

Divine Purposiveness and its Implications in Legal Theory: The Interplay of *Kalām* and *Uṣūl al-Fiqh*

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Abstract

While jurists agree that the Shari'a serves to benefit human beings because God is wise and merciful, they disagree as to the nature of the correlation between God's rulings and these benefits. Does God legislate with the *purpose* of benefitting consumers of the law? In this essay I investigate the Ash'ari doctrine on whether God can be said to act purposively and how this doctrine influences legal theory (*uṣūl al-fiqh*). I will examine Sayf al-Dīn al-Āmidī's position on this issue in his theological writings and his work on legal theory. By focusing on one particular aspect of legal theory, I will demonstrate how the issue of purposiveness in God's acts substantively impacts methodologies for the derivation of legal rules. I will then highlight the mechanisms al-Āmidī develops as a means of constructing a theory that maintains consistency and integrity, and compare his view to that of Fakhr al-Dīn al-Rāzī's (d. 606/1209).

Keywords

uṣūl al-fiqh – *qiyās* – *'illa* – *maqāṣid* – *ḥikma* – *maṣlaḥa* – *kalām*

Introduction

Western scholarship has long recognized the interrelations between Islamic scholastic theology (*kalām*) and legal theory (*uṣūl al-fiqh*). Indeed, many of the most influential theologians were also jurists. We find a significant degree of overlap between works of theology and legal theory on certain contested matters of *kalām*. On these matters, the lines dividing these two

disciplines are blurred in a way that some issues cannot be said to fall solely within the purview of one or the other. For instance, and this becomes standard after the 5th/11th century, works of legal theory begin by discussing theological postulates that have parallels, indeed their origins, in the literature on *kalām*.¹ Further, it is common to find jurists providing cross-references between their works of theology and legal theory. We are thus confronted with the following question: Do theological doctrines influence the position a jurist takes in matters of legal theory?

The close ties between Ash'arism and Shāfi'ism have been well documented in the writings of George Makdisi. In one study, Makdisi demonstrated how the Shāfi'i school of law became host to the Ash'arī school of theology,² and elsewhere he noted the extent to which *kalām* "infiltrated" the field of legal theory in the writings of Shāfi'i jurists, which caused some jurists to draw a distinction between Shāfi'i and Ash'arī brands of *uṣūl al-fiqh*.³ The present study builds on these known interrelations to demonstrate that theological doctrines have a substantive impact on legal theory. How theology influences positive law is another issue; what is of concern here is that theology has the theoretical potential to affect positive law. That is to say, if jurists did in fact develop legal opinions by strictly following the methodology outlined in the field of *uṣūl al-fiqh*, then their theological positions would affect their arguments for certain rulings, or at least their explanations of them.⁴

The present study sheds further light on the interplay between legal theory and theology in Ash'arī *kalām* and Shāfi'i *uṣūl al-fiqh* by examining a doctrine present in both disciplines in the writings of Sayf al-Dīn al-Āmidī (d. 630/1233). By focusing on a specific theological debate – the question of whether God can be said to act purposively – I will show how theological issues influence different aspects of legal theory. For the sake of clarity, I will refer to this theological question as the doctrine of "divine purposiveness."

1 For examples, see Ahmad Atif Ahmad, *Structural Interrelations of Theory and Practice in Islamic Law: A Study of Six Works of Medieval Islamic Jurisprudence* (Leiden: EJ Brill, 2006), 6, 11 note 13.

2 G. Makdisi, "Ash'arī and the Ash'arites in Islamic Religious History 1," *Studia Islamica* 17 (1962), 46–7.

3 Idem, "The Juridical Theology of Shāfi'ī," *Studia Islamica* 59 (1984), passim.

4 On the relationship between positive law and *uṣūl al-fiqh*, see S. Jackson, "Fiction and Formalism: Toward a Functional Analysis of *Uṣūl al-fiqh*," in *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Leiden: EJ Brill, 2002), 177–201; Ahmad, *Structural Interrelations*, 37–47; Behnam Sadeghi, *The Logic of Law Making in Islam: Women and Prayer in the Legal Tradition* (New York: Cambridge University Press, 2013), 26–39; Mohammad Fadel, "Istihsān is Nine-Tenths of Law: The Puzzling Relationship of *Uṣūl* to *Furū'* in the Mālikī Madhhab," in *Studies in Islamic Legal Theory*, ed. Bernard Weiss (Leiden: EJ Brill, 2002), 161–76.

In Arabic, the question of divine purposiveness is usually referred to as “*ta’lil af’āl Allāh bi’l-maqāsid wa’l-aghṛād.*” There are three terms here that warrant explanation. *Ta’lil*, derived from the noun ‘*illa*, is included to question whether God’s actions are motivated by a reason or cause.⁵ The second and third terms, *maqāsid* (sing. *maqṣad*) and *aghṛād* (sing. *gharaḍ*), are often used synonymously; they both refer to ‘objectives’ or ‘ends,’ although the former often carries the added meaning of ‘purpose.’ In this essay, to say that God acts ‘purposively’ – by choice according to the Ash’arī theologians, by obligation according to the Mu’tazilī theologians – implies that He acts for an objective. This objective is often referred to as the *ḥikma* (wisdom, rationale) or *maṣlaḥa* (benefit) that the action aims at actualizing.

Historical Background

There is evidence to suggest that the debate on divine purposiveness finds its origins in discussions concerning God’s reason for creating the universe, which in turn was rooted in the Mu’tazilī-Ash’arī schism on the issue of divine justice and ethical value. In these early debates, Abū al-Ḥasan al-Ash’arī (d. 324/935–6) mentions different opinions within the Mu’tazilī school regarding “whether God created creation for a reason (‘*illa*).”⁶ Al-Ash’arī himself held that “[God’s] creative act (*ṣun’uhu*) is the cause (‘*illa*) for all things, and there is no cause for His creative act (*wa lā ‘illa li-ṣun’ihi*).”⁷ As an early proponent of Ash’arism, Abū Bakr al-Baqillānī (d. 403/1013) argues in one section of his *Tamhīd al-awā’il wa talkhīṣ al-dalā’il* that God did not create the universe for a reason (*fi’anna al-*

5 The meaning of the word ‘*illa* varies in theology and legal theory. In the former, it normally means a “reason” or “cause.” In legal theory, the ‘*illa* refers to the feature of an action that occasions, prompts, or triggers the ruling. The Ash’arī-Mālikī Shihāb al-Dīn al-Qarāfi (d. 684/1284) mentions a different distinction: According to the scholastic theologians (*mutakallimīn*), a ‘*illa* necessitates a qualification for the one who possesses it. For instance, knowledge (‘*ilm*) is a ‘*illa* that affords the one who possesses it the qualification of knowledgeableness (‘*ālīmīyya*). In legal jargon, the ‘*illa* is the thing for which a ruling is established (Shihāb al-Dīn Qarāfi, *Nafā’is al-uṣūl fi sharḥ al-maḥṣūl*, ed. ‘Ādil Aḥmad ‘Abd al-Mawjūd and ‘Alī Muḥammad Ma’wad, 9 vols. [Mecca: Maktabat Nizār Muṣṭafā al-Bāz, n.d.], 7:3217). Of course, these definitions were subject to intense debate. Another distinction is mentioned by Badr al-Dīn al-Zarkashī in his *al-Baḥr al-muḥīt fi uṣūl al-fiqh*, ed. Muḥammad Muḥammad Tāmīr, 6 vols. (Beirut: Dār al-Kutub al-‘Ilmiyya, 1421/2000), 5:114.

