

Islamic Contributions to the Universal Conception of the Common Good in Multi-Confessional Societies: Hermeneutical Foundations¹

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Abstract

This paper examines the structure and origins of ethical and theological argumentation in aš-Šāṭibī's concept of the Common Good from a hermeneutical perspective and discusses its significance for modern Islamic *moraltheorie*. After a brief theoretical chronology of the process of theological argumentation within legal tradition, this paper considers some general reasons why *maqāṣid* concepts were appropriate for an exhaustive reconstruction and reinterpretation of *maṣlaḥa* within the framework of Islamic ethics.

Key Words: Hermeneutic, Islam, aš-Šāṭibī, Theology, Maqāṣid

Introduction

The term *maṣlaḥa* refers to an Islamic-theological conception of the "good" that is the epitome of morally responsible behavior for a believer. According to aš-Šāṭibī, the primary concern of ethics in Islam is to raise awareness about the common good.³ While different schools of thought may hold varying

¹ This paper originates from a book, currently being printed, on Islamic Ethics. Abbreviations used are as follows: MU = Muwāfaqāt; MU^I = Muwāfaqāt: edition Beirut, Dār al-Kutub al-‘ilmiyya; MU^{II} = Muwāfaqāt: edition Beirut, Dār al-Ma‘rifa; MU^{III} = Muwāfaqāt: edition Cairo; Q = Qur‘ān. Quranic citations, unless indicated otherwise, are taken from the following work: A. J. Arberry, *The Koran Interpreted* (London, 1957).

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³ In comparison to Christian ethics, the good is not necessarily seen in relation to evil within Islamic legal theory. This is because neither original sin nor deliverance exists in Islam. Nonetheless, the knowledge of good and bad appears to be the goal of all

conceptions of *maṣlaḥa*, the concept represents the same moral principle to all: it is the ultimate goal of morally responsible human behavior. In opposition to Aristotelian ethics, however, in which one may only speak of what is good for "us,"⁴ Islamic legal theory is premised on a widely applicable and inexhaustible use of the term good. The concept itself applies to various spheres, ranging from the individual and private to the social and eschatological well-being of a community. Different methodological processes of deliberation have been developed over time as a means of defining what should be contained within the conception of the good. Eschatology is an important factor in debates on ethical well-being in Islam. Its dominance prevents the individual, and thus the theologian, from conceiving ethical responsibility solely within a framework of avoiding the punitive consequences of religious misconduct in the context of self-preservation. Furthermore, the eschatological perspective of well-being confers a transcendental element upon ethical being.

ethical reflection in both Christianity and Islam, as noted by Dietrich Bonhoeffer in relation to Christian ethics. Eberhard Bethge (ed.), Dietrich Bonhoeffer, *Ethik* (Munich, 1963), pp. 19-21.

⁴ In the first lines of the *Nicomachean Ethics*, Aristotle describes the orientation of his work as follows: "Every art and every inquiry, and similarly every action and pursuit, is thought to aim at some good; and for this reason the good has rightly been declared to be that at which all things aim." Ross (ed. & trans.), Aristotle, *The Nicomachean Ethics* (Oxford University Press, 1998), p. 1. In accordance with contemporary interpretations, this relativity, in its reference to us, does not prohibit what is relatively good from being contained in no particular good; rather, it is that which is lacking is all good. Paul Ricoeur, *Soi-même comme un autre*. Seuil (Paris, 1990), p. 11. An essential difference from Islamic ethics lies also in the fact that the eschatological component, which is of vast importance to Islamic theories of ethics, is completely non-existent in Aristotelian ethics.

Within Islamic legal tradition, the definition of *good* comprises both so-called "ethical" and "pre-ethical" goods. The latter are described by Franz Böckle as real opportunities that exist independently of personal thought and will. The former, according to Böckle, are moral behavioral values assigned to responsible individual actors, which require adherence.⁵ The meanings and contexts for the application of *maṣlaḥa* developed by branching out from these two basic lines of reasoning. There is *maṣlaḥa*, an ancillary method of legal interpretation and formation of moral judgement (especially, *al-maṣlaḥa l-mursala*), and there is *maṣlaḥa*, a holy principle of creation (generally seen as a predisposition or social wellbeing). Within Islamic legal theories of intentionality, the term *maṣlaḥa* has been discussed as a social or ethical concept, i.e., an independent value meaning "public interest" or "common good." At the same time, however, it maintained, from the beginning, a theological dimension as a part of ethics theory (especially as a sub-principle of *qiyās*), while also maintaining its methodological dimension.⁶

1. The Common Good in Relation to Duty and Responsibility

Within the ethical field of legal theory, in the determination of ethical behavior, *maṣlaḥa* is a key term that refers to the highest moral good and emphasizes the recursive, generative character of the holy law. Whereas a teleological intentional approach would risk becoming restricted in a purely rational interpretation, the doctrine of duty (*taklīf*) is in danger of static-unproductive legality.⁷ In distinguishing between obligation and orientation, one can easily

⁵ See, Franz Böckle, *Fundamentalmoral* (München, 1977), p. 259.

⁶ Ibn Aschour, *Maqāṣi daš-Šarī'a al-'islāmiyya* (Dār as-salām, Cairo, 2005), p. 75.

⁷ The "highest good" is used alternatively, and depending on context, in one of two readings, as presented by Daniel Keller, in respect to the development of the Kantian paradigm: a communal, universal determination of the highest good as an ethical

detect a dual legacy: one of intentionality, in which the *šarī'a*-legal order is marked by its teleological character, and a text-based *Zahīrī* intellectual heritage, in which a deontological approach is used to arrive at a legal ascertainment, due to the obligatory character of a norm. The orientation towards wellbeing comes from a hormic reading of Revelation. It grants the possibility of an ethical verdict that is suited to the situation, one in which both holy scripture and reason are considered equally.⁸ Similarly, the term *taklīf* opens a field of meaning in which to develop – in connection with instructions to do good – normative-type estimations.⁹ Out of this arises a primacy of ethics (*maqāṣid*), opposed to that of morals (*aḥkām*), so that the deontological perspective is subordinated to the teleological one in legal deduction.

Anchoring the deontological moment within a teleological objective reveals the position of intent in al-Ġazālī's work, *The Revival of Religious Sciences*: "The intention is always better than the action" (*Iḥyā' 'ulūm ad-dīn*).¹⁰ If we comprehend this statement rationally, then *maṣlaḥa* can refer only to the

community and an individual determination of the highest good. Daniel Keller, *Der Begriff des höchsten Guts bei Immanuel Kant. Theologische Deutungen* (Mentis Verlag, Paderborn, 2008), p. 17. The modification in the highlighted text is not clear to me. Is Keller using the term? Is it "used alternatively by Daniel Keller in one or two of his readings of the Kantian paradigm"? But why mention one or two readings? And how does "depending on the context" fit?

⁸ See MU^{II}, I, p. 61.

⁹ Muḥammad Mustafā Abū l-'Illā (ed.), Abū Ḥāmid al-Ġazālī (d. 505/1111), *Al-Iqtisād fī l-I'tiqād. Maktabat al-Ġundī* (Cairo, 1972), p. 151.

¹⁰ Muḥammad Mustafā Abū l-'Illā (ed.), Abū Ḥāmid al-Ġazālī (d. 505/1111), *Al-Iqtisād fī l-I'tiqād. Maktabat al-Ġundī* (Cairo, 1972), p. 152. The wording of the publication in its original German translation is "Die Absicht ist stets besser als die Handlung."

"highest good" in the sense of "pure intention."¹¹ The consequence of this is to subordinate *maṣlaḥa* as an ethical orientation to an assessment through *aḥkām*.

Al-Ġazālī's statement is reminiscent of a claim made some 700 years later by the German philosopher Kant, in which he emphasized that the carrier of the title "good" is no more than one's will. In Kantian morals, however, individual will replaces what, in Islamic ethics, is the real intention of a believer. The real intention of an action is located in its purpose; the will in its relation to the law. And while will may be expressed in speech acts that belong to the group of imperatives, statements of intent are ascribed to the subgroup of optative speech acts, including felicity.

The will in its fundamental conception is nothing more than the faculty of practical reasoning that is principally present in all beings endowed with reason. However, because of its finite conception, it is empirically determined by emotional tendencies.¹² Moral reflection, according to Kant, consists of a patient assessment of those who aspire to the title of "good without qualification," so that the unimpeded good will, in accordance with the highest principle of autonomy, becomes equal to a nomothetic will, i.e., a will that determines its

¹¹ If the presumed interpretation of al-Ġazālī's statement should prove to be correct, then one can undeniably see within it a certain parallel to Kant's idea of the absolute worth of the mere will: There is nothing in the entire world, even outside of the world, that can be conceived, that one can declare, without limitations, to be good, except for a good will. See Wilhelm Weischedel (ed.), Immanuel Kant, *Grundlegung zur Metaphysik der Sitten* (vol. 1 of 4, IV, Frankfurt a.M., 1974), p. 18, and, Heinz E. Tödt, *Perspektiven theologischer Ethik* (München, 1988), pp. 26-27. Tödt adds that Kant thus clarifies the role of thinking moral judgments as integrated acts of will and insight.

