

Felicitas Opwis, *Ethics and Analogy (Qiyās) in 5th/11th Century Islamic Legal Theory*

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Felicitas Opwis's book *Ethics and Analogy (Qiyās) in 5th/11th Century Islamic Legal Theory* studies a specific but highly meaningful moment in Islamic legal theory. The book explores the developments in the understanding of analogical reasoning (*qiyās*) in the highly dynamic eleventh century of the common era. In reconstructing these developments, Opwis distinguishes between the "sign model" of the analogy's *ratio legis* ('illa), which primarily sees the 'illa as a semantic feature connecting the ruling to any given factual situation to which it may be applicable, and the "motive model" of the *ratio legis*, in which, in addition to establishing the effective link between the analogy and its outcomes, the 'illa also serves to justify or highlight the rule's motive and purpose. Treating the *ratio* of analogical reasoning as a search for the motive underlying each rule, Opwis explains, became more common from the eleventh century onward, contrary to earlier periods in which the sign model was dominant, a transformation she characterizes as an "ethical turn" in the development of the Islamic conception of legal analogy. In capturing this meaningful moment in the history of Islamic legal theory, Opwis illustrates how these developments were a manifestation of the growing role of the ethical concept of benefit (*maşlaḥa*) in legal reasoning. As such, the book adds to an already extensive body of research that Opwis has produced on the concept of benefit in Islamic legal theory.¹

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1 For example, see Felicitas Opwis, *Maşlaḥa and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century*. Leiden: Brill, 2010; Felicitas Opwis, "New Trends in Islamic Legal Theory: *Maqāṣid al-Sharī'a* as a New Source of Law?," *Die Welt des Islams* 57, 1 (2017): 7–32, <https://doi.org/10.1163/15700607-00571P03>.

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This new book explores this ethical turn toward a motive theory of analogy and tries to draw the complicated links between this turn and theological theories in play at the time, all while exploring how this turn was, counterintuitively, more associated with the Ash'arīs, the divine-command theorists of the Islamic tradition. Opwis describes a paradigm shift toward the motive model of *'illa* most specifically associated with Abū Ḥāmid al-Ghazālī (d. 1111). Al-Ghazālī famously developed the idea that we know from textual evidence that the *sharī'a* serves a set of purposes aiming at the achievement of benefit (*maṣlaḥa*). Corresponding with this theory, al-Ghazālī argued that a valid *ratio legis* and, consequently, analogical reasoning, is "appropriate" (*munāsib*) in that it is designed to attain a particular *maṣlaḥa*. This argument, Opwis explains, signifies a turn toward a widely accepted view that analogy involves an inquiry into "legislative intent," led by Ash'ārī scholars and understandable as an effort to expand the law into all areas of human life. The wide acceptance of this theory, Opwis correctly notes, had wide repercussions for the history of Islamic law, extending even into the modern concern for the relation of the law to modern nation-states.

The subject of the book's inquiry is at the intersection of Islamic law, ethics, and theology. Opwis points out the difficulty of identifying simple, linear relationships between those three intricately linked fields. While theology does not predetermine a school's legal position, theological views do inform a jurist's approach to legal methods and concepts in complex ways. The same is true of ethical values: although no one would contend the absence of links between legality and goodness in a broad sense, many approaches as to how law relates to ethics can be better understood with reference to theological positions. Although mindful of the intricate connections between these three spheres, the author makes a conscious choice to focus on the links between law and ethics specifically, which allows a focused reading of the development of this crucial notion of *'illa* as purpose. While such choices are inevitable in any study of such historical and theoretical intricacy, the conscious silence on certain concepts that would correspond squarely to the field of philosophical theology (*kalām*) leaves some questions unanswered, for example, such fundamental questions as the meaning and range of available views on what constitutes legislative/divine intent in the context of ethical purpose.

The book's structure follows the work of five prominent scholars (chapters 2 through 6) to elucidate in detail their reflections on analogy and its ethical dimensions, with the first chapter laying out some of the book's broader theological and ethical background. This systematic focus on the thought of each scholar, reflected in the dedication of one chapter to

each, is meaningful in itself. Far too often, the thought of classical Islamic scholars is explored and deconstructed for the sake of the excavation of specific findings that may be of interest to us as contemporary readers; in this case, Opwis instead allows us to see the work and thought of each scholar as an integrated whole without fragmentation, thus showing deference and respect to the integrity of each scholar's project.