6 Abū al-Ḥasan al-Ash’arī, *Maqālāt al-Islāmīyyīn wa-ikhtilāf al-muṣallīn*, ed. Muḥammad Muḥyī al-Dīn ‘Abd al-Ḥamīd, 2 vols. (Beirut: al-Maktaba al-‘Aṣriyya, 1999), 1:318.

7 Abū al-Qāsim Salmān al-Anṣārī, *al-Ghunya fi al-kalām*, ed. Muṣṭafā Ḥasanayn ‘Abd al-Hādī, 2 vols. (Cairo: Dār al-Salām li’l-Ṭibā’a wa’l-Naṣh wa’l-Tawzī’ wa’l-Tarjama, 1431/2010), 2:1030.

qadīm lā yaf'al al-'ālam li-'illa).⁸ A primitive form of this debate is also briefly outlined in a similar fashion by 'Abd al-Qāhir al-Baghdādī (d. 429/1037).⁹ Ash'arīs of the following generation, who also argue against divine purposiveness, focus their discussions on the reason for the creation of the universe. In their theological writings, Abū al-Qāsim al-Anṣārī al-Naysābūrī (d. 512/1118) and his student, 'Abd al-Karīm al-Shahrastānī (d. 548/1153), mention that there is no reason ('*illa*) or objective (*gharaḍ*) in the actions of God (*af'āl Allāh*), and they begin by stating that God had no reason for creating the universe.¹⁰ While al-Anṣārī mentions several points that allow the argument to be inclusive of all of God's actions, he repeatedly returns to the issue of God's act of creating the universe. Al-Shahrastānī goes slightly further by discussing points indicating that his position may extend to all of God's actions. By the time of Fakhr al-Dīn al-Rāzī (d. 606/1209), perhaps even earlier, the debate on divine purposiveness is applied to God's actions in general. The evolution of this debate should be viewed as a consequence of an increasing overlap between the discourses of *kalām* and *uṣūl al-fiqh*, as well as a growing realization of the implications of the doctrines of divine purposiveness on legal theory.

However, in terms of al-Āmidī's epistemological framework, it is better to view the relationship between *kalām* and *uṣūl al-fiqh*, specifically as they relate to the doctrine of divine purposiveness, as one in which the latter builds upon the former, rather than characterizing them as sharing an "overlapping" discourse. By this I mean that *kalām*, which for al-Āmidī is the mother science, sets the groundwork for questions on legal theory.¹¹ The doctrine of divine purposiveness has implications on legal theory, and not the other way around. This understanding is supported by the fact that in his *kalām* works in which he discusses God's nature, al-Āmidī's puts forward a "natural theology" based exclusively on reason and independent of revelation.¹² Even characterizing the debate surrounding the *ratio legis* of legal rulings (discussed below) as falling under the domain of "legal theory" can be misleading, since, as al-Āmidī presents it, it is a position that *reasonably* – not *necessarily*, so as not to conflate his view with the errors he attributes to the Mu'tazilīs – follows from his theological precepts. The jurisprudential question at issue, to be sure,

8 Abū Bakr al-Bāqillānī, *Tamhīd al-awā'il wa talkhīṣ al-dalā'il*, ed. 'Imād al-Dīn Aḥmad Ḥaydar (Lebanon: Mu'assasat al-Kutub al-Thaqāfiyya, 1407/1987), 51.

9 'Abd al-Qāhir al-Baghdādī, *K. Uṣūl al-dīn* (Istanbul: Maṭba'at al-Dawla, 1346/1928), 82–3.

10 Anṣārī, *al-Ghunya*, 2:1029; 'Abd al-Karīm al-Shahrastānī, *Nihāyat al-aqdām fi 'ilm al-kalām*, ed. Alfred Guillaume (Cairo: Maktabat al-Thaqāfa al-Diniyya, 1430/2009), 390.

11 Bernard Weiss, *The Search for God's Law* (Salt Lake City: University of Utah, 2010), 34.

12 *Ibid.*, 49.

is also a metaphysical one. (Although it will become clearer in what follows, I must emphasize here that for al-Āmidī the theological question [i.e., God is not obligated to act purposively] is established with certainty, while the “jurisprudential” one [i.e., God legislates purposively] is established as a matter of probability; in other words, the latter proposition is maintained by more forgiving epistemic standards – i.e. for any given ruling, it is *probable*, as opposed to *certain*, that God legislated it for a purpose – although it will always be assumed, until shown otherwise, that a ruling is legislated for a purpose).

Theoretical Background

In works of *kalām* and *uṣūl al-fiqh*, the doctrine of divine purposiveness was debated primarily under two different rubrics: that of causality and that of divine justice/ethical value. Under the former rubric, causality was already touched upon in the quotation from al-Ash‘arī cited above: “[God’s] creative act is the cause (*‘illa*) for all things, and there is no cause for His creative act.” Al-Ash‘arī argues that if God’s actions are deemed wise by virtue of a reason (*‘illa*) for the sake of which He acted, then that contradicts the fact that the universe is created and God is preeternal. If God acted for a reason, that reason would have to be preeternal or created. If the reason were preeternal, then its object (*ma‘lūlihā*, i.e., God’s action that was produced by virtue of the reason) would also have to be preeternal (since the reason is a *cause* for the action, and causes are co-present with their effects). Actions, however, cannot be preeternal. On the other hand, if the reason was created, then there would be a infinite regress of reasons – a reason for the reason, and so on – which is also impossible.¹³ Instead of viewing God’s actions as wise because they are purposive, what makes them wise for al-Ash‘arī is the simple fact that they were produced by Him.¹⁴ It is important to note that *‘illa*, as employed here by al-Ash‘arī, carries the double meaning of being a “reason” and “cause” for God’s actions.¹⁵

13 Abū Bakr Muḥammad b. al-Ḥasan b. Fūrak, *Mujarrad maqālāt al-shaykh Abī Ḥasan al-Ash‘arī*, ed. Daniel Gimaret (Beirut: Dār al-Mashriq, 1987), 140–1. For al-Bāqillānī’s version of the same argument, see Bāqillānī, *Tamhīd*, 51–2.

14 Al-Ash‘arī held that God’s actions are objectively and intrinsically wise, not because of the result that they produce. God’s action could be perceived as an injustice by someone while it is not so in fact, just as what seems to be good to one person is bad for another. Al-Ash‘arī opposed the belief that God’s actions are wise by virtue of being beneficial. God can do something harmful and it is still wise. Ibn Fūrak, *Mujarrad*, 130, 140.