¹² Friedrich Nietzsche goes so far as to presume morals to be no more than a sign language of emotions. See Friedrich Nietzsche, *Jenseits von Gut und Böse* (Alfred Kröner Verlag, Stuttgart, 1991), p. 96.

own laws of being. For such a will, the "good without qualification" in Kantian thought, takes on the form of duty. This is proven in the most basic formulation of the categorical imperative, which the subject directs at itself: "Act only in accordance with that maxim through which you can at the same time will that it become a universal law."¹³ However, if one looks at the categorical imperative from the perspective of speech act theory, a particular problem emerges. As was already known within the field of classical Arab-Islamic rhetoric, an order requires not only that the speaker and addressee of a given interaction be distinguishable from one another, but also requires that the relation between command and obedience be bound to conditions of success. These in turn, are strongly dependent upon convention and the context within which speech takes place. Al-Ġazālī conceives obligation as follows:

Taklīf is a discourse, which has a reference, namely the object of obligation, the condition of which is, that it is understood, but not that it is possible. The viability of implementation is not a criterion for the realization of speech. For the *taklīf* is a speech that proceeds from one who understands [speaks] in the direction of one who understands [listens] and in relation to an intelligible object, so that the speaker is distinguished from the listener. This is what one would designate *taklīf*.¹⁴

In the case of a command, both social convention and the context of the speech presuppose the existence a speaker who commands and a receiver who is, in advance, bound to obey by the nature of the criteria of the imperative. Kant conferred the ability to order and to obey or disobey on the same subject. This

¹³ See, Immanuel Kant, *Grundlegung zur Metaphysik der Sitten* (AA, IV, Berlin, 1968), p. 421.

¹⁴ Muḥammad Mustafā Abū l-'Illā (ed.), Abū Ḥāmid al-Ġazālī (d. 505/1111), *Al-Iqtisād fī l-I'tiqād. Maktabat al-Ġundī* (Cairo, 1972), p. 151.

led him to define the subject's predisposition through the subject's ability to disobey, which in turn is equated with an inherent passivity. According to Kant's argument, then, this is how the reverse side of will, namely, desire, comes to be. He describes this side as "pathological" and cites it as a possible source for the emergence of evil.¹⁵

The conceptualization of how to arrive at a verdict in Kant's philosophy is metaphysical and far removed from the practical realm of application. It is based on an abstract and timeless idea of reason, one that is also present in some strands of Islamic rationalistic theology. The basic principle of Kant's entire philosophy was, according to Tödt,

the principle of identity: reason counted as the possibility of unison, that was itself timeless and encapsulated everything within time. Reason appears to us however, as temporally and historically conditioned. That is why we can no longer adhere to an unchanged Kantian ethic of duty.¹⁶

In a similar vein, Arendt advocates a temporally bound definition of reason that is close to the conceptualization of good within Islamic legal theory:

Evil, if determined in reference to the self, remains as formal, as void of content as Kant's categorical imperative, whose formality has enraged so many of its critics. If Kant said, every maxim that cannot become a universally applicable law, is unjust, then it is as though Socrates had said, every deed is unjust, if I no longer wish to live together with its originator.¹⁷

¹⁵ Hannah Arendt, *Über das Böse* (Piper Verlag, München, 2003), p. 95.

¹⁶ Heinz E. Tödt, *Perspektiven theologischer Ethik* (München, 1988), p. 27.

¹⁷ Hannah Arendt, *Über das Böse* (Piper Verlag, München, 2003), p. 96.

The origin of the Islamic doctrine of duty lies in *taklīf* assignment. It avoids the formality of Kant's categorical imperative, because its understanding of reason is transcendental and oriented towards belief, as opposed to the void formalism of Kant's categorical imperative. This is clearly demonstrated within the realm of rationalistic theological discussions of predestination and freedom of will.¹⁸

2. *Maṣlaḥa* and Freedom in Rationalistic Theology

Islamic rationalistic theology, unlike legal theory, is of divided opinion on the question of free will. Mu'tazilite thought is based on the idea that humans possess free will and are thus accountable for their actions on Judgment Day. The Aš'arites, on the other hand, hold the opinion that humans possess only a limited will that can be influenced by the omnipotence of God in advance of any action and that, consequently, humans are held to be only partially accountable for their actions. Furthermore, according to Aš'ari doctrine, only God possesses the

¹⁸ Freedom of will, as a key term in Kantian practical philosophy, is taken to mean the ability to bring about a state, the cause of which is not under the law of nature or under another cause determined by temporality. In contrast to this, Islamic theology sees human will as committed, as inducing the execution of an activity, and as brought forth by the will of God, which in turn is eternal and uncommitted; He has created in his omnipotence the world in this form, as one out of many other possible forms. Thus, reason ascribes to free will the characteristic to choose a thing, and it is through the force of God that it can be realized. See Gerhard Schweppenhäuser, *Nietzsches Überwindung der Moral* (Verlag Königshausen u. Neumann, Würzburg, 1988), p. 26 and Muḥammad 'Abd Al-Hādī Abū Rīdah, *Al-Ġazālī und seine Widerlegung der griechischen Philosophie* (Blass, P. A. Tipografía, Madrid, 1952), pp. 100-101.

power to enable action. Humans then, are only able to act as a result of the acquisition (*kasb*) of the holy property of will.¹⁹

The Mu‘tazilites, in interpreting the diremption of will and power, ascribe the latter only to the Sublime as an absolute property. Their rejection of Aš‘ari acquisition theory is explained as follows: the realization of holy power (*qudra*) within the actions of humans, be they positive or negative, is only possible if the will to said action is emitted exclusively by humans. Anything else would be a violation of the postulate of justice.²⁰ Since God, according to Mu‘tazilite doctrine, is just, and thus evil cannot result from him, the role of humans in making decisions about their actions is fundamental to the occurrence of reprehensible deeds. God is omnipotent and has no adversary, in the dualistic sense, who could be made responsible for the occurrence of evil.²¹

¹⁹ See Daniel Gimaret (ed.), Abū Bakr Ibn al-Furāk (d. 406/1015), *Muğarrad maqālāt al-Aš‘arī* (Dar al-Mašreq, Beirut, 1987), pp. 90-93.

²⁰ The argument for the diremption of will and strength, according to Mu‘tazilite thought, is based on the fact that strength, as a characteristic, is divisible; it can be ascribed to two opposites (e.g., God and human) without responsibilities becoming entangled. Will, on the other hand, can only ever be individual, due to its implied freedom of choice. This argument is used by rationalist theologians to show that evil happens independently of God's will. See Sabine Schmidtke (ed.), Moḥammad Ibn ‘Umar az-Zamaḥṣarī (d. 538/1144), *Al-Minhāğ fī ulūm ad-dīn* (Stuttgart, 1997).

²¹ See Sabine Schmidtke (ed.), Moḥammad Ibn ‘Umar az-Zamaḥṣarī (d. 538/1144), *Al-Minhāğ fī ulūm ad-dīn* (Stuttgart, 1997). According to Heinz E. Tödt's interpretation, Dietrich Bonhoeffer represents a similar position, as he asserts that humans are not content to accept all of life's directionality out of God's hand and creation; rather, in the fall of mankind, they claim the ability to distinguish between good and evil, and thus, the ability to choose accordingly. Heinz E. Tödt, *Perspektiven theologischer Ethik* (München, 1988), p. 46.

Although the concept and meaning of reason must be taken into consideration when contemplating human action, there are, at the same time, multiple verses in the Quran calling for reliance on, and submission to, God's will – for example, in 81:29: “But will you shall not, *unless God wills, the Lord of all Being.*” For if humans had, as the counter-argument put forth by the Aš‘arites proclaims, exclusive freedom of will, then God would be limited in his omnipotence.²² Ar- Rāzī points out – in order to demarcate the position of the Mu‘tazila – that while the Mu‘tazilites believe that God is obligated to consider *maṣlaḥa* as an objective, most *fuqahā’* advocate that God is not obligated to exclusively ordain goodness. Rather, he does so (coincidentally) out of his own kindness.²³

There appears to be a contradiction within Aš‘arite theology between the omnipotence of God and human free will. It is resolved, however, through

²² According to the Aš‘arite conception, God acts based on a momentary state of the world (*occasio*) in order to create the next state. It should be added, that with the notion of *accidents*, the Aš‘arites aimed to underpin their assumption that God’s omnipotence does not interfere with the human causality inherent in actions responsible for evoking characteristics such as good and bad inclinations, because of their interconnection with interactive actions. See D. Perler & U. Rudolph, *Occasionalismus (Occasionalism)* (2000), p. 116. I take it these are all defining phrases (no commas): “inherent,,” “responsible,,” “such as good and bad...”

²³ In his considerably comprehensive work, "Al-Mahṣūl," Faḥr ad-Din ar-Rāzī, not only combines the early works of Abū l-Ḥussain al-Baṣrī and Abū Ḥāmid al-Ġazālī and reformulates their concepts, but also uses them as a foundation for an innovative view of *maṣlaḥa* that lies between pure textualism and pure syllogism, etching a new middle way. This made "Al-Mahṣūl" one of the influential works for later studies in the field of *uṣūl al-fiqh*. This is visible today in the number of commentaries and treatises that address it.

recourse to statements from the Quran and *sunna* to the following effect: Humans have but one consciousness and it is limited to this world, and thus, their freedom of choice is also only ever relative, and could never go against the omnipotence of God.²⁴ This also means humans have a limited capacity of anticipatory skill concerning their faculty of judgment.²⁵ This, in turn, results in human fallibility. Thence, a relative freedom of will becomes a touchstone for human ethos; 18:7: "*We have appointed all that is on earth for an adornment for it, and that We may try which of them is fairest in works.*"²⁶

As opposed to *maşlaḥa*, the majority of theologians consider *mafsada* (evil) as something generally real that cannot be put off, ignored, or trivialized, and that cannot be simplified as a product of predestination. In an abstract sense, the Aş'arites define it as precisely that point at which all contradictions of human existence meet; namely, the fact that humans are free and at the same time not free. Furthermore, they are strong, thanks to their ability to attain godly properties (*kasb*), and this ability means humans can, in a substitutive manner, create, but their abilities and strengths are also ever-changing and ephemeral.²⁷

²⁴ See Quran verses: (9:37): "*Decked out fair to them are their evil deeds; and God guides not the people of the unbelievers.*" And on thought content: (2:212), (3:14), (6:122), and (3:54): "*And they devised, and God devised, and God is the best of devisers.*" Also, (6:123) and (7:99). Again, "Quranic verses"?

