to obedience to God's ordinances, al-Juwaynī ties it to the *rationes legis* that are expressed in the meanings of the revealed word. He proclaims that *'illas* found in Scripture (*'ilal sam'iyya*) are not indicated for their own sake. Citing the precedent of the forebears (*al-awwālūn*), he says that from the authoritative sources of the Sharī'a they grasped meanings and *maṣlaḥas*, which they deemed congruent (*muwāfaq*) with the prophetic legal practice and upon which they relied when determining rulings for situations not addressed in the texts (al-JUWAYNĪ 1979: 803, 829, and 837-838).

Despite giving examples (al-JUWAYNĪ 1979: 904-905 and 908) and confirming that suitable and suggestive meanings as well as *maṣlaḥa* can serve as *rationes legis* for rulings, al-Juwaynī does not establish a more coherent link between the purpose of the Law, *maṣlaḥa*, and the *ratio legis* of divine rulings. Where al-Ghazālī explicitly defines the purpose of the divine rulings as *maṣlaḥa*, by which he understands the preservation of the five necessities,

outcome or the actor's intent (cf. al-JUWAYNĪ 1979: 1208-1209; SCHACHT <http://dx.doi.org.proxy.library.georgetown.edu/10.1163/1573-3912_islam_COM_0469>).

⁵⁸ Al-Juwaynī argues that in textual implications the meaning of the ruled upon case (*aṣl*) already implies the meaning of the textually unaddressed situation (*far'*). For example, the prophetic prohibition to urinate in standing water that is used for ablution also encompasses the prohibition against pouring urine, such as from a night pot, into it (al-JUWAYNĪ 1979: 782-783).

al-Juwaynī does not provide tangible criteria to identify *maṣlaḥa*. He looks at the meaning and context in which the divine ruling is embedded to identify the correct *ratio legis* in light of whether or not it is sufficiently suggestive and suitable. He explicitly rejects determining it by co-presence and co-absence (*tard wa-‘aks*), citing lack of precedence in the practice of the Companions (al-JUWAYNĪ 1979: 886). As seen in the example of the father prohibiting his son from eating a poisonous weed, the function of the *ratio legis* is to generalize the ruling. Yet, al-Juwaynī fails to articulate clearly the link between the ethical dimension of preventing harm, i.e., the purpose, and the establishing of the ruling. The ‘*illa*, he insists, is set by God as a sign (‘*alam*) to allow the generalization of divine injunctions (al-JUWAYNĪ 1979: 1000 and 1097), thus extending the Law and its legislative intent to those instances not directly addressed in scripture (al-JUWAYNĪ 1979: 743 and 778-779).

Although al-Juwaynī does not explore the ethical dimension any further, he does establish a qualitative hierarchy of *rationes legis*, which reverberates in al-Ghazālī’s thought. In order to identify the correct one among competing *rationes legis* for a case under consideration, al-Juwaynī establishes a five-fold division. The first, and strongest, category is textually established ‘*illas* that are intelligible in their meaning which is connected to a necessary matter (*amr ḍarūrī*) pertaining to universal order and general policies. As an example al-Juwaynī mentions the obligation of retaliation (*qiṣās*), which, he says, is ratiocinated to the inviolability of innocent blood, protecting against bloodshed, preserving life, and deterring against transgressions (al-JUWAYNĪ 1979: 923, 1208-1209, and 1222). The second rank comprises ‘*illas* that are connected to a general need (*ḥāja ‘amma*) but do not reach the level of necessity, such as permitting the practice of leasing (*ijāra*), which is a tangible need without which harm befalls people who do not own property (al-JUWAYNĪ 1979: 924). The third rank encompasses *rationes legis* that pertain to attaining a noble objective or averting a deficiency (*jalb al-makrama, nafi al-naqīd*). As examples, al-Juwaynī mentions the requirement of ablution after defilement by a minor impurity (*tahāra al-ḥadath*) and the removal of dirt (*izālat al-khabath*) (al-JUWAYNĪ 1979: 924-925). Into the fourth rank fall those ‘*illas* that are similar to the third but that lack the express support of an authoritative source text or violate other textually established legal principles. Cleanliness, for example, is a recommended objective, though no source specifically speaks to this goal. Similarly, according to al-Juwaynī, the objective of contractual enfranchisement (*kitāba*) is manumission, although this violates universal principles of analogical reasoning (*aqyisa kulliyya*) in contract law, since in contractual manumission the owner exchanges his own property (slave) for his own property (labor of his slave) (al-JUWAYNĪ 1979: 925-926 and 937).⁵⁹ The lowest rank of ‘*illas* that al-Juwaynī lists are those for which no meaning comes to the jurist’s mind about the ruling, such as the bodily acts of worship. Performing them, he says, does not have an apparent benefit or avert harm but one may say that the constant remembrance of God leads to avoiding sinful and reprehensible acts (al-JUWAYNĪ 1979: 926).