15 Al-Bāqillānī also uses the word *‘illa* in the sense of both cause and reason. Bāqillānī, *Tamhīd*, 51–2.

Similarly, divine purposiveness was negated by the *falāsifa* (philosophers), such as Ibn Sīna. The *falāsifa*'s position was based on Aristotle's four types of causation (material, formal, efficient, and final), and the understanding that God is the uncaused first cause of all other causes.¹⁶ The *falāsifa* held that all actions, including those produced by the divine, occur for the sake of an end (*ghāya*). The end for which God acts differs from the end for which His creation does. For instance, an individual may eat in order to satiate his hunger; hence, the end that motivated his action is distinct from himself. By contrast, God acts for the sake of Himself, and He cannot act for an end that is distinct from Himself since that would imply that He is imperfect.¹⁷ Ontologically, causes, to be sure, must precede their effects. If God acts for a purpose, that purpose being a final cause, and that purpose being something distinct from God Himself, then that purpose is in truth causing God to act. Avicenna solves this problem by saying that God Himself is the final cause: God is "the source of existence on the one hand, and the ultimate good and perfection on the other." Thus, when God acts for the good or perfection, He is acting for the sake of Himself.¹⁸

Building on the traditions of both the Ash'arīs and *falāsifa*, al-Āmidī proposes a different solution in his *al-Ihkām fī uṣūl al-aḥkām*. He distinguishes between the final cause – i.e., God's purpose – in the abstract and in actuality. God may mentally conceive of a purpose, but that that purpose will remain non-existent until God *chooses* to act. When God chooses to act, then the purpose will come into existence, and in that way God has not been caused to act by the purpose.¹⁹

Under the rubric of divine justice, the Ash'arī-Mu'tazilī dispute was driven by contrasting theories of ethical value, chiefly, metaethical discussions on the nature of good (*ḥusn*) and bad (*qubḥ*). For instance, Mu'tazilīs affirm divine purposiveness because, according to them, to act without purpose is to act in

16 *ET*², s.v. "Illa" (L. Gardet).

17 Kara Richardson, "Causation in Arabic and Islamic Thought", *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta (2015). <<http://plato.stanford.edu/archives/win2015/entries/arabic-islamic-causation/>>.

18 Robert Wisnovsky, *Avicenna's Metaphysics in Context* (Ithaca: Cornell University Press, 2003), 186.

19 Sayf al-Dīn al-Āmidī, *al-Ihkām fī uṣūl al-aḥkām*, ed. 'Abd al-Razzāq 'Afifi, 4 vols. (Riyadh: Dār al-Ṣamī'ī li'l-Nashr wa'l-Tawzī', 1424/2003), 3:366. Al-Āmidī's explanation may have been influenced by Ibn Sīna's distinction between the essence (*māhiyya*) and existence (*wujūd*) of the final cause, which the latter developed in order to avoid the circularity that arises by stating that the final cause causes the agent (or the efficient cause) to act and the agent causes the final cause. Wisnovsky, *Avicenna's Metaphysics in Context*, 181–4.

vain (*‘abath*), and vain acts are morally bad.²⁰ As one Mu‘tazilī put it, “God, may He be Exalted, does not do that which is bad (*al-qabīḥ*). The proof for this is that [God] does not choose one action over another save for a motive (*li-dā’*) and objective (*gharaḍ*).”²¹ Accordingly, all Mu‘tazilīs affirm divine purposiveness. By contrast, it appears that the majority of Ash‘arīs negated divine purposiveness. However, there is no necessary correlation between certain theories of ethical value and a position on divine purposiveness. For instance, al-Rāzī offers a widely adopted definition of ethical value in his work on legal theory, *al-Maḥṣūl fī ‘ilm al-uṣūl*, yet, as discussed below, he categorically denies divine purposiveness. However, the Ash‘arī-influenced Ḥanbalī, Najm al-Dīn al-Ṭūfī (d. 716/1316), who adopts al-Rāzī’s definition of ethical value (with minor caveats),²² writes that God’s actions are purposive, not by necessity, but by choice.²³ Similarly, Abū Ḥāmid al-Ghazālī (d. 505/1111), whose understanding of ethical value is similar to that of al-Rāzī’s in the *Maḥṣūl*, changed his position on divine purposiveness; towards the later part of his career, he held that God indeed acts with purpose.²⁴

20 Mariam al-Attar writes that according to the Mu‘tazilī al-Qāḍī ‘Abd al-Jabbār (d. 415/1025), “It is bad (*qabīḥ*) to act arbitrarily or to perform useless acts (*‘abath*). A moral judgment has to be purposeful and not arbitrary, thus if one ‘had no purpose in assigning an obligation, then the assignment of the obligation would be irrational (*qabīḥ*).” (Mariam al-Attar, *Islamic Ethics: Divine Command Theory in Arabo-Islamic Thought* [Oxon and New York: Routledge, 2010], 69). As an Ash‘arī, al-Āmidī espouses an ethical anti-realism according to which good and bad are merely conventional, relative, semantic statements (Sayf al-Dīn al-Āmidī, *Abkār al-afkār fī uṣūl al-dīn*, ed. Aḥmad Muḥammad al-Mahdī, 5 vols. [2nd ed., Cairo: Dār al-Kutub wa’l-Wathā’iq al-Qawmiyya, 1424/2004], 2:121). On Ash‘arī and Mu‘tazilī ethical theories, see Ayman Shihadeh, “Theories of Ethical Value in *Kalām*: A New Interpretation,” *The Oxford Handbook of Islamic Theology*, ed. Sabine Schmidtke (Oxford: Oxford University Press, 2016), 384–407. Upholding divine purposiveness is important to the overall ethical and theological scheme of Mu‘tazilism. Several other Mu‘tazilī doctrines for which the affirmation of divine purposiveness “acts as a reference point” are mentioned in Sophia Vasalou, *Moral Agents and Their Deserts: The Character of Mu‘tazilite Ethics* (Princeton and Oxford: Princeton University Press, 2008), 32.

21 Camilla Adang, Wilfred Madelung, and Sabine Schmidtke, *Baṣran Mu‘tazilite Theology: Abū ‘Alī Muḥammad b. Khallād’s Kitāb al-uṣūl and its reception. A Critical Edition of the Ziyādāt Sharḥ al-uṣūl by the Zaydī Imām al-Nāṭiq bi-l-ḥaqq Abū Ṭālib Yaḥyā b. al-Ḥusayn b. Ḥārūn al-Buṭḥānī (d. 424/1033)* (Leiden: Brill, 2011), 214.

22 Najm al-Dīn al-Ṭūfī, *Dar’ al-qawl al-qabīḥ fī al-taḥṣīn wa’l-taqbīḥ*, ed. Ayman Shihadeh (Riyadh: King Faisal Centre for Research, 2005), 81f.

23 *Ibid.*, 97f.

24 Ḥasan al-Shāfi‘ī, *al-Āmidī wa ārā’uhu al-kalāmiyya* (Cairo: Dār al-Salām, 1418/1998), 443, n. 3. Frank Griffel writes that al-Ghazālī maintained that God acts purposively: “Al-Ghazālī rejected Avicenna’s position that there is no goal (*qaṣd*), pursuit (*talab*), desire (*ārzu*), or

A third rubric under which divine purposiveness was argued, albeit one that is less prominent in the *kalām* debates, is exemplified in al-Ghazālī's *Risālat al-ḥikma fī makhlūqāt Allāh*. Ahmed El Shamsy has shown that al-Ghazālī “reintroduc[ed] teleology [read: divine purposiveness] into the discourses of law and theology” in order to “counterbalance the increasingly transcendentalizing forms of later Ash‘arism, which posited an unknowable God who created without purpose.”²⁵ Influenced by Galen of Pergamon and Ibn Sīna, in this treatise al-Ghazālī adopts an empiricist methodology based on an inductive reading of individual phenomena in nature to argue for “an overall *télos* in divine creation.”²⁶ Accordingly, al-Ghazālī arrives at the conclusion that the promotion of benefit and deterrence of harm is an ever present purpose in God's creation, knowable through empirically examining its design.²⁷ Al-Ghazālī clearly used this empiricist method to formulate his doctrine of *maqāṣid al-sharī‘a* (the objectives of the law), and he may have upheld purposiveness in the law when he authored *Shifā’ al-ghalīl fī bayān al-shabah wa’l-mukhīl*, a work dedicated to the science of legal analogy. However, I disagree with El Shamsy's contention to the extent that al-Ghazālī viewed legal rulings to be purposive in his later and more influential work on legal theory, *al-Mustasfā min ‘ilm al-uṣūl*.²⁸ In the *Mustasfā*, al-Ghazālī maintains that God does not act purposively because He does not have any objectives (*li-intifā’ al-aghraḍ ‘anhu*).²⁹ This text does not promote the view that legal rulings are purposive, or, in other words, that God legislated rulings for the sake of serving human interests. But while al-Ghazālī himself may not have expounded a theory of

intention (*gharaḍ*) present when God creates. God's chosen goal is to achieve the greatest possible benefit for His creation” (Frank Griffel, *Al-Ghazālī's Philosophical Theology* [Oxford: Oxford University Press, 2009], 28of).