²⁵ *Faculty of judgment* is used here to refer to the human ability that is used in processes of interpretation and deliberation in order to arrive at value judgments. See Klaus Tanner, "Ein verstehendes Herz. Über Ethik und Urteilskraft," in, *Zeitschrift für Evangelische Ethik*, Gütersloher Verlagshaus, 56th ed., book 1 (January-March, 2012), p. 9.

²⁶ See in this context also, Quran verses (5:48), (6:165), and (67:2).

²⁷ On this, see Quran verses in which the human freedom of the will is discussed, e.g., (74:38): "Every soul shall be pledged for what it has earned." Or (4:79): "Whatever

Rationalistic approaches to speculative theology illustrate how Revelation guides humans across what seem to be contradictory manifestations of human existence. This is the main focus of Islamic ethics, for, according to legal theory, in order to comprehend human reason in its malleability, or rather its fallibility, one needs a perception that is spiritually oriented and that perceives the tentativeness of life experience.²⁸

good visits thee, it is of God; whatever evil visits thee is of thyself. And We have sent thee to men a Messenger, God suffices for a witness." Also, (4:62), and (16:34). In addition to these, there are numerous other verses that indicate predetermination, such as (76:30): "But you will not unless God wills; surely God is ever All-knowing, All-wise." Or (2:142): "The fools among the people will say, 'What has turned them from the direction they were facing in their prayers aforetime?' Say: 'To God belong the East and the West; He guides whomsoever He will to a straight path.'" See also (2:213), (2:253), (2:272), (2:284), (28:56), etc. Both believers in predestination as well as believers in freedom of will invoke the diversity of possible interpretations of these Quran verses.

²⁸ The Islamic legal-theoretical conception of reason appears to comprise two contemporary philosophical traditions within one combinatory model. In its worldly conception of the good, Islamic legal theory shows a certain affinity to Wilhelm Dilthey's acknowledgement of a historicity of reason, which is also found in the work of the Arab thinker Moḥammed 'Abed al-Ġābirī. The transcendental perception of the good, which appears to closely resemble the term for happiness, can be compared with the so-called reflective reason of Georg W. F. Hegel. According to al-Ġābirī's definition, the truth of being is not completed or given in and of itself, but rather can only attain completion in our recognition and action. See Moḥammed 'Abed al-Ġābirī, *Kritik der arabischen Vernunft* (Berlin, 1999), Georg W. F. Hegel, *Phänomenologie des Geistes* (Hamburg, 1952), Wolfhart Pannenberg, *Wissenschaftstheorie und Theologie* (Frankfurt a. M., 1973), and Thomas Herfurth, *Diltheys Schriften zur Ethik: der Aufbau der moralischen Welt als Resultat einer Kritik der introspektiven Vernunft*

The transition from the truth claims of rationalistic theology to the quest for the truth of ethics lies in their common relation to belief in the reality of the world. Through the concurrence of belief and life experience, the world is apprehended as one that is constantly changing, and there is an epistemological framework for the justifiability of ethical responsibility within this changing world. It is the spiritual cognition of truth in the so-called *kalām*-science.

In Islamic legal theory then, there is an awareness of responsibility that is born of predisposition and assignment. Free will is subordinated to this awareness. Hence, there is no asymmetry in the freedom of choice between good and evil. In the parlance of Kant, or rather Nietzsche, the human in Islam is ascribed an "inclination towards good" that is implanted by God.²⁹ As a parallel to the propensity towards evil, in which humans are presumed to make a conscious decision with a bad/evil will, Paul Ricoeur's "fallibility" appears to be significantly closer to the Islamic concept of freedom, the goodness of God, because it indicates a neutral and coincidental development in the direction of

(Könighausen & Neumann, Würzburg, 1992), p. 129. Did I attribute the definition correctly?

²⁹ According to Friedrich Nietzsche, "All 'evil' acts are motivated by the drive to preservation or, more exactly, by the individual's intention of procuring pleasure and avoiding displeasure [...] *The evil acts at which we are now most indignant rest on the error that he who perpetrates them against us possesses free will, that is to say, that he could have chosen not to cause us this harm.* R. J. Hollingdale (trans.), Friedrich Nietzsche, *Human, All Too Human, A Book for Free Spirits* (Cambridge University Press, 1996), p. 53. The difference to the Islamic conceptualization lies in precisely those aporias that are called forth by the terms *free will* and *pleasure*. You don't mean *terms* as conditions here, right? But as words.

evil.³⁰ The holy commandment of humans, along with belief, calls forth both the contradictions of that suitable freedom for human existence and the commitment that goes with it. Nowhere are the aspects of this new freedom more clearly illustrated than in the ambiguity of the term of *taklīf*.

3. Ethical Alignment on the Horizon of Moral-Theological Obligation

Regardless of the theological untenability of the definition of the term *taklīf*, which sees in it only a synonym for obligation within the framework of legal norms, it is possible to find a new approach to the deontological perspective of *ṣarī‘a* in the legal-theoretical approach of aš-Šāṭibī. *His approach implies a particular and new relation between value judgement, obligatory character, and predisposition.*³¹ For aš-Šāṭibī, the commanded assignment is an intentional act that proceeds from God in the direction of humans; it should put into motion a process of comprehension (*fiqh*) and should not be based on mere obedience. Aš-Šāṭibī thus stands in the good intentionalist tradition of al-Ġazālī, who comprehends *taklīf* as an act of prompting³² from God, which calls forth a reaction of a spoken nature from humans:

³⁰ The idea of human fallibility in Islam is based on a famous statement of the Prophet (sas): “Each of you is fallible and the best of all who are fallible are the repentant.” See Thesaurus Islamicus Foundation (ed.), Buḥārī, Muḥammad Ibn Isma‘īl al- (d. 256/870), *Ṣaḥīḥ al-Buḥārī*, 3 vols. (Vaduz, 2000). For a modern conceptualizations of fallibility in Paul Ricoeur, see, Hans-Jörg Ehni, *Das Moralisch Böse* (Verlag Karl Alber, Freiburg / München, 2006), p. 182.

³¹ See MU^{II}, II, p. 33.

³² As has been previously illustrated in a study on modality in the Quran, a jussive, or commanding, speech act expresses an order (*ṭalab*) to act or requests guidelines for action. It is differentiated from the second most important category of prescriptive statements, which carry with them simply an oratorical verbal reaction. See Stephan

God can decide to impose upon humans, that which they can endure or which they cannot endure. The Mu‘tazilites rejected this assumption and in the doctrine of the Sunnis the obligation/assignment comprises a meaning [truth] in itself, namely, that it is a matter of 'speech' that has an originator, of whom nothing is presupposed, other than that he is a speaker. This speech has the obligated party as a receiver, of whom it is presupposed that he comprehends the speech, so that one may, in the case of an addressee who is unanimated (*ġamād*) or deranged (*maġnūn*) speak neither of discourse nor of assignment.³³

In the corresponding verse from the Quran (33:72), humans have entered a pact of freedom bestowed upon them verbally by God, knowing well that they must bear the responsibility for this agreement by means of their intellect.³⁴

The central aspect of the commandment/assignment (*taklīf*) is generally to be found in the intentionality of the phenomenon of the "promulgation," in which is manifest the meaning of belief. The acceptance of a holy command through humans corresponds in this context with an acknowledgement of the

Cornemann (ed.), Mohammed Nekroumi, "Interrogation, Polarité et Argumentation. Vers une Théorie Structurale et Enonciative de la modalité en arabe classique," *Bonner Islamstudien*, vol. I (EB-Verlag, Hamburg, 2003), p. 229.

³³ Muḥammad Mustafa Abū l-‘Illā (ed.), Abū Ḥāmid al-Ġazālī (d. 505/1111), *Al-Iqtisād fī l-I‘tiqād. Maktabat al-Ġundī* (Cairo, 1972), pp. 151-152.

³⁴ A simpler, but less explanatory version of translation can be found in Bubenheim and Elias: "We offered the entrusted good to the skies, the earth, and the mountains, but they refused to carry it, they shied away from it. The human carried it – surely, they are often unjust and very often foolish." The German original: "*Wir haben das anvertraute Gut den Himmeln und der Erde und den Bergen angeboten, aber sie weigerten sich, es zu tragen, sie scheuten sich davor. Der Mensch trug es - gewiss, er ist sehr oft ungerecht und sehr oft töricht.*"

responsibility associated with the promulgation. The key point of *taḳlīf* lies in the conceptual area of serving/veneration (*al-ibādah*).³⁵ *Al-ibādah* however, can hardly be reduced to the idea of submission to a set of legal specifications. Rather, it is about taking over an ethical and anthological consciousness of responsibility, which is already implanted in humans by God.³⁶ The commandment is understood here as a fundamental human experience that is connected to the construction of a lived world and the beginning of a "mission."³⁷ The "commandment" is not a mere ethical management of mortality.³⁸ Rather, it is about the embodiment of the life of a believer and about comprehending

³⁵ This may be deduced from aš-Šāṭibī's interpretation of the following verse from the Quran (Q, 51:56): "*I have not created jinn and mankind except to serve me.*" According to aš-Šāṭibī's explanation, this verse reflects the highest objective of godly legal order. See MU^{II}, Beirut, II, p. 4.