The first chapter addresses the complicated question of how theology relates to jurisprudence and, thus, to practical law and ethics. It takes the reader through a succinct yet detailed account of major theological areas that impact jurisprudential thinking, starting from human ethical predisposition or "experience" and moving through views on ethical epistemology, the corresponding views on divine revelation, and finally, how legal-ethical judgments follow from language. Opwis convincingly (and, I think, correctly) argues that the relation between theological commitment and jurisprudential positions is neither causal nor linear for any jurist or category of jurists. Theological views, however, do play a role in some areas of jurisprudence, which, in Opwis's analysis, tends to be more apparent when it comes to the interpretation of revelatory language regarding which there is some gap or ambiguity. Different theological schools have different views on divine speech and whether or not it is comparable to human speech, which, of course, are commitments that impact the scholar's attitude in the field of jurisprudence, understood as a field fundamentally concerned with hermeneutics. This analysis helps set the stage for Opwis's analysis of *qiyās* as a jurisprudential concept at the intersection of law, ethics, and theology.

The first scholar whose thought receives an in-depth analysis is the great Shāfi'i-Mu'tazili al-Qāḍi 'Abd al-Jabbār (d. 1025). In the second chapter, Opwis elucidates 'Abd al-Jabbār's account of the ethical, rational, and revelation-based (or "religious") assessment of actions, highlighting, against prior accounts, the importance of the attributes, consequences, and capacity of the actor in his theory, which, despite its insistence on the rational assessment of acts, leaves an important role for revelation-based analysis. While he maintains a similarity in form between legal and general analogy, 'Abd al-Jabbār does not view the *ratio legis* as a necessitating or causal factor, but rather as a motivating factor that underlies the ruling and acts upon human will. This understanding of *ratio legis* in analogy aligns with the broader understanding of the law as anchored in the ethical properties of acts and their consequences, as they pertain to the agent's motivations and choices.

This continuity between the ethical and legal thought of 'Abd al-Jabbār emphasizes divine justice as a central concern animating both his ethical

theory more broadly and his conception of analogy and *ratio legis* more specifically. In ‘Abd al-Jabbār’s theory, the law’s (and analogy’s) emphasis on beneficial consequences is a manifestation of the ethical continuity between the divine and human realms, combined with the deficiency of the human will and their inability to constantly act in a way that is consistently beneficial without some divine guidance. This continuity can also be seen in the thought of Abū l-Ḥusayn al-Baṣrī (d. 1044), on whose work Opwis focuses in the following chapter. Al-Baṣrī develops an ethical theory focused on benefit and harm and this world, and emphasizes the possibility of rational assessment of an action’s ethical value on the basis of benefit and harm analysis. Al-Baṣrī’s theory departs from ‘Abd al-Jabbār in anchoring the revelatory assessment of acts in a benefit analysis primarily focusing on the afterlife. Like ‘Abd al-Jabbār, however, exploring *maṣlaḥa* and the consequences of actions remains central to his ethical thinking. The idea of analogy or *qiyas* for al-Baṣrī stems from his overall argument that it is rational to aim for the maximization of one’s benefit in this and the next world, thus further extending ‘Abd al-Jabbār’s idea that *ratio legis* is primarily a motivating factor that drives action. Nonetheless, al-Baṣrī, like ‘Abd al-Jabbār before him, largely leaves ethical assessment out of the semantic and contextual analysis that allows the jurist to identify the ‘*illa*’ practically, thus indicating that both adhered to what Opwis had previously elucidated as the “sign model” of understanding ‘*illa*’.