- 25 Ahmed El Shamsy, “Al-Ghazali's Teleology and the Galenic Tradition: Reading The Wisdom in God's Creation (al-Ḥikma fī makhlūqāt Allāh),” in *Islam and Rationality: The Impact of al-Ghazālī. Papers Collected on His 900th Anniversary*, ed. Frank Griffel, 2 vols. (Leiden: EJ Brill, 2016), 2: 109–10.
- 26 Ibid., 93.
- 27 Ibid., 97.
- 28 Al-Āmidī was strongly influenced by al-Ghazālī's *Mustasfā* and claimed to have memorized the entire work. See Bernard Weiss, “Sayf al-Dīn al-Āmidī (d. 631/1233),” in *Islamic Legal Thought: A Compendium of Muslim Jurists*, ed. Oussama Arabi, David S. Powers, and Susan A. Spector (Leiden: EJ Brill, 2013), 339–51, esp. 339.
- 29 Abū Ḥāmid al-Ghazālī, *al-Mustasfā min ‘ilm al-uṣūl*, ed. Ḥamza b. Zuhayr Ḥāfiẓ, 4 vols. (Medina: n.p., n.d.), 1:186. In a forthcoming essay, I advance additional arguments for why al-Ghazālī's doctrine of *maqāṣid al-sharī‘a* is not one that supports a theory of purposiveness in God's law.

divine purposiveness in the law based on this empiricist methodology, this approach matured in the writings of later Ash'arī-Shāfi'īs, such as Badr al-Dīn al-Zarkashī (d. 794/1392). As an Ash'arī, al-Zarkashī adhered to the view that God does not *act* purposively, although He does *legislate* purposively. More specifically, God does not act for an object, nor do objectives motivate Him to act (*lā yaf'al shay^{an} li-gharaḍ wa lā yab'athuhu shay^{an} 'alā fi'l shay*). Al-Zarkashī maintains, however, that God may act and legislate for a wisdom or rationale, by choice, and it appears that he finds there to be a clear distinction between rationales and objectives/purposes (*wa'l-ḥaqq anna ri'āyat al-ḥikma li-af'āl Allāh wa aḥkāmihī jā'iz wāqī' wa innamā ankarat al-ash'ariyya al-'illa wa'l-gharaḍ wa'l-taḥsīn al-'aqlī wa ri'āyat al-aṣlah*). In other words, according to al-Zarkashī, God *acts wisely*. He argues that if one wants to be convinced of the fact that God acts wisely, irregardless of whether His activity pertains to natural (*kawnī*), religious (*dīnī*), or legislative (*shar'ī*) matters, then one should observe the ends pursuant to which God arranged particular natural and religious things, and to which scripture testifies: "So We may show him some of Our signs."³⁰

It is worth noting that the earlier Ash'arī literature is sometimes unclear as to whether the doctrine of divine purposiveness is being framed by the rubric of causality or ethical value. For instance, Abū al-Qāsim Salmān al-Anṣārī negates divine purposiveness by going back and forth between pointing out the ethical and causal problems in the arguments of his opponents and without making a clear distinction between the two rubrics.³¹ It goes without saying that the ways in which the doctrine of divine purposiveness was argued under each rubric, and the intellectual genealogies of the arguments, can be the subject of an entirely separate essay on its own. For the purposes of this study, it is my view that regardless of which rubric frames the debate on divine purposiveness, the implications, as they pertain to matters of legal theory, are unaffected.

More significant than the rubric framing the discussion is the nature by which legal rulings are conceived. The impact of the doctrine of divine purposiveness on legal theory can be determined only if it is assumed that legal rulings are objects of God's actions. The question of whether legal rulings are created by God is subject to debate because some jurists associate legal rulings with God's pre-eternal attribute of speech (*kalām, khiṭāb*). Al-Āmidī, however,

30 Zarkashī, *Bahr*, 5:122–4; Qur'ān 17:1.

31 Anṣārī, *Ghunya*, 2:129–31.

specifically states that legal rulings are objects of creation.³² If God's actions are purposive, then legal rulings can also be said to be purposive. If God's actions are not purposive, then neither are legal rulings. The tension arises when the claim is made that legal rulings are established *for* (*li-*) the benefit of human beings. For example, al-Rāzī remarks on what he regards as a discrepancy in the writings of many jurists who claim that rulings are established *for* something, which suggests that rulings are purposive. However, he continues, this purposiveness would be denied by some of the same Ash'arī jurists who employ this formulation. According to them, the position that rulings are purposive presupposes a commitment to Mu'tazilī doctrine.³³ But no jurist would deny the relationship between legal rulings and the benefits they offer. Jurists devised creative methods to reconcile and justify this apparent conflict. For instance, al-Zarkashī subscribed to the view that God does not act with purpose and at the same time held that God's rulings are purposive. He explained the apparent contradiction by stating that "[God's] rulings are different than [God's] actions."³⁴

Al-Āmidī's Position on Divine Purposiveness

By first examining the position al-Āmidī takes in his two main works on theology, *Abkār al-afkār fī uṣūl al-dīn* and *Ghāyat al-marām fī 'ilm al-kalām*, we will be in a better position to understand the theological commitments operating in al-Āmidī's mind when he wrote his work on legal theory, *al-Ihkām fī uṣūl al-aḥkām*. Al-Āmidī's position on the purposiveness of God's actions undergoes a significant shift from the *Abkār* to the *Ghāya*. This shift suggests that the *Ihkām* was written before the *Ghāya*, and that when al-Āmidī penned the *Ihkām* he was committed to the beliefs he held in the *Abkār*, at least those beliefs pertaining to the issue of divine purposiveness.

In his study of al-Āmidī's theology, Ḥasan al-Shāfi'ī notes that the *Abkār*, which was finished in the year 612/1215–1216, just before al-Āmidī's move from

32 Āmidī, *Ihkām*, 3:358.

33 Ayman Shihadeh, *The Teleological Ethics of Fakhr al-Dīn al-Rāzī* (Leiden: EJ Brill, 2006), 99. Sophia Vasalou offers an excellent analysis of al-Rāzī's criticism of the contradiction in Ash'arī doctrine. Sophia Vasalou, *Ibn Taymiyya's Theological Ethics* (New York: Oxford University Press, 2016), 163–4.