³⁶ Aš-Šāṭibī's analysis of the Islamic conceptualization of obligation stands in opposition to Kant's categorical imperative, in that its starting point is the principle of creation, after the human spirit has been comprehended as the image of God. Within the Aristotelian conception of human existence, experience plays an important role. In Islamic legal theory, however, the role of praxis is comparatively subordinated. See Wilhelm Weischedel (ed.), Immanuel Kant, *Grundlegung zur Metaphysik der Sitten* (vol. 1 of 4, IV, Frankfurt a.M., 1974), p. 51.

³⁷ The special dimension of human assignment is most clearly illustrated in the following Quran verse: "*And when they Lord said to the angels, 'I am setting in the earth a viceroy.' They said, 'What, wilt Thou set therein one who will do corruption there, and shed blood, while we proclaim Thy praise and call Thee Holy?'* He said, '*Assuredly I know that you know not*'" (Q, 2:30).

³⁸ The claim that humans are, through their existence, under the obligation of *ṣarī'a* and *taḳlīf* shows a very limited understanding of *taḳlīf*. See Thomas Amberg, *Auf dem Weg zu neuen Prinzipien islamischer Ethik. Muhammad Shahrour und die Suche nach religiöser Erneuerung in Syrien* (Ergon Verlag, Würzburg, 2009), p. 405.

oneself in light of the Quranic message, which guides the believer on the horizon of holistic meaning toward a particular end of (hi)story. However, just as all historical cognition ever has only temporary validity, Revelation opens the possibility of a comprehensive understanding of the lived historical interrelations of human existence. This is because Revelation suggests transcendental anticipatory thought.³⁹ In aš-Šāṭibī's legal thought, predisposition and commandment are not oppositional terms. The goal of *šarī'a*, as an expression of holy order that permeates all things, leads, in relation to obligation or commandment, to the status of predisposition:

If God has created a creature, in which good and evil are combined, then the good is that for which creation was conceived [...] And this also stands in relation to the statement of the Mu'tazila current, that evil and harm occur without intention and against the will of God. For God is elevated above this.⁴⁰

Whereas the discourse of obligation calls forth the creation of a new lived situation, opening up new perspectives for the believer, the discourse of predisposition mirrors a certain ethical and ontological orientation of religious

³⁹ The term *disposition/ predisposition* entails a certain overlap of the "beginning" and "end" of history. This permits a re-reading of Islamic ethics which positions the Islamic conception of existence precisely between the historical approach of Wilhelm Dilthey and the *anticipatoru* thesis of Hegel. Dilthey presumes that the wholeness of life can be grasped only at its end. Hegel's anticipatory theory sees humans' thoughts about their own immortality as grounded in recognition (Erkennen). See Jean-Claude Wolf, "dass der Mensch durch Erkennen unsterblich ist - Hegels Deutung der Erzählung vom Sündenfall" in *Freiburger Zeitschrift für Philosophie und Theologie*. 58th year, book 2 (2011), p. 58, and, Wolfhart Pannenberg, *Wissenschaftstheorie und Theologie* (Frankfurt a. M., 1973), p. 137.

⁴⁰ MU^{II}, II, p. 37.

existence. Through the message of commandment, Revelation brings a new property into human existence, connected with the bearing to react accordingly. Thus, it is solely the strength of the lawgiver, of God, that obliges one to act morally.

The *maqāṣid*-approach thus contributes significantly to the methodological overcoming of the dichotomy between disposition and obligation, through the implied intentionality of the promulgation.⁴¹ According to aš-Šāṭibī's theory, the objective of the Lawgiver corresponds to the predisposition of humans, insofar as it results in the goal of moral action according to the terms of *šarī'a*, namely *maṣlaḥa*. Furthermore, by placing intentionality theory at the fulcrum between theories of creation and theories of obligation, it became possible to make a natural transition from the intended meaning of promulgation to a natural transition between teleology and deontology.

So the terms *good (maṣlaḥa)* and *obligatory (taklīf)*, when applied to the actions of humans, play the same role as the aforementioned discursive phrase of al-Ġazālī in relation to discourse partners, and the same role as the guidelines to action and how they relate to the subject/ actor, as put forth by legal theory, to explain legal norms.⁴² The commandment/assignment, in turn, presumes

⁴¹ The second theory of the moral practice of radical *taklīf* followers originated from within the two legal schools of the Ḥanbalites and the Šafi'ites. They see, in Revelation, the incident that created morality. Their approaches emphasize the externally created obligation to act in accordance with moral knowledge.

⁴² The speaker refers to herself discursively through her contribution; actors, by intervening in the web of activities, shows their ability to do something, to act. Hence, their actions are categorized into the realms of "good" and "obligatory" without difficulty. As the initiator of a given action in the realm of duty, individuals bear responsibility for their actions in the form of an externally imposed moral compulsion.

continuous, ongoing apprehension, since humans, due to their independent reason, have been chosen by God as vice-regents: the *taklīf* principle stands in the same relation to the holistic self (*nafs*) as the standards for the attainment of subordinated life ambitions (*maqāṣid ʿiyya*) stand in relation to their superior goals, namely *maṣlaḥa*. Through the implied ethical responsibility of the concept of assignment/commandment, the word *nafs* attains, as a single term, a valued and evaluatory meaning that qualifies the individual as *mukallaf* (*the agent of the assignment/commandment*). *A central aspect of the taklīf principle is its inherent combination of the life tasks of humans with their reason.* The holy commandment *taklīf* lies in humans' leading religious lives in accordance with a reasonable understanding of Revelation.⁴³ The term *maṣlaḥa* then becomes indispensable in the context of thinking through, in a reasonable manner, the meaning of acting responsibly,⁴⁴ since it acts as a junction in the relation between reasonable spiritual obedience and spiritual cognition.

The objective of their action then becomes the object of evaluations and estimations that proceed from the viewpoint from which every ethical actor sees him or herself. See Paul Ricoeur, *Soi-même comme un autre*. Seuil (Paris, 1990), p. 209.

⁴³ This conception is fundamentally different from that of the Aristotelian Ergon-theory, which addresses the duty and function of an individual in the good execution of a reasonable activity. For Aristotle, happiness is principally attainable by humans through a particular kind of human activity. If attained, it fills the individual's life as a whole, on the condition that the individuals, in addition to reasonable activity, also possess virtue (*aretē*). See Jean-Claude Wolf, *Das Böse als ethische Kategorie*. (Passagen Verlag, Wien, 2002), p. 42.

⁴⁴ In this context, responsibility means bearing responsibility for one's actions before a superior figure. *Maṣlaḥa*, as a criterion for judging human behavior, implies, then, that responsibility and fault are unthinkable without the presumption of a certain conception of freedom. Reason plays a key role in the process of assigning process in the determination of the religious boundaries of freedom. See "On the relation between

4. Spiritually Oriented Judgment in Relation to a Rationalistic Theory of the Good⁴⁵

Aš-Šāṭibī's critique of the rationalistic explanatory pattern of value judgement is a continuation of Aš'arite groundwork under the open-minded conditions of 13th-century Andalusia. Here, within at least some centers of scientific learning, such as Granada, it was possible to proclaim an open admission to mysticism and gnostic thought without fear of potentially life-threatening consequences.

A primary form of the intentionalist conception of the good is the so-called *maṣlaḥa mu'tabara*, which is concerned with interests whose attainment does not appear to have any damaging consequences or negative side effects. Clearly, it is concerned with interests that are equally and consensually recognized by rationalistic and textual legal sources; these include for example, the defense of

freedom and responsibility," Helmut Kussäther, *Was ist Gut und Böse?* (Neukirchner Verlag, 2Neukirchen-Vluyn, 1979), p. 13. The process of assigning process? Is that correct?

⁴⁵ The method of inference used by aš-Šāṭibī for coding legal value judgements is referred to here as "ethical judgement formation" in reference to Heinz E. Tödt (1988) and Norman Daniels (1996). The reflexive relation to social conventional value systems is, in aš-Šāṭibī's terminology, expressed as *'urf* (the moral formation of judgement). Throughout the process of legal analysis, the use of the key concept of intentionality helps to clarify basic analytical procedural steps, including, for example, the examination of the relationship between legal norms and options for human behavior, or tests of the coherence between legal principles and rules of behavior. These procedural steps are standard practice in much of modern ethics research, even though they appear in different forms. See Heinz E. Tödt, *Perspektiven theologischer Ethik* (München, 1988), pp. 13-21; Norman Daniels, *Justice and Justification. Reflective Equilibrium in Theory and Practice*, (Cambridge, 1996).

one's belief, one's life, and one's intellect.⁴⁶ Intuitively, it makes sense that aš-Šāṭibī builds upon the tradition of al-Ġazālī on this question; he limits both *mašlaḥa mu'tabara* and *mafsada mu'tabara* to actions that stem from the field of the five universal ethical maxims of the *ḍarūriyyāt* and their textual proofs in the *Quran* and *sunna*.⁴⁷ In aš-Šāṭibī's thought, however, the role of Revelation remains pivotal to the formation of ethical judgment, to the extent that he separates the term *mašlaḥa mu'tabara* from the Mu'tazilite *a priori* reasonable conception of the good, which in turn, is based on Good and Bad as abstract categories with independent existence.⁴⁸

⁴⁶ According to Aḥmad ar-Rīsūnī's analysis, *mašlaḥa mu'tabara* is concerned with interests, the negative side effects of which have less meaning for human action, to the extent that they entail no legal consequences. See Aḥmad ar-Rīsūnī, *Naẓariyyat, al-maqāṣid 'inda l-Imān aš-Šāṭibī* (Beirut / Casablanca, 1985), p. 65. In general, however, this category entails, for aš-Šāṭibī, largely actions whose value is clearly determined by Revelation, such as rituals and deeds in the service of God (prayer, fasting, pilgrimage, etc.).