With the legal theory of the Ḥanafī-Māturīdī Abū Zayd al-Dabūsī, we begin to see a shift toward a more expansive and less text-dependent understanding of the inner operation of analogy, at least as compared to his Mu‘tazilī counterparts. In the fourth chapter, Opwis explains that al-Dabūsī’s legal-ethical thought, including his understanding of analogy, is permeated by a commitment to a worldview that centers divine wisdom. God’s wisdom, for al-Dabūsī, manifests in the creation of benefits for His creatures and the tools by which they can attain such benefits, including human reason and language. Thus, the substance of the law, as well as its tools and various forms, are all different manifestations of such a universal design that rests on an all-encompassing wisdom. In line with some of his contemporaries, al-Dabūsī was inclined to view the law as entwined with a scheme of mundane purposes that prioritize the good of mankind, all of which is part of God’s wisdom. That being said, he still insists on a revelation-based model of legal obligation and prohibition. In a manner reminiscent of al-Ghazālī, al-Dabūsī argues that rational assessing the benefits of each action can lead to *hypothetical* or *relative* assessments, but only through divine revelation can the human mind attain correct knowledge of the status of actions. We see a departure from al-Baṣrī’s model of *ratio legis* in al-Dabūsī’s focus on efficacy (*ta’tḥīr*) as the way to determine

the *'illāi*, which, Opwis notes, is closer to the concept of *munāsaba* to be found in the work of Shāfi'i-Ash'arī's, perhaps most famously in al-Ghazālī. While al-Dabūsī does not go as far as anchoring analogy entirely in ethical considerations, the focus on efficacy, coupled with his conception of divine wisdom, expands the role of benefit in the process of analogy.

The final two chapters study in succession the work of the two prominent Shāfi'i-Ash'arīs Abū Ishāq al-Shirāzī (d. 1083) and Imām al-Ḥaramayn al-Juwaynī (d. 1085). The juxtaposition of these two contemporaries is particularly meaningful for the understanding of the ethical turn at the heart of this study. Al-Shirāzī's legal thought and his idea of analogy rest on an understanding of a divine-human relation primarily informed by subordination and obedience. This view meant that the ethical underpinnings of the law, while al-Shirāzī does not deny them, are ultimately both unattainable and irrelevant to the process of understanding and expanding (e.g., through analogy) the law. Obedience must rest on strict linguistic analysis, and, therefore, the *ratio legis* is essentially a vehicle for linguistic meaning. Although he shared his contemporary Ash'arī's commitment to divine omnipotence and the necessity of revelation-based analysis for legal knowledge, al-Juwaynī adopted a wider view of language and, consequently, of the process of analogy as it potentially relates to the purposes of the law. Whereas al-Shirāzī's legal reasoning was firmly anchored in linguistic form, al-Juwaynī's idea of language focused more on the concepts underlying those forms, such as, for example, the idea of necessity underlying the imperative form. In that sense, al-Juwaynī's views on *ratio legis*, while still anchored in revelation, opened the door, through the idea of suitability, to the introduction of some element of legal purposes in the process of expanding the law through analogy.

Ethics and Analogy is the latest in the long list of valuable studies in which Opwis delves into the inner logic of Islamic legal theory and presents a welcome addition to her many seminal contributions to our understanding of ideas of benefit and purpose in Islamic legal thought. As one has come to expect from Opwis's work, the book is meticulous and rests on careful and reverential (but not uncritical) readings of the five selected scholars' work. The choice to dedicate one chapter to each jurist allows for a level of emphasis on the inner connections and guiding threads within each scholar's work that studies structured around broad concepts rather than individual scholars cannot provide.

The study is also self-consciously delineated in a number of ways. It is strictly focused on the interplay between ethical and legal concepts in jurisprudential works on analogy in the eleventh century of the common

era, and focuses on the work of a number of prominent scholars. The deliberate choice to leave out purely theological discussions leaves some potential analyses unexamined, such as, for example, the way in which different conceptions of divine will and intent may have been articulated with those various models of legal analogy. Another unexplored potential consists of the comparative implications of this study on our understanding of analogy in legal and ethical theory more broadly.² For its focused, careful, and insightful analysis, this study will be necessary reading for students and scholars of Islamic law, legal and ethical theories, and intellectual history.

2 For an example of a contemporary work that examines the intersection of legal reasoning with ethical ideas of responsibility, see Peter Cane, *Responsibility in Law and Morality*, London: Bloomsbury, 2003, 25–28.