34 Zarkashī, *Baḥr*, 5:122.

Egypt to Damascus,³⁵ served as al-Āmidī's most influential theological work for later Ash'arism.³⁶ The *Ghāya*, a much shorter work, was written as an abridgment of the *Abkār*.³⁷ According to Ḥasan al-Shāfi'ī, when al-Āmidī wrote the *Abkār* his commitment to classical Ash'arism was strong, whereas in the *Ghāya* he advanced views that diverged from the classical school.³⁸ Further, the *Ghāya* shows a greater reliance on rational proofs, even if they contradict hadith reports, and demonstrates a greater awareness of the doctrines of the *falāsifa* than the *Abkār* does.³⁹ It is important to identify the chronology of al-Āmidī's works in order to locate where the *Iḥkām* lies in relation to his theological writings. We know that the *Iḥkām* was finished in 617/1220–1221, when al-Āmidī was teaching in Damascus.⁴⁰ In the *Iḥkām*, al-Āmidī refers to the *Abkār* and summarizes some of its theological arguments.⁴¹ In another work on legal theory, *Muntahā al-sūl fi 'ilm al-uṣūl*, an abridgment of the *Iḥkām*, al-Āmidī also makes references to the *Abkār*.⁴² An analysis of the *kalām* doctrines that al-Āmidī maintains (or takes for granted) in his works on legal theory indicates that the *Ghāya* was written after both the *Iḥkām* and the *Muntahā*, and that it represents the author's most mature views on *kalām*. For this reason, it is likely

35 Al-Shāfi'ī, *al-Āmidī*, 86.

36 Ḥaṣan al-Shāfi'ī notes the influence of the *Abkār* based on what al-Sharīf b. Muḥammad al-Jurjānī (d. 816/1413) mentions in his commentary on 'Aḍud al-Dīn al-Ījī's (d. 756/1355) *K. al-Mawāqif fi 'ilm al-kalām*. Ibid., 89f; *ET*, s.v. "al-Īdji" (J. van Ess).

37 Al-Shāfi'ī, *al-Āmidī*, 91. Al-Āmidī himself informs the reader that the *Ghāya* is an abridgment of the *Abkār* (Sayf al-Dīn al-Āmidī, *Ghāyat al-marām fi 'ilm al-kalām*, ed. Ḥasan Maḥmūd 'Abd al-Laṭīf [Cairo: al-Majlis al-A'lā li'l-Shu'ūn al-Islāmiyya, 1391/1971], 5). This is also evident from the similar wording and repeated arguments in the sections from the *Abkār* and the *Ghāya* under study in this essay. For similar notes, see the editor's introduction to the *Ghāya* (ibid., editor's introduction, 14). Al-Āmidī reportedly wrote another abridgment of the *Abkār* entitled *Manā'ih al-qarā'ih*.

38 Al-Shāfi'ī, *al-Āmidī*, 97.

39 For instance, the editor notes that al-Āmidī refuted the classical Ash'arī proofs for the existence of the atom and was influenced by Mu'tazilī and later Ash'arī positions on the issue of seeing God (Āmidī, *Ghāya*, editor's introduction, 16).

40 Al-Shāfi'ī, *al-Āmidī*, 61.

41 Ibid. For instance, compare al-Āmidī's discussion on ethical value (*al-taḥsīn wa'l-taqbīh*) in the *Abkār* and *Iḥkām* (Āmidī, *Abkār*, 2:117–44; idem, *Iḥkām*, 2:112–21).

42 al-Shāfi'ī, *al-Āmidī*, 61. The *Muntahā* removes most of the dialectics and argumentation of the *Iḥkām* and limits itself to the conclusions. It seems that the *Muntahā*, like the *Iḥkām*, was written before the *Ghāya* and, therefore, it likely shares the theological doctrines of the *Abkār*. There is no noticeable change between the *Iḥkām* and *Muntahā*, at least on the topics investigated in this essay. For this reason, no further references will be made to it.

that neither the *Ihkām* nor the *Muntahā* reflects his last thoughts on legal theory. Had it been otherwise, then the author's theological justifications for certain points of legal theory (e.g. the fact that the law seeks to promote human welfare but that God does not act purposively) would have changed to maintain consistency with what he holds in the *Ghāya*. Those interested in al-Āmidī's legal theory should take note that Bernard Weiss's *The Search for God's Law*, which analyzes and comments on the entirety of al-Āmidī's *Ihkām*, references the *Ghāya* when treating al-Āmidī's theological postulates. While Weiss's reliance on the *Ghāya* does not have any significant bearing on his study, it may lead to some confusion in his discussions on the "purpose of the Legislator" and "rationales" in the chapter on legal analogy.

The doctrine in question treated by al-Āmidī in the *Abkār*, *Ghāya*, and *Ihkām* is: Does God act in pursuit of a rationale (*ḥikma*) or for a purpose (*gharaḍ*, *maqṣūd*)? The answer to this question is relevant to legal theory since, in the *Ihkām*, al-Āmidī explicitly states that God's legislative decrees (*aḥkām*) are objects of His creative act (*ṣun'īhi*).⁴³ The implications are most evident in the area of legal theory that treats the methods for extending the law to cases beyond what the source texts directly address. This doctrine is dealt with in chapters on legal analogy (*qiyās*), where legal theorists fiercely debated issues relating to causality and purposiveness in God's actions.

As for al-Āmidī, at first glance, the *Abkār* and *Ghāya* appear to promote the same view. As an abridgment of the *Abkār*, the *Ghāya* follows the same outline and repeats many of the arguments in a similar style. The differences between the two texts are subtle, but significant.

Abkār al-afkār fī uṣūl al-dīn

The section in the *Abkār* that treats divine purposiveness is titled: "That it is not obligatory for God's actions to pursue an objective (*gharaḍ*) or a purpose (*maqṣūd*), and that there is nothing obligatory for God as a matter of principle" (*fī annahu lā yajib ri'āyat al-gharaḍ wa'l-maqṣūd fī af'āl Allāh ta'ālā wa annahu lā yajib 'alayhi shay' aṣlan*).⁴⁴ According to the author, the position of the *ahl al-ḥaqq* (the partisans of truth, i.e. the Ash'arīs), as stated in the *Abkār*, is that attending to a rationale (*ḥikma*) or an objective (*gharaḍ*) is not obligatory (*ghayr wājib*) for God. The view of the Mu'tazilīs, to whom al-Āmidī is here responding, is that God's actions must be for an objective (*gharaḍ*) or purpose (*maqṣūd*). Moreover, His actions are always performed in the interest of His creation (*ṣalāḥ al-khalq*) because God is beyond acting for His own ends and

43 Āmidī, *Ihkām*, 3:358.

44 Āmidī, *Abkār*, 2:151.

He experiences neither benefit nor harm. The Mu'tazilīs view this as an obligation (*wājib*)⁴⁵ incumbent upon God, and it is required in order to negate any notion of futility (*'abath*) in His acts.⁴⁶

Ash'arī theologians were always keen to emphasize the omnipotence of God, and it is with this central concern that they developed their creed and responses to Mu'tazilism.⁴⁷ To this end, al-Āmidī's concern in the *Abkār* is no different. Al-Āmidī seeks to demonstrate God's omnipotence by removing any implication of there being restrictions on His actions, the operative term here being "*wājib*." Thus, the author emphatically states that God does not act (or abstain from acting) in any way due to an obligation. God acts with absolute autonomy and sovereignty; His actions are produced in accordance with His will, unfettered by any obligation.⁴⁸

45 Islamic legal theory recognizes two terms that convey the meaning of "obligation": *wājib* and *farḍ*. The Mu'tazilīs employed both terms when referring to obligations imposed on human beings, but only the former for obligations that applied to God. Al-Qāḍī 'Abd al-Jabbār explains the difference between the meanings of each term. *Wājib* may refer to obligations that are known by necessity (*'ulima bi-idṭirār*), i.e., knowledge of these obligations does not require a command or prohibition. *Farḍ*, which is often used interchangeably with *wājib*, is more qualified. A *farḍ* is a type of obligation that is imposed by a commandment and is therefore a legal obligation (*wājib shar'ī*) as opposed to a rational obligation. That is why *farḍ* is not used in the context of God's actions or when speaking of obligations that are established by the intellect (i.e., known by necessity). Al-Qāḍī 'Abd al-Jabbār Abū al-Ḥasan al-Asabādī, *al-Mughnī fī abwāb al-tawḥīd wa'l-'adl: al-ta'dīl wa'l-tajwīr*, ed. Maḥmūd Muḥammad Qāsim, 20 vols. (n.p., n.d.), 6:43–4.