⁴⁷ Al-Ġazālī formulated the general definition of *mašlaḥa* as an opposing pole to *mafsada* back in the 5th century. He did so by putting forth the opinion that every deed that ensured the safekeeping of the five necessities is undoubtedly a *mašlaḥa*, and conversely, any deed that endangered their upholding was a *mafsada*. See Abū Ḥāmid al-Ġazālī (d. 505/1111), *Al-Mustaṣfā* (Dār al-Fikr, Damascus), p. 287. Aš-Šāṭibī pursues the same path of reasoning in his definition of the categories *mašlaḥa* and *mafsada*, which however, he describes as definitive (*muṭlaq*) in this context.

⁴⁸ The position of aš-Šāṭibī (MU^{III}, II, S. 31) is reminiscent of the skepticism that David Hume expressed towards reason. For Hume, it was no more than a tool of essentially affective virtue. See Ludwig Siep, *Konkrete Ethik. Grundlagen der Natur- und Kulturethik* (Frankfurt a.M., 2004), p. 344. Hume, right?

What has been made clear in the *Kalām* science and in the legal methodology, is that reason cannot recognize good, nor evil.⁴⁹

The objections of aš-Šāṭibī, however, are not directed at reason in general; rather, they are directed at the *a priori* character of Mu‘tazilite thought. For he finds that the temporality and polymorphism of human reason are totally marginalized in favor of the supposedly absolute and independent character that is also independent of lived reality.⁵⁰ One sees the *a priori* position most clearly in the works of the early Mu‘tazilite Abū l-Ḥusayn al-Baṣrī (d. 436/1044) who believed in the existence of good as an independent entity.⁵¹ He used the term *maṣlaḥa* and its plural form, *maṣāliḥ*, in both senses: in the general sense (as an ethical category that is preordained to creation), and in the particular sense of its methodical-legal meaning within the framework of the theory of the four sources of legislation.

According to Abū l-Ḥusayn al-Baṣrī, *maṣlaḥa* as a juridical term can only ever be understood as a synonym for what is legally good. In its plural form, *maṣāliḥ*, however, it refers to particular contexts and situations that, based on the conditions under which they take place, call for varying manners of action within the range of the good.⁵² For him, the relation of *maṣlaḥa*, as an abstract entity,

⁴⁹ MU^{III}, II, p. 61.

⁵⁰ Inspired by the Mu‘tazilite conception of the real existence of good and evil, Nağm ad-Dīn aṭ-Ṭūfī (d. 716/1316) occupied what appeared to *ṣāfi‘ī* scholars to be an extreme position, insofar as he advocated the unconditional application (that is, with no pre-conditions) of the *maṣlaḥa* principle, even to the extent of passing over, or ignoring textual statements.

⁵¹ Khalil Mays (ed.), Abū al-Ḥusayn al-Baṣrī (d. 436/ 1045), *al-Mu‘tamad*, vol. 1, (Dār al-kutub al-‘ilmiyya, Beirut).

⁵² This displacement of meaning between the singular and plural forms of the term *maṣlaḥa* is also found in aš-Šāṭibī. Unlike Abū l-Ḥusayn al-Baṣrī, however, aš-Šāṭibī

to the term *istiślāh* (defined as the rational justification of an action), as well as to *‘illa*, is at the center of the discussion. As a Mu‘tazilite, Abū l-Ḥusayn al-Baṣrī argues against the advocates of the transmission (*naql*), who claim that *maṣlaḥa* cannot be reasoned, that is, rationally constituted (i.e., defined in rational terms). That which is legally good (*al-maṣāliḥ aš-šar‘iyya*) results from actions for which there is an obligation.⁵³ He supplies no list of the *maṣāliḥ*, however, and also gives no explanation of the connection between *al-maṣāliḥ aš-šar‘iyya* and the abstract term *maṣlaḥa*, seen as a general ethical category.

In the discussion of "good" and "evil," aš-Šāṭibī adhered to the inductive Aš‘arite method, which gives primacy to textual proof (*an-naql*) over rational argumentation (*al-‘aql*). Nonetheless, in his legal philosophy he was able to arrive at an independent understanding of reason, through the separation of his

ascribes to the singular form *maṣlaḥa* the practical function of an ethical orientation, whose essence is determined by the holistic context of execution in life. In his line of thought, *maṣlaḥa* resembles a theoretical reflection on moral judgment formation. Thus, in the different *muwāfaqāt*-treatise on *maṣlaḥa*, he deliberately forgoes the use of abstract judgment categories, even though these have widespread use in the field of rationalistic theology. These include *ḥayr* (the highest good) and *šarr* (radical evil). This point is further elucidated below.

⁵³ He distinguishes this from the means that make it possible to perform the assigned deed. They all have a relation to *maṣlaḥa*. These means are: (1) *dalīl* (literally, "proof"): textual evidence in regard to the acceptance or rejection of a deed, (2) *amāra* (literally, "feature," "attribute"): an adequate sign for a certain characteristic, (3) *‘illa* (literally, "reason," "*ratio legis*"): grounds for an analogical conclusion, and thus, a basis for the definition *maṣlaḥa*, (4) *sabab* (literally, "reason," "means"): the cause of an action, and lastly, (5) *šarṭ* (literally, "condition"): a condition that must be met in order to ensure the execution of a deed. Altogether, *maṣlaḥa* is a goal for al-Baṣrī, to which *‘illa* and the other abovementioned terms are means. See Ṭaha Ḡābir Fayyāḍ al-‘Ulwāni (ed.), Faḥr ad-Dīn ar-Rāzī (d. 606/1209), *Al-Maḥṣūl*. vol. II (Riad, 1980).

philosophy from rationalistic theology. This new understanding contributed greatly to his comprehending basic currents within the formation of legal theoretical judgment, for, according to aš-Šāṭibī's assumption, Revelation precedes reason, but the message of the Revelation is sufficiently understood only in hindsight, through reason.⁵⁴

Translated into more modern terminology, *a priori* reason, according to aš-Šāṭibī's conclusion, is not able to clearly distinguish the good from the reprehensible because it only acknowledges that which it brings forth via its own design.⁵⁵

Considering his extraordinarily innovative idea of the highest good (*al-maṣlaḥa al-mu'tabara*) as the orientation for all intentional action, the objections of aš-Šāṭibī against every rational-ontological conveyance of the question of the "good" into the sphere of the objective, are understandable.⁵⁶ Still, the intentionalist conception of the highest good appears not to be unifiable at all with the Kantian subjection of the faculty of judgment.⁵⁷ The displacement of the Mu'tazilite ontological-objectifying determination of the good in

⁵⁴ MU^{II}, DK, I, p. 61.

⁵⁵ See Wilhelm Weischedel (ed.), Immanuel Kant, *Kritik der reinen Vernunft* BXIV, II (Frankfurt a.M., 1974), p. 23.

⁵⁶ MU^I, II, p. 6. Individual intentions should in the end result in the aim of godly legal order (*ṣarī'a*), so that felicity may be ensured in both this life and the afterlife.

⁵⁷ In aš-Šāṭibī's understanding of good, one can recognize a clear convergence towards the position of modern theological ethics. In this context, it is appropriate, despite the time span that separates them, to compare aš-Šāṭibī's train of thought on value judgments to the definition of good by Otfried Höffe: a relational term according to which the evaluative position of a subject comes into being in its expression. See Otfried Höffe, "Das Gute", in, Otfried Höffe, *Lexikon der Ethik* (München, 2002), pp. 110-111.

jurisprudence, however, did not necessarily mean abandoning the relation between reason and Revelation; rather, it was continued, albeit within a different hierarchic structure.⁵⁸

From the perspective of aš-Šāṭibī's understanding of reason as a means to realize religious truths, one can understand the question of the reasonableness of good as an intention for action, or *qasd*, as a question about the theoretical grounding of reasons for action, in accordance with holy legal norms. This is the basis of how the relations are determined among reason, Revelation, and ethical judgment making:

And if the evidence of the *šarī'a* is applied to the [ethical] universal maxims and the rules specific to action, as has already been explained by the aforementioned counter position, one could not conclude ever with an indubitable judgement, unless one incorporates reason, whereas reason is subordinated to religion.⁵⁹

The goals of the *šarī'a* are not only arrived at theologically through the idea of the orientation of the human towards *maṣlaḥa*, but are also equally knowable from the community's cognition of the moral good:

The community recognizes [the goals of the *šarī'a*] as necessary, although these were never firmly determined in a [legal] proof, neither could we find a legal basis through which to specifically trace them. Rather, the unity of these foundations with the *šarī'a* was determined through a majoritarian multiplicity of legal proofs, that cannot be summarized under one category.⁶⁰

⁵⁸ MU^{II}, I, p. 61.

⁵⁹ MU^{III}, I, p. 14.

⁶⁰ MU^{III}, I, p. 14.