We see here that al-Juwaynī’s discussion of ‘*illas* that may validly be used in *qiyās* foreshadows al-Ghazālī’s categories. His terminology, though different from that of al-Ghazālī, reflects a purposive and consequentialist approach to the divine law. He understands

⁵⁹ Al-Rāzī, in his discussion of suitability, references al-Juwaynī and his examples, though he has refined their categorization in light of al-Ghazālī’s theory of *maṣlaḥa* and suitability (al-RĀZĪ 1992: 160-163).

rulings and their *rationes legis* to be connected to divine legislative intent, which can be gleaned by investigating the *maṣlaḥa* or benefit that is attained, and the harm (he does not use the term *mafsada*) that is averted in this world. He repeatedly talks about good things (*maḥāsīn*), *maṣlaḥas*, and benefits (*manāfiʿ*) in reference to the mundane, not as otherworldly reward or punishment.

In al-Juwaynī's thought we see a noticeable shift toward an ethical conception of the *ratio legis*. He strongly affirms that divine commands are good only because God commands them, rejecting the intellect's ability to assess the value of acts independently from Revelation. While denying humans moral autonomy independent from Revelation, al-Juwaynī at the same time upholds human ability to understand (and re-enact) divine legislation by investigating the meanings of the revealed rulings in their context, and using them to extend the Law to situations not addressed in the sources.⁶⁰ Going beyond the explicit source texts of Qurʾān and *Ḥadīth* and looking at the intention and meanings of divine decrees enables one to assess all of human acts and, thus, have an all-encompassing religious law.⁶¹ Though only implicitly, al-Juwaynī, thus, links the ethics of the divine legislative intent to the *ʿilla*, which is indicated by its being suitable for and suggestive of the ruling, thus, giving the *ʿilla* an explanatory function, though remaining within the semantic realm. God's intention is not grasped and extended by way of an ontological causality but by way of His eternal speech and the meaning that expands from it. This legislative intent is loosely understood by al-Juwaynī as *maṣlaḥa*. In contrast to al-Baṣrī, who conceives *maṣlaḥa* in terms of otherworldly reward for obedience to God's injunctions, al-Juwaynī seems to associate *maṣlaḥa* primarily with mundane benefit, though he never defines it in any concrete terms. He also understands *maṣlaḥa*, again loosely, in terms of necessity, needs, and noble conduct, which are tied to identifying the *rationes legis* of rulings. Left to the wayside in establishing the correctness of the *ratio legis* are criteria such as efficacy as well as co-presence or co-absence. In al-Juwaynī's thought we see that formal characteristics used to identify the *ratio legis* of divine rulings give way to qualitative and, in the final analysis, ethical considerations.

Concluding Remarks

Despite this small sample of jurists, some conclusions, albeit tentative, may be drawn. All three of these jurist subscribe to the notion that God is not frivolous (*ʿabath*) and that His Law, hence, is laid down for a purpose, namely for people's *maṣlaḥa*. They differ, however, in the extent to which they deem God's legislative intent to be identifiable in the revealed

⁶⁰ Like al-Ghazālī, al-Juwaynī also considers God's purpose to serve as *ʿilla* in itself. He does not call it *maṣlaḥa mursala*, or *mursal*, but subsumes it under inference (*istidlāl*). Meanings that are suitable, resemble those found in the authoritative sources, and are *maṣlaḥas* can be used in inferential reasoning even though no source text is found (al-JUWAYNĪ 1979: 1113-1118 and 1122; al-GHAZĀLĪ n.d.: II, 487-488 and 506).

⁶¹ Throughout the *Burhān*, al-Juwaynī emphasizes that no incident is devoid of God's ruling (al-JUWAYNĪ 1979: 743, 805, 1116, 1325, and 1348-1349). Juwaynī's efforts to strengthen the role of the *ʿulamāʾ* in society by providing them with tools to speak to all incidents that need legal and moral decision is also reflected in his political theory work *Ghiyāth al-umam* (cf. HALLAQ 1984: 41).

rulings and operational in the *ratio legis* employed in analogical reasoning. Counter-intuitively, there is an inverse relationship between affirming the intellect's ability to recognize good and bad (*taḥsīn* and *taqbiḥ*) and including ethical considerations in identifying the *ratio legis*. Al-Baṣrī conforms to the Mu'tazilī position that God commands only what is good because it is good. This leads him to forego any further inquiry into how to recognize the goodness of divine rulings. His confidence that God only legislates what is good and that He is obliged to indicate how humans can reach their *maṣlaḥa* means that in religious matters humans strictly follow God's signs (i.e., *'illas* or *amāras*) to extend rulings to unprecedented cases.⁶² In the procedure of analogy, humans forego any assessment of the ethical dimension of the revealed ruling and identify the correctness of the *ratio legis* by its efficacy (*ta'thīr*), understood as co-presence and co-absence between *ratio legis* and ruling. Outside of the religious Law, al-Baṣrī leaves room for the intellect to determine normativity. It remains to be investigated whether acting upon rational obligations procures only this-worldly benefit (*maṣfa'a*) or also otherworldly reward (*maṣlaḥa*).