46 Āmidī, *Abkār*, 2:151. The obligation for God to act in the interest of His creation is important for Mu'tazilīs like al-Qāḍī 'Abd al-Jabbār, who held that "uselessness [*'abath*] is a ground of evil." Oliver Leaman, "Abd al-Jabbar and the Concept of Uselessness," *Journal of the History of Ideas*, 41:1 (1980), 129–31, esp. 129.

47 Griffel writes: "Among the central motifs of early Ash'arite theology was the preservation of God's complete control [read: omnipotence] over His creation." Griffel, *Al-Ghazālī's Philosophical Theology*, 125.

48 The main concern in any Ash'arī articulation of divine purposiveness is to uphold God's omnipotence. This can be achieved by negating divine purposiveness; it might be argued that God is self-sufficient, independent (*ghanī*), and cannot experience pleasure, pain, benefit, or harm. If God's actions serve human wellbeing, this is achieved by what His actions entail (*luẓūm*) and not by a motive. This is the argument of al-Shahrastānī ('Abd al-Karīm al-Shahrastānī, *Nihāyat al-aqdām fī 'ilm al-kalām*, ed. Alfred Guillaume [Cairo: Maktabat al-Thaqāfa al-Dīniyya, 1430/2009], 390–3). The Mu'tazilīs argue that God acts with purpose in order to uphold divine justice and they reject any notion of futility in His actions (ibid., 390). The *falāsifa*, according to al-Shahrastānī, argue against divine purposiveness on the grounds that the "High" (*al-'ālī*) does not act for the sake of the "low" (*al-asfal*). The *falāsifa* hold that actions are produced by First Principles (*al-mabādī' al-awwal*)

TABLE 1

Symbol	Meaning
A	Argument
O	Objection
R	Response
E	Objective

Al-Āmidī writes that divine purposiveness is “not obligatory” (*ghayr wājib*) but not that it is *impossible*. In other words, al-Āmidī allows for the possibility that God may act with purpose. In these opening lines of this section of the *Abkār*, the author is primarily concerned with establishing that such purposiveness is a matter of God’s volition in the interest of defending the Ash’arī axiom of an omnipotent God.⁴⁹

Turning now to the dialectic of the *Abkār*, al-Āmidī defends his position by offering two core arguments⁵⁰ (A₁–2) followed by eight potential objections to them (O₁–8). The author responds to each objection (R₁–8) individually to show how it does not successfully disprove his core argument. Rather than going through every detail of his argument, I will focus on how his argument leaves open the possibility of affirming divine purposiveness, which the *Ihkām* then positively affirms with a more emphatic voice.

Al-Āmidī’s first core argument (A₁) initially gives the impression that the author rejects the possibility of divine purposiveness. Careful attention to the wording, however, suggests that al-Āmidī maintains a non-committal stance. A₁ proceeds as follows:⁵¹

informed by the Active Intellect (*al-‘aql al-fa‘āl*), which necessarily creates in a certain manner (ibid., 390f). Alternatively, an Ash’arī might take al-Āmidī’s approach in the *Abkār* and *Ihkām*, as discussed below, where he suggests that divine purposiveness does not necessarily compromise God’s omnipotence.

49 Ultimately, the Ash’arīs and Mu’tazilis agreed that God acts for the welfare of mankind, but disagreed in one fundamental respect. The Mu’tazilis held that God *must* act pursuant to human welfare, while the Ash’arīs maintained that His actions are such by virtue of His grace (*faḍl*). Anver Emon, *Islamic Natural Law Theories* (New York: Oxford University Press, 2010), 24f.

50 Al-Āmidī mentions that these are the arguments of other Ash’arīs (*al-aṣḥāb*). Āmidī, *Abkār*, 2:152.

51 Ibid., 2:152f.

If God always acts in pursuit of a rationale or objective, then this objective has either (A1.1.) existed since pre-eternity (*qadīm*) or (A1.2.) it is created (*ḥādīth*).⁵² If A1.1. is the case, then it follows that the action that produces this objective has either (A1.1.1.) existed since pre-eternity, or (A1.1.2.) this does not follow. A1.1.1. is impossible since God's actions are created (an assumption proven elsewhere). If A1.1.2. is the case, then the action is pre-eternal since the objective is pre-eternal (the action cannot precede the objective), and thus the objective does not result from the action.

→ *Conclusion of A1.1.: Since a pre-eternal objective cannot result from an action, God's action cannot have an objective.*

In the case of A1.2, where the objective is created as the result of a created act, then the objective is (A1.2.1.) contingent upon there being an agent (*fa'īl*), or (A1.2.2.) it is not. If A1.2.2. is the case, then something has been created without an agent, which is impossible.⁵³ If A1.2.1. is the case, then the agent is either (A1.2.1.1.) God or (A1.2.1.2.) someone else. A1.2.1.2. cannot be true because God is the sole creator (an assumption proven elsewhere). If it is A1.2.1.1., then God's creation of this objective (E₁) is either (A1.2.1.1.1.) for another objective (E₂) or (A1.2.1.1.2.) it is not. A1.2.1.1.1. results in the fallacy of an infinite regress, while A1.2.1.1.2. proves that the action is purposeless.

→ *Conclusion of A1.2.: contra the Mu'tazilīs, an action of God may be purposeless, since E₁ in A1.2.1.1.2. lacks E₂.*

If we assume that in the case of A1.2.1.1.1. and A1.2.1.1.2. the action created for E₁ is itself the intended or actual objective, this would then affirm the fulfillment of an objective without resulting in an infinite regress. This would then be the case for every created action, which is to say that the action itself is the objective without it being in need of E₂.

→ *Conclusion: this proves al-Āmidī's point, which is that acting in pursuit of an objective is not an obligation imposed on God because E₁, the object of God's creation, does not itself have an objective or E₂.*

52 A simplified version of this argument is used by al-Rāzī to negate divine purposiveness. See Fakhr al-Dīn al-Rāzī, *Nihāyat al-'uqūl fī dirāyat al-uṣūl*, ed. Sa'īd 'Abd al-Laṭīf Fūda, 4 vols. (Beirut: Dār al-Dakhā'in, 1436/2015), 3:289f.

53 Al-Āmidī affirms the impossibility of something being created without an agent because believing otherwise leads to denying the existence of God. One might then argue that the universe came into existence without a creator.

This argument, no doubt convoluted, may be simplified as follows: for al-Āmidī, the objective must be created and the creator must be God. Further, E₁ does not need E₂; the action and the objective can be one and the same, which results in an action devoid of an objective (other than itself). In short, the position of the Mu'tazilīs results in an infinite regress since they maintain that every creation of God must itself have an objective because God's actions are necessarily purposive. Al-Āmidī is able to prove that not every action (E₁, for instance) must have an objective, but he still holds that it is possible for there to be one.