In aš-Šāṭibī there is a distinction between worldly and eschatological good. This differentiation results in a plurality of terms for value judgment; however, it has no particular bearing on the discussion of the highest good.⁶¹ This is the case insofar as the terms for the highest good, *al-maṣlaḥa al-mu'tabara*, or rather, radical evil, *al-mafṣada al-mu'tabara*, have claims validity ascribed to them that are only of a mere legal-theoretical nature:

In the end, the uses and harms, that are recognized in *ṣarī'a* are pure and in no way intermingled, neither in large, nor in small part. And even if one were deceived into thinking they were, they are not so from a theological-legal perspective.⁶²

As regards the definition of worldly good, aš-Šāṭibī connects his idea of the *ṣarī'a* as a beginning point for the process of determining "good" and "bad" with another idea, one that also had adherents in the Šafī'ī school of thought. "With good and reprehensible one means only pseudo-categories, that do not truthfully correspond at all to the good and the reprehensible in reality."⁶³ Aš-Šāṭibī's train

⁶¹ The terms *ḥayr* versus *šarr* (good versus bad) are widely used by theologians. Aš-Šāṭibī employs these exclusively in the discussion of rational-theological theses. In other cases, he uses a dichotomy that many jurists have also employed, *maṣāliḥ* versus *mafāsid* (interest versus damage), and the less well known (at least among the legal scholars) duality of *manāfi'* versus *maḍārr* (use versus harm). See Ibn Qudāma al-Ḥanbalī (d. 620/1223), *Rawḍat an-nāzīr wa ḡunnat al-munāzīr*. I, (Maktabat al-kulliyyāt al-azhariyya, Cairo), p. 312. The latter dichotomy comes up frequently in treatises on theoretical frameworks for action in the analysis of moral judgment formation.

⁶² MU^{III}, I, p. 28.

⁶³ With *ḥaqīqa*, aš-Šāṭibī is referring to the abovementioned concept of truth put forth by philosophers and rationalist theologians, which is based on the idea of the objectivity of the good. In discussions concerning the moral formation of judgment,

of thought in relation to value judgments appears clearly, more precise in theoretical terms, as well as more methodologically mature. According to his analysis, from an ethical-theoretical perspective, the *a priori* ability of reason, in and of itself, is insufficient for recognizing a conception of "well-being" that is valid for all believers in all situations, in both this and the next world.⁶⁴

Use and harm are generally concomitants [of actions], and that they are only concomitants means that they, depending on the context, and individual, and the time of their occurrence, may be harmful or not harmful [...] many of the uses may prove to be harmful. And all this is to be explained through, that the use and the harm, for the configuration of this life, are permitted or prohibited, and not there in order to attain physical needs.⁶⁵

This sounds very clearly like the conception of a lived world according to the principle of preliminary tentativeness, by which human fallibility can turn on its

when jurisprudence is concerned with differentiating good from evil, the starting point is one of theoretical action, in which every judgment is the product of contextual and situational deliberation. See Ṭaha Ğābir Fayyāḍ al-‘Ulwāni (ed.), Faḥr ad-Dīn ar-Rāzī (d. 606/1209), *Al-Maḥṣūl*. vol. II (Riad, 1980), p. 240.

⁶⁴ The analysis of aš-Šāṭibī thus contributes to refining the position of ar-Rāzī, which presumes that the characteristic of being good, in its embodiments of good and bad, (which is suitable to human nature, or also connected to human striving for betterment) can undoubtedly be known via human reason. Up to this point, ar-Rāzī adopts a position that is close to that of the Mu‘tazilites. However, he then limits his conception of *maṣlaḥa* in this direction as well, by stating that good and bad, as general moral categories that may entail praise or condemnation, can be established only through *aš-šar‘*. See Ṭaha Ğābir Fayyāḍ al-‘Ulwāni (ed.), Faḥr ad-Dīn ar-Rāzī (d. 606/1209), *Al-Maḥṣūl*. vol. II (Riad, 1980), p. xx.

⁶⁵ MU^{III}, I, p. 28.

head the good-naturedness that a human has attained. The good is not conceived from within itself; neither is it conceived on the basis of rational criteria that lend to judgment the property of being. Instead, it is primarily conceived in a binary relational process (it is vertical between God and humans, as well as horizontal between humans and humans). Thus, the conception of reason within aš-Šāṭibī's legal philosophy moves beyond the aporias of both predestined "temporality" and the Mu'tazilite "a-priori-ism" of the concept of apprehension. It does so via its believing cognition of truth and reality.⁶⁶ For an understanding of reason based on deliberating consideration as the overcoming of evil without the intervention of God into the lived world, is, as aš-Šāṭibī conceives it, unthinkable, for acting in this world is not only about decisions between good

⁶⁶ The definition of reason here is divided into three sections. This definition originates from a modern understanding of al-Ġazālī's conceptualization of the intellect. In his mystical phase, he differentiated among three paths to cognition: insight of the mind (which serves the comprehension of the content and law of Revelation in accordance with a reasonable registering of worldly truth), insight of the soul (its objective being knowledge surrounding the practical execution of religious virtues and the handling of so-called inclinations of the will), and insight of the heart (a knowledge oriented towards belief, which leads to the true recognition of God through mystical Revelation). See Abū Ḥāmid al-Ġazālī (d. 505/1111): *Iqtiṣād*, Edition, Ort, Jahr, pp. 47-48, as well as, Muḥammad 'Abd Al-Hādī Abū Rīda, *Al-Ġazālī und seine Widerlegung der griechischen Philosophie* (Blass, S. A. Tipográfica, Madrid, 1952), pp. 87-92. The categorization of knowledge in al-Ġazālī into *a priori* knowledge (internal conditions of consciousness), sensual knowledge (generalizations based on the observation of natural phenomena), and mediated knowledge (conveyed to us via truthful individuals) is comparable to the classification of levels of reason by the modern theologian Wolfhart Pannenberg, even if they are not identical. See Wolfhart Pannenberg, *Grundfragen systematischer Theologie, Gesammelte Aufsätze* (Göttingen, 1967), p. 244.

and bad, but also about the knowledge that every action can lead to both positive and negative consequences. This demand of individuals a certain awareness of their responsibility for potential misconduct.⁶⁷ Carrying over the question of value judgment into the sphere of intentions of the Lawgiver is justified, insofar as believers are morally challenged by the ambiguities life confronts them with, and to the extent they may be in need of help and guidance.

On the level of legal norms, there is an overlap between the characteristics of the pseudo-good and the pseudo-reprehensible. This is justified by the fact that some *šarī'a*-conditions contain an apparently inherent contradiction, whereby an action may be permitted and prohibited at the same time.⁶⁸ Despite his rejection of the Mu'tazilite and the Maturidī stance, which was to acknowledge an independent existence of the good and reprehensible outside of the *šarī'a*, aš-Šāṭibī did not go in the completely opposite direction from the Aš'arites either. Generally speaking, he stands in the solid tradition of a practical philosophy whose adherents have tried time and time again to distance

⁶⁷ Aš-Šāṭibī perpetuates a traditional postulate here, which was already informally touched upon by his spiritual teacher, al-Qarāfī. He does so with the following explanation of the entanglement of good and evil: "Just as every good contains some harm, even if it appears unlikely, harm can also bring forth positive consequences, even if these are not always [rationally] deducible. Thus, being good also entails an allowance of reminiscing about the past with constant regret and unconditional forgiveness." See Ṭaha 'Abd ar-Ra'ūf Sa'd (ed.), Šihāb ad-Dīn al-Qarāfī (d. 684/1285), *Šarḥ tanqīḥ al-fuṣūl fī 'iḥtišār al-maḥṣūl fī l-uṣul*, (Maktaba al-Kullīyāt al-Azharīya wa-Dār al-Fikr, Cairo, 1973), p. 78; MU^I, II, p. 26-39; and Helmut Kussäther, *Was ist Gut und Böse?* (Neukirchner Verlag, Neukirchen-Vluyn, 1979), p. 71.

⁶⁸ Reference is often made here to the legal norm of prohibiting alcohol, whereby the enjoyment of alcohol is seen as a violation, while the intake of medication containing alcohol is permitted. MU^{III}, I, S. 29.

themselves from both polarities of rationalistic theology. In rejecting the conception of some Mu‘tazilites that good and evil are independent creations of God, and by introducing a judicial and moral value judgment, aš-Šāṭibī makes it possible to see good and evil as things that have their place and origin in human action itself.⁶⁹

In his discussion of the term *maṣlaḥa*, aš-Šāṭibī analyzes the Aš‘arite categories of *taḥsīn* (judging according to the principle of the good) and *taqbiḥ* (judging according to the principle of what is reprehensible). In doing so, he also prevents the separation of belief from thought. The entire theoretical construct of his approach to intentionality is based on a particular imagining of the relation *maṣāliḥ* versus *mafasid* (use versus harm), and this stems from the Aš‘arite category of situationality (that is, the extent to which a certain action is appropriate given the situation in which it takes place).⁷⁰

⁶⁹ The father of practical rationality, Imām al-Ḥaramayn al-Ġuwaynī, also pleaded for a strict separation between theological and juridical argumentation: It is uncontested that reason presumes the avoidance of vice and the striving for possible utility. The rejection of this is beyond all reason, for this is essentially the right of humans. The central point of concern in the matter what is good or bad in respect to the right of God. ‘Abd al-‘Azīm ad-Dīb (ed.), ‘Abd al-Malik ibn ‘Abd Allāh Imām al-Ḥaramayn al-Ġuwaynī (d. 478/1085), *Al-Burhān fī uṣūl al-fiqh. Vol. 1* (2nd ed., Dār al-Anṣār, Cairo, 1980), p. 91. The grammar is off in the marked passage. The central point of concern is the matter of what is good or bad? Is it a quotation following the colon? If so, it should be marked.