In al-Dabbūsī's thought, we see forays into an ethical understanding of the *ratio legis* born out of divine wisdom. God commands what is good because of His wisdom (*ḥikma*) that this good should exist in this world. God's wisdom entails that divinely imposed rulings avert harm and procure good for humankind—they bring about *maṣlaḥa*. When discussing how to identify the *ratio legis* in the procedure of analogy, al-Dabbūsī does not clearly articulate a purposive or consequentialist perspective, yet, many of his examples show that a ruling's *'illa* is related to God's wisdom and purpose in creating the world and revealing His Law for people's *maṣlaḥa*. Although he remains vague on what he means when describing the efficacy of the *ratio legis* in terms of propriety (*ṣalāḥ*) and relevance (*mulā'ama*) for its ruling, and congruence (*muwāfaqa*) with other established laws, it is apparent that the *ratio legis* is associated with underlying reasons that are discernable by looking into the meaning and context of the ruling. In order to extend God's Law to unprecedented situations, humans have to investigate how a ruling fits into God's wisdom such that it is good for the associated act to occur.

Al-Juwaynī provides the least space for rational ethical judgments outside of the revealed Law. Yet, it is precisely humans' inability to reach ethical assessments rationally that forces him to resolve unaddressed cases by reliance on the revealed Law. The good is recognized through analysis of the divine speech, which al-Juwaynī, along Ash'arī lines, understands as containing a meaning (*ma'nā*) that is discernable in the contextual usage of the language of the Law. The meaningfulness of divine rulings translates into a meaningful relationship between *ratio legis* and ruling, a relationship in which the *ratio legis* is suitable for (*munāsib*) and suggestive of (*mukhīl*) God's legislative intent. The goodness of God's command, for al-Juwaynī, is reflected in tangible mundane *maṣlaḥas*. Despite rejecting the notion that good and bad are rationally determinable, al-Juwaynī leaves it to the human intellect to identify

⁶² Zysow argues that al-Baṣrī combines the sign and the motive model of the *ratio legis* (ZYSOW 2013: 228 and 230). My analysis brings me to conclude that al-Baṣrī belongs to the proponents of the sign model because he does not understand the *'illa* as reflecting God's legislative intent. Rather, only by following the associated ruling is the *ratio legis* connected to *maṣlaḥa*, which is the motivating factor from the perspective of the believer.

the *'illa* of divine rulings by its suitability and attainment of mundane *maṣlaḥa*, thereby providing a space for ethical judgments—albeit within the parameters of Revelation.

Although none of the jurists presented above make an explicit connection between God's legislative intent and the *ratio legis* of His laws, I hope to have shown that al-Ghazālī's ideas about the *maqāṣid al-sharī'a* do not come out of nowhere. Prior to al-Ghazālī, jurists leaning toward Māturīdism and Ash'arism in theology had already many of the elements found in al-Ghazālī, though missing is the explicit definition that the purpose of the divine Law is humankind's *maṣlaḥa* encapsulated in preserving the five essential elements of human existence.⁶³ Al-Ghazālī's genius was to capture the meaning of that purpose in more concrete measures. In his work, the process of determining the correctness of the *'illa* takes a decisively purposive and consequentialist turn. The ethical character of the Law is recognizable in the *rationes legis* of its rulings, which lead to *maṣlaḥa*, measurable by its attainment of good things in this world, and which is applicable to instances about which the Law is silent. The *ratio legis* is imbued with ethical value. Al-Ghazālī, thereby, resolves the Ash'arī objection to Mu'tazilī rational moral epistemology by articulating criteria, taken from Revelation, that inform humans about what constitutes *maṣlaḥa* and which *maṣlaḥa* has priority in case of conflict (FARAHAT 2019: 44).

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⁶³ What remains to be further explored is the impact of these different conceptions of moral epistemology on the sphere of the religious and the secular. Does religious accountability (*taḳlīf*) extend to all of human acts or only to those rulings that Scripture and analogies based thereon prescribe? Al-Baṣrī's thought suggests the latter, al-Juwaynī seems to be advocating the former.

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