Al-Āmidī's second core argument (A₂) is that if there is an objective (*gharaḍ*), then it must revert to either God or man.⁵⁴ This is impossible with respect to God because He is above objectives, benefits, and harm. Alternatively, if the objective reverts to man, then the fulfillment of the objective, which is created by God, reflects neither better nor worse on Him; the possibility of either outcome makes no difference to Him.

But with respect to man, A₂ only proves that an objective is not necessary (*lāzim*, read: obligatory), not that it is impossible. Al-Āmidī then moves to undercut his opponents with the "Mu'tazilī's bane." This is the famed argument, proudly cited in numerous Ash'arī works of *kalām*, with which Abū al-Ḥasan al-Ash'arī is purported to have "reduced to silence" his Mu'tazilī master, Abū 'Alī al-Jubbā'ī (d. 303/915–6).⁵⁵ The main point of the argument may be summarized as follows: Why does God allow a man to grow up a non-believer and enter Hellfire when He could have prevented that from happening? The implication is that doing so is purposeless. In fact, al-Āmidī states that this argument "categorically refutes the necessity (*luzūm*) of [there being] an objective" in God's actions. Furthermore, if every divine act must have an objective, how can we explain the fact that some people are doomed to eternal damnation? Eternity in the Hellfire does not benefit those who are damned, nor does it serve an objective. How does one explain the purpose underlying numerous

54 Āmidī, *Abkār*, 2:153–5.

55 "Of all the recurring anecdotes in the literature of *kalām*, none is found more often than the dilemma of the three brothers [i.e. the "Mu'tazilite's bane"] ... Abū 'Alī, unable to resolve the dilemma without abandoning the Mu'tazilite tenet of divine justice, was said to have been reduced to silence" (Rosalind W. Gwynne, "Al-Jubbā'ī, al-Ash'arī and the Three Brothers: The Uses of Fiction," *Muslim World* 75 [1985], 132). Gwynne identifies several authors who cite this narrative: al-Rāzī, Ibn Khallikān (d. 681/1282), and Tāj al-Dīn al-Subkī (d. 771/1370) (al-Rāzī and al-Subkī, as we know, are Ash'arīs). One reason why they reference it is to refute the Mu'tazilī doctrine of divine purposiveness (*ibid.*, 156). A variation of the story, without attribution to al-Ash'arī, is also mentioned by al-Shahrastānī in *Nihāyat al-aqdām*, 402–3.

inanimate objects, such as plants and minerals, which offer neither pleasure (*ladhdha*) nor pain (*alam*)? What benefit (*fā'ida*) do they serve? According to al-Āmidī, an intelligent person would conclude that they do not serve an objective. Neither is there an objective behind the death of prophets, the prolongation of Satan's life, and many of the difficult obligations (*taklif*) with which humans have been burdened.⁵⁶ But the picture al-Āmidī paints gets bleaker: "Further, if every intelligent individual were to reflect, assiduously weighing between the option of existing or ceasing to exist, then he would hope to cease to exist due to his disdain for the afflictions of this world and the Hereafter."⁵⁷ Other than these examples, however, there still remains the possibility that God may act for an objective. What al-Āmidī intends to demonstrate is that God is not obligated to act for an objective.

Al-Āmidī mentions a potentially threatening objection to A2 in O2. His interlocutor in O2 states that A2 only demonstrates that humans are not privy to the objectives behind God's actions. This lack of knowledge is not equivalent to negating the existence of an objective. "Absence of knowledge," the interlocutor argues, "is not knowledge of absence."⁵⁸ In R2, the response to O2, al-Āmidī states that it is impossible for the "Mu'tazili's bane" and eternal damnation to serve an objective.⁵⁹ While O3 states that it is possible that eternal Hellfire is beneficial for those who are damned, a fact to which God alone could be privy,⁶⁰ R3 responds that this argument is absurd (*khurūj 'an alma'qūl*).⁶¹ As for the other examples mentioned, the likelihood of there being an objective is slim.⁶² An outside observer might criticize al-Āmidī on the ground that he takes for granted that an objective must be positive, i.e., that it yields a benefit or good. That criticism would miss the point that al-Āmidī is arguing against the Mu'tazili view of divine purposiveness which, grounded as it is in their theory of ethical value, assumes that God always acts for a good end.

Regarding the remainder of the objections to al-Āmidī's core arguments, O6 states that those inanimate creations mentioned in A2 may serve as signs that point towards the existence of God;⁶³ O7 argues that the death of prophets may serve a benefit known to God or it may be of benefit to the prophets

56 Āmidī, *Abkār*, 2:154f.

57 Ibid., 2:155.

58 Ibid.

59 Ibid., 2:158.

60 Ibid., 2:155.

61 Ibid., 2:158. O4–5 and R4–5 also deal with eternal damnation. See *ibid.*, 2:155–6, 2:158–9.

62 Ibid., 2:158.

63 Ibid., 2:156.

themselves;⁶⁴ and O8 mentions that the prolongation of Satan's life serves as a test for people for which they may be rewarded.⁶⁵ In brief, al-Āmidī responds as follows: R6 states that if there is an objective in these created things, then it is not always achieved because people continue to disbelieve. Further, while knowledge of God's existence may yield a benefit that reverts to man, might God not create that benefit directly? This unnecessary burden, therefore, would be imposed in vain (*'abath^{an}*).⁶⁶ R7 states that the argument of O7 is weak because God might fulfill a greater benefit without having to make prophets die.⁶⁷ Finally, R8 responds by saying that the intended objective behind Satan's prolonged life is not achieved in many instances. In fact, Satan has caused far more harm than good since he has misguided most people. Additionally, rewarding people may be achieved without making them endure tests.⁶⁸

At its core, the Mu'tazilī position rests on assumptions regarding the understanding of God as a wise creator. In the view of Mu'tazilī theologians, the absence of an objective entails futility, which, in turn, is morally reprehensible (*qabīḥ*) and therefore impossible for God. In response to this challenge, which arises in O1,⁶⁹ al-Āmidī counters his opponent's argument in the simplest yet most effective way possible. He changes the terms of the debate: Yes, God is wise in His actions, but His wisdom is exhibited by the perfection of His actions in accordance with His knowledge and volition, and this wisdom is not contingent on an objective or purpose. The opponent's argument is flawed because of his incorrect understanding of ethical value – specifically, his commitment to ethical realism (*fāsīd uṣūlihim bi'l-taḥsīn wa'l-taqbīḥ al-dhātī*) – and his false analogizing from the mundane world to the supernal (*qiyās al-ghā'ib 'alā al-shāhid*).⁷⁰ Nevertheless, this argument does not deny the possibility of divine purposiveness.

64 Ibid., 2:157.

65 Ibid.

66 Ibid., 2:159f.

67 Ibid., 2:161.

68 Ibid., 2:162. Similarly, al-Qarāfī writes that the world exhibits more harm (*fāsād*) than benefit (*maṣlaḥa*); however, on the basis of inductive reasoning (*istiqrā'*), we know that the revealed laws (*al-sharā'ī'*) are for the benefit of human beings. Qarāfī, *Nafā'is*, 7:3312.

69 Āmidī, *Abkār*, 2:155.