⁷⁰ Perhaps the most representative, and at the same time most debated, work discussing the Aš‘arī conception of *maṣlaḥa* is undoubtedly that of Faḥr ad-Dīn ar-Rāzī, "*Al-Maḥṣūl fī ‘ilm al-uṣūl*." Ṭaha Ġābir Fayyād al-‘Ulwānī (ed.), Faḥr ad-Dīn ar-Rāzī (d. 606/1209), *Al-Maḥṣūl*. vol. II. (Riad, 1980).

5. Theological Common Good in the Context of Deliberative Reason

As al-Ġuwaynī did before him,⁷¹ aš-Šāṭibī makes a categorical distinction in defining the field of applicability for moral value judgments. He differentiates between how and where to apply the philosophical position of *a priori* reason and between socially oriented, anthropological-social paradigms. In doing so, he moved into the foreground the anthropological-social foundation of Islamic ethics, so that the question of a reflective association with a tension between holy legal determinants and the immanent good of practice could be moved into the center of ethical contemplation. Out of this resulted the insight to determine value judgments in accordance with the situationality of legal norms.⁷²

The short discussions of aš-Šāṭibī on the role of situationality in the formation of ethical judgment already suffice to illustrate that there is a wide bearing of the morally good for any single individual constellation of action. For this reason, aš-Šāṭibī questions the idea of an unconditional connection between legal applications and rationally determined value judgments. Strictly applied legal norms, whose validity (necessarily) overrides the context of action, can end up endangering the most valued of holy legislation, namely, justice. This is a clear indication by aš-Šāṭibī of the meanings of moderation (*al-yusr / al-līn*) and mercy (*ar-raḥma / al-luṭf*) as components of godly intention in legal application. He is also differentiating between narrowly defined legal determinants and those

⁷¹ The term *functional rationality* in Tilman Nagel is based on the conception of good of Herbert Spencer, in which "good" is equated with "functional." See Friedrich Nietzsche, *Jenseits von Gut und Böse* (Alfred Kröner Verlag, Stuttgart, 1991), p. 253. To describe the doctrine of good of al-Ġuwaynī, based on theology and transcendence, as functional rationality, is thus reductionist to a certain degree. See Tilman Nagel, *Die Festung des Glaubens. Triumph und Scheitern des islamischen Rationalismus im 11. Jahrhundert* (München, 1988).

⁷² MU^{III}, II, S. 29.

that take an actor's intentions and their particular context into consideration. As God declared to his prophet in the Quran (20:2): *"We have not sent down the Qur'an upon thee [as Revelation] to be unprosperous [rather, so that you experience suffering and arduousness]."*⁷³

According to aš-Šāṭibī, in addition to the dominance of a moral good, holy scripture and an actor's intention are crucial for arriving at an ethical judgment. The good and the reprehensible can hence only be determined by an interpretive textual analysis of the intention of the legislator, while taking into consideration the moral value judgment, which, with the help of contextual factors, can decisively codetermine the normative value of an action. Additionally, one must conceive of a more comprehensive contextual structure when forming a judgment, without adhering, however, to an excessively rationalist pragmatism. In anticipating an action's intention and orienting oneself towards good, there takes place a permanent transgression of the given circumstances, and this takes from reason any ability to perceive the intentions humans see in their actions. This acknowledgement opens the perspective for a reasonable recognition of Revelation as an essential principle, rooted in belief, for the formation of ethical value judgments:

The interests/goods that are guaranteed in worldly life, are seen from two perspectives: for one, from the perspective of the environment of their

⁷³ Numerous Quran verses can be cited here, to which reference has been made already in other contexts, such as (21:107): *"We have not sent thee, save as a mercy unto all beings,"* or (3:159): *"It was by some mercy of God that thou wast gentle to them; hadst thou been harsh and hard of heart, they would have scattered from about thee. So pardon them, and pray for forgiveness for them, and take counsel with them in the affair, and when thou art resolved, put thy trust in God; surely God loves those who put their trust [in him]."*

existence, and for another, from the perspective of their relation with legal discourse.⁷⁴

The terms *worldly good* and *moral good* are, according to aš-Šāṭibī's approach, essentially interchangeable with the thought content for useful (*nāfi*), in the sense of that which has proven itself to be practicable. It may not, however, seek to claim its validity as valued in the highest grade.⁷⁵

As the last object of intentional action, the good in this world is principally not knowable, due to the unpredictability of the potential consequences of one's actions in advance. That is why, in his treatise on the epistemological status of worldly value judgment, aš-Šāṭibī departs from the frame of a general discussion of value in order to proceed to a consideration of concrete situations.⁷⁶ The ascertainment of ethical judgment, outside of the realm of good intentions, within real situations, runs into the limitations of predictability. That is why it becomes unavoidable, in trying to arrive at an ethical determination of judgment in

⁷⁴ MU^{II}, II, p. 20.

⁷⁵ Aš-Šāṭibī's term for worldly good (*maṣlaḥa mursala*), which serves as a preliminary stage for his trisection of the good, is indispensable here for thinking about ethical behavior. It also bears the risk, however, of succumbing to subjectivism, due to its close relation to the doctrine of virtue. The term for the highest good (*maṣlaḥa mu'tabra*) remains essential for the formation of ethical judgment, due to its connection to the Quran and its recursive character. A similar approach is found in the work of Friedrich Schleiermacher. He divides the formal, ethical key terms into three categories: duty, virtue, and good. He maintains the importance of the term for the highest good for ethical judgment formation, due to its generative character. See Friedrich Schleiermacher, *Grundlinien einer Kritik der bisherigen Sittenlehre* (Otto Braun, 2nd ed., Meiner, Leipzig, 1928).

⁷⁶ See. MU^{II}, II, p. 20, as well as Franz von Kutschera, *Grundlagen der Ethik* (de Gruyter, Berlin, 1999).

unpredictable situations, to fall back on contextually appropriate considerations through recourse to reason and Revelation. Since the normative value of an action is measured in its putative results, insofar as this can be estimated, a legal scholar should, in every case where there is potential for confusion between good and bad, weigh the consequences of the particular action to arrive at a suitable judgment.⁷⁷ The deliberation takes place in accordance with the same hierarchic structure by which the relations among universal ethical maxims that are indispensable to life (*aḍ-ḍarūriyāt*) are organized. If in a given situation two conflicting interests are at stake, this rule shall determine which takes precedence. For example, if the preservation of life is at stake versus the preservation of property, the former takes precedence over the latter. One should proceed in this manner in difficult cases.⁷⁸

In opposition to Kant's categorical imperative, in which all potential misconduct appears to be condemnable with the same severity, the means of arriving at a judgment in aš-Šāṭibī's legal system proceeds much more in accordance with a differentiating, contextually specific framework. Thus, theft and murder, and fabrication and bearing false testimony, for example, are

⁷⁷ In the face of the dependency of situational (*mawāqi' al-wuḡūd*) and textual (*al-ḥiṭāb aš-šar'ī*) factors, aš-Šāṭibī explains that one may decide on a case-by-case basis, whereby, in each case, the weaknesses of one approach are to be balanced against the strengths of the other. MU^{II}, II, p. 21.

⁷⁸ MU^{II}, II, p. 30. This "existentialist" connection between the preservation of faith and the preservation of life should be understood in relation to the implicit, identity-forming character that aš-Šāṭibī ascribes to Revelation in his interpretation of the connection between belief and existence. The motive of self-preservation is, then, not a natural constant in the struggle for survival that determines individual action, as claimed by Nietzsche. See Gerhard Schweppenhäuser, *Nietzsches Überwindung der Moral* (Verlag Könnighausen u. Neumann, Würzburg, 1988), p. 33.

categorized and rated in different ways, depending on their relations with the respective objectives of *šarī'a*.⁷⁹

In aš-Šātibī's interpretation of contextual judgment, the binary valuation of "good"/"evil" plays the role of a practical reasonableness,⁸⁰ in the performance of which deliberative thoughts about intentions and the goals of deeds are involved. Some legal schools of thought have overemphasized the importance of logical deductive reasoning, which claims to be able to be completely independent from the concrete associations of human contexts of action. In this case, however, the question of arriving at a judgment is removed from that sphere, in favor of an analysis that is much closer to exemplifying alternative actions that are more typical of reality. These alternatives contain, or may contain, greater or smaller amounts of good or bad, even if they are only in their unforeseen consequences or side effects.⁸¹

In this manner, spiritual cognition, as an exceptionally polymorphic field of conviction, can do justice to the demands of a rationalist ethics of responsibility, with recourse to a selective understanding of realities for action.

⁷⁹ This comparison serves as a backdrop to the stringent formalism that Hannah Arendt expressed in reference to Kant. She added, in Kant's statement, evil is the same thing, whether it turns humans into thieves or into murderers; it is the same unholy weakness within human nature. Hannah Arendt, *Über das Böse* (Piper Verlag, München, 2003), p. 97. I don't get that. She added to Kant's statement? In reference to Kant's statement?

⁸⁰ The term *practical rationality* is close to the translation by Hans-Georg Gadamer of the Aristotelian term *phronesis*, also known as "practical wisdom." See Hans-Georg Gadamer (ed. & trans.), *Nikomachische Ethik*. VI (Frankfurt a. M., 1998), p. 6. The term *practical rationality* helps to capture the analytic concepts also present in aš-Šātibī's idea of *deliberative rationality*. .

⁸¹ See, Heinz E. Tödt, *Perspektiven theologischer Ethik* (München, 1988), p. 32, as well as Hannah Arendt, *Über das Böse* (Piper Verlag, München, 2003), p. 148.