70 Āmidī, *Abkār*, 2:157. Al-Rāzī offers a similar argument in which he rejects the Mu'tazilī claim that God is obligated to act in certain ways (Rāzī, *Nihāya*, 3:292f). Al-Qarāfī does the same regarding the question of God's wisdom. He rejects the Mu'tazilī understanding of wisdom, which is conditional on acting with the purpose of procuring benefits (*maṣāliḥ*). This condition, he writes, agrees with a conventional understanding of wisdom and is

It is clear that al-Āmidī is concerned to negate the ability of the naked intellect to establish legal norms (*aḥkām*, sing. *ḥukm*), a point of contention between Mu'tazilis and Ash'arīs.⁷¹ The implications of Mu'tazilī doctrine – the belief that ethical value and the fact that God must always act for mankind's interest are discoverable by reason, independently of revelation – is that reason may thereby establish norms without recourse to revelation, or that reason may infringe upon revelation's primacy. If there must necessarily be a purpose, then, in certain cases, a claim to know that purpose might translate into a claim to know the legal norm that it entails. By negating the notion of necessary divine purposiveness, al-Āmidī places limits on the role of reason to independently produce norms. In the *Iḥkām*, the author goes on to negotiate a fine line between the doctrine of divine purposiveness and the ability to derive norms therefrom.

Ghāyat al-marām fī 'ilm al-kalām

Al-Āmidī reproduces most of the arguments, objections, and responses from the *Abkār* in the *Ghāya*, with few changes. Our study of the *Ghāya*, therefore, will highlight those points on which the author's opinion differs from what he holds in the *Abkār*. Immediately noticeable is a change in the author's tone at the outset of the *Ghāya*'s section on divine purposiveness. The section in the *Ghāya* is titled: "Negating objectives and purpose in the actions of the Necessarily Existent [i.e. God]" (*fī nafī al-gharaḍ wa'l-maqṣūd 'an af'āl wājib al-wujūd*). The position of the *ahl al-ḥaqq* is worded differently here than in the *Abkār*: God created the universe for neither an end (*ghāya*) nor a rationale (*ḥikma*); none of the good (*khayr*) and evil (*sharr*), benefit (*naḥ*) and harm (*ḍarr*) He created was for either an objective (*gharaḍ*) or a purpose (*maqṣūd*).⁷² Al-Āmidī's shift to a more hard-line position is evident. Whereas in the *Abkār*

therefore inapplicable to God. Instead, he argues that for God to be wise means that He is described with perfection (*kamāl*), complete knowledge (*al-'ilm al-shāmil*), and the seven attributes derived from entitative determinants (e.g. Power, Will, Knowledge) (*al-ṣifāt al-sab'ā al-ma'nawīyya*) (Qarāfī, *Nafā'is*, 7: 3308). Elsewhere, al-Qarāfī criticizes al-Rāzī's definition of wisdom on the grounds that it is influenced by the Mu'tazilī theory of ethical value. Al-Qarāfī continues: "We agree with the Mu'tazilis on attributing wisdom to God, but we disagree over its interpretation. They interpret "wisdom" as 'the obligatory pursuit of benefit (*murā'āt al-maṣāliḥ wujūb^{an}*)'" (ibid., 9:3995). For a discussion of al-Āmidī's argument that it is invalid to analogize between the mundane and supernal, see Weiss, *The Search for God's Law*, 53–6.

71 In the *Iḥkām*, al-Āmidī introduces the chapter on ethical value by writing, "Know that there is no legislator save God, may He be Exalted." Āmidī, *Iḥkām*, 1:111.

72 Āmidī, *Ghāya*, 196.

he firmly denies any *obligatory* divine purposive, in the *Ghāya* he categorically rejects its *possibility*.

As in the *Abkār*, so too the *Ghāya*, al-Āmidī assumes that an objective entails some sort of benefit or utility, which is explained by the context of his argument as being directed against the Mu'tazilī doctrine of divine purposiveness. If there is an objective, which could serve only humankind but not God, what is the utility of different inanimate objects or the burdening of human beings with pain and hardship? Would not an intelligent person rather vanish into oblivion than exist? What benefit (*naḥ*, *ṣalāḥ*) is there for someone doomed to an eternity in Hell? What benefit (*maṣlaḥa*) is there in granting Satan everlasting life and causing prophets to die? To claim that these examples are beneficial is "to deny [what is known by] necessity" (*jaḥd al-ḍarūra*).⁷³

After reproducing the "Mu'tazilī's bane," al-Āmidī concludes that "it is evident from this assertion that an objective in the actions of God ... is impossible (*mustaḥīl*) for Him."⁷⁴ While it is clear that al-Āmidī's position is motivated by his desire to refute the Mu'tazilīs, more specifically, he wants to invalidate the Mu'tazilīs' theological argument that sanctions the naked intellect's authority to derive legal norms independently of revelation. Interestingly, we find that in the *Abkār* the author summarizes, in a doxographical manner, the doctrines of the Mu'tazilīs and their subdivisions while classifying them as one of the "Muslim factions" (*al-firaq al-Islāmiyya*).⁷⁵ However, in the *Ghāya*, where al-Āmidī takes a more uncompromising position against the Mu'tazilīs, he refers to them as apostates (*mulḥidīn*).⁷⁶ This is a point of interest, indeed, but al-Āmidī's description of the Mu'tazilīs may also be read as polemical flare. In sum, his position in the *Ghāya* is that it is absolutely impossible for God to act purposively.

Purposiveness in *al-Iḥkām fī uṣūl al-aḥkām*

Al-Āmidī's work on legal theory, the *Iḥkām*, gives strong support to my reading of the *Abkār* and presents a position that is less equivocal. Al-Āmidī writes:

73 Ibid., 197f.

74 Ibid., 198f.

75 Āmidī, *Abkār*, 5:40–52.

76 Āmidī, *Ghāya*, 13. In the *Abkār*, when listing the main doctrines of the Mu'tazilīs, the author mentions that they held that it is obligatory (*yajīb*) for God to pursue rationales (*ḥikma*) in His actions. This reference to the position of the Mu'tazilīs on divine purposiveness is useful because it tells us the extent to which this doctrine betrays a commitment to a theological school and how important it was. It seems, therefore, that this doctrine was regarded as characteristic of the Mu'tazilī school. Āmidī, *Abkār*, 5:41.

Given how we know the Lawgiver (*al-shāriʿ*) [i.e. God] to be, He does not issue a ruling devoid of a rationale. Legal rulings are legislated for the benefit (*li-maṣāliḥ*) of legal subjects (*al-ʿabīd*). This is not so by way of obligation (*al-wujūb*), rather, [it is known from] considering the regular custom (*ʿāda*) [according to which] the legislation of rulings operates.⁷⁷

While denying any obligations that God may be subjected to, al-Āmidī affirms that God never legislates without a rationale that serves human beings. In defense of this point, he writes:

The jurists have agreed that legal rulings can never be devoid of rationales. Whether by way of obligation (*bi-ṭarīq al-wujūb*), according to the Muʿtazilīs, or by way of concomitance (*bi-ḥukm al-ittifāq*), according to our colleagues (*raʿy aṣḥābina*), [this is true] whether or not the rationale is apparent.⁷⁸

In a section titled “Establishing the definition of the ‘intended purpose’ that underlies legislation” (*fī taḥqīq maʿnā al-maqṣūd al-maṭlūb min sharʿ al-ḥukm*), the author writes that the intended purpose (*al-maqṣūd al-maṭlūb*) of the law is to procure benefit (*maṣlaḥa*) and/or avert harm (*maḍarra*) for human beings (since God does not experience benefit or harm).⁷