Here, it is not about decisions between the evidently good and evidently bad, but rather about a deliberation over which decision deserves legal preference, and thus, which decision may best.⁸²

The believer's duty towards responsibility as *mukallaf* (what is obligated) results from the interplay between deliberating on the good as based in Revelation, and from the intention of the actor that is knowable from the context. Actors are expected to intensely

engage with reality and its potentialities, and in doing so, perceive the consequences of their own actions as something that is attributable to themselves, to which they are morally accountable.⁸³

This is why aš-Šāṭibī insists on the Islamic-theological distinction between *niyya* (subjective intention) and *qaṣd* (the goal of an action that can be known in advance via a process of deduction). This distinction is decisive in the process of arriving at a judgment.⁸⁴ Thus, the process of deliberation leads one to acknowledge different levels of intentionality behind a given action, so that an action is not to be judged based solely on the subjective intention from which it

⁸² See, for example, Klaus Tanner, "Ein verstehendes Herz. Über Ethik und Urteilskraft" in, *Zeitschrift für Evangelische Ethik* (Gütersloher Verlagshaus, 56. Jahrgang, Heft 1, Januar-März 2012), pp. 9-21, as well as Heinz E. Tödt, *Perspektiven theologischer Ethik* (München, 1988), p. 30.

⁸³ This is a reference to Max Weber's rational concept of an ethics of responsibility. See, on this theme in aš-Šāṭibī, *MU^{II}*, II, pp. 42-43.

⁸⁴ It is important to point out that by describing aš-Šāṭibī's approach as intentionalist, only one part of the entirety of his work is being discussed. See Bernard G. Weiss, *The Spirit of Islamic Law* (University of Georgia Press, Athens, 2003).

presumably springs, since one can hardly distinguish between objectively good actions and those that are based on pious subjective intentions.⁸⁵

Conversely, from the perspective of spiritual cognition, an action that appears outwardly good is only then legally good when it stems from a subjectively good intention (*niyya*). However, insofar as the *niyya*, proves to be inaccessible for a situationally appropriate judgment, aš-Šāṭibī introduces a new moral maxim, namely, *sadd aḍ-ḍarāʿi* (exclusion of abuse/ blocking of instrumentalization). According to this maxim, all actions categorized as good are excluded from the repertoire of the good if the actor hopes to attain an undue individual advantage through them.⁸⁶ This is a *de facto* determination principle,

⁸⁵ This statement is informed by a famous statement by ʿUmar b. al-Ḥaṭṭāb: “Servers of God! Show us your good deeds, for it has been stipulated for us (humans) to judge by the [explicitly verifiable] exterior. Judgment over what is concealed should be left to God.” See Muḥyī ad-Dīn ʿAbd al-Hamid (ed.), Ibn Hišām al-Anṣārī (d. 761/1360), *Muḡnī al-labīb* (Dār iḥyā at-turāṭ al-ʿarabī, Beirut).

⁸⁶ The term, *sadd aḍ-ḍarāʿi* can be translated as “exclusion of abuse.” In aš-Šāṭibī’s legal thought, it serves to curb the eventual abuse of charitable or God-serving actions for illegitimate personal gain, be they social or political. It is an instrument with which to test the normative validity and the moral value of spiritual deeds. By making use of it, one may, for example, declare as invalid the installation of a system for charitable donations if the initiator intends to arrive at political or social influence through his action. On the worldly level, the truthfulness of an action in the service of God can be tested only in hindsight, by the results that emanate from it. For the eschatological acceptance of human deeds, the main determinant is the inherent intention. See MU^{II}, II, pp. 287-288. In the end, a “charitable” deed, such as the giving of alms or the freeing of slaves, cannot be categorized as good or reprehensible in and of itself; rather, the context in which the action takes place is of the utmost importance. In modern Islamic debates concerning the applicability of this process of inference, its political instrumentalization has been criticized, whereby a system of recurring allegations has

which should prevent a potential circumvention of legal norms. This focus on the individual intention behind an action, however, raises the question anew of the confinement of specific intentions of self-interest in the context of responsible behavior. Aš-Šāṭibī reacts with a three-way division of good, namely, into *maṣlaḥa mu'tabara*, (the highest good), *maṣlaḥa mursalah* (the morally good or practical interest), and *maṣlaḥa mulgāt* (the good that is declared invalid or as abrogated interest by legislation). With the term *intention*, there is an implied idea of orientation. With this implied idea, it becomes clear that humans live within networks of relations and act within the framework of resulting interrelations, either as victims under external influence or as influential actors themselves.⁸⁷ In spiritual cognition, the imagined objective is not to suffer injustice rather than commit it, but to do good unto others.⁸⁸ This is why,

been developed to officially prohibit political demonstrations and the public condemnation of a ruler. The German equivalent, suggested by Thomas Amberg, *Blockierung der Mittel* ("blocking of the means") is then only valid in light of the use of the term in modern debates. See Thomas Amberg, *Auf dem Weg zu neuen Prinzipien islamischer Ethik. Muhammad Shahrour und die Suche nach religiöser Erneuerung in Syrien* (Ergon Verlag, Würzburg, 2009), p. 255.

⁸⁷ The binary relation established within Islamic theology between subjective and objective intentions appears to orient itself along lines similar to the distinction established by Max Weber. He formulated a two-way distinction between a deed and a social deed. See Max Weber, *Wirtschaft und Gesellschaft. Grundriss der verstehenden Soziologie* vol. 1 (Tübingen, 1976), p. 1.

⁸⁸ There are numerous Quran verses on this. See, e.g., (41:34). There is also a well-known *ḥadīth* which goes as follows: "Those who are most loved by God, are those who are the most charitable towards their fellow humans." Muḥammad Ibn Isma'īl al-Buḥārī (d. 256/870), *Ṣaḥīḥ al-Buḥārī*. Thesaurus Islamicus Foundation, 3 vols. (Vaduz, 2000). For a modern understanding of this question, see Hannah Arendt, *Über das Böse* (Piper Verlag, München, 2003), p. 108.

according to Islamic doctrine, the attestation of the other in the other world, on the Day of Judgment, is of particular importance.

The value judgment that results from deliberation then, does not merely reflect social appearances that appear outwardly symmetrical; rather, it is the reflection of a responsibility in the context of lived reality that is constantly changing. The three-way division of good in aš-Šāṭibī seeks to systematize the different relations involved in ethical value judgment, both methodologically and morally.

Tentative Conclusion

A sub-section of late Islamic practical philosophy, the legal ethics of aš-Šāṭibī, pursues a realization of eschatological and spiritual healing, while also pursuing practical interests.⁸⁹ There results from this, in aš-Šāṭibī's work, a many-sidedness of good, in which the main components in the process of deliberation are not based simply on that which is expedient or useful. Rather, aš-Šāṭibī's methodology of deliberation is much more concerned with analyzing and determining the relation between practical interest and well-being, which is both very much longed for, and desired by God.

As regards the jurisdiction of *šarī'a*, as mentioned above, aš-Šāṭibī divided *mašlaḥa* into three categories: *mašlaḥa mu'tabara*, *mašlaḥa mulgāt* and *mašlaḥa*

⁸⁹ M. Khalid Masud was one of the first Islamic theologians to apply the term *legal philosophy* in describing the legal theory of aš-Šāṭibī. By doing so, he drew attention to the potential for interpretation within the intentionalist approach. See M. Khalid Masud, *Islamic Legal Philosophy: A Study of Abū Ishāq al-Shatibi's Life and Thought* (Islamic Research Institute, Islamabad, 1977), p. 37. This rapprochement between theological ethics and practical interest is also found in the work of Heinz E. Tödt in reference to Christian ethics. See, Heinz E. Tödt, *Perspektiven theologischer Ethik* (München, 1988), p. 25.

mursalah, whereby the worldly *maṣlaḥa mursalah*, as a "correlate to human striving," can be comprehensively defined only in reference to the moral conduct of life, *al-ʿurf*.⁹⁰

The highest good, in the sense of the common good, is not differentiated from general goods because it is based on specific, rationally comprehensible interests, but because, in it, well-being remains protected in such a way that all forms of an object of personal desire are withdrawn from it. Within legal tradition then, the ethical-Islamic conception of the common good is clearly distinguished from the object of individual craving.

Happiness and suffering do not correspond to *maṣlaḥa mursalah* or *mafsada mursala*, but are connected to them through needs-based practical goods. Thus, they maintain a binary relation to human striving in the same way as they do to godly intention. In this respect, God's mercy and kindness (*lutf*) are the key to happiness and suffering.

⁹⁰ Ibn al-Qayyim reduces the difference between *maṣlaḥa muʿtabara* and *maṣlaḥa mursalah*. He does so by viewing the latter category as a product of the rationalistic interpretation of Revelation. See Muḥssin ʿAbdu as-Salām Ibrāhīm (ed.), Ibn al-Qayyim (d. 751/1350), *Iʿlām al-Muwaqqiʿin an rabbi l-ālamīn*. IV vols. (Dār al-Ġīl, Beirut, 1991). Aṣ-Šāṭibī's binary division of the term *maṣlaḥa* into purely textual (*rein textuelle*) and largely conventional good is generally comparable to the abovementioned distinction made by Franz Böckles, who distinguishes between pre-moral and moral good. For, although the so-called pre-moral good for Böckle appears to have no relation to holy scripture, it is conceptually close to *maṣlaḥa muʿtabara*, due to its *a priori* character. See Franz Böckle, *Fundamentalmoral* (München, 1977), p. 259. Is *rein* correct? It's French for "kidney."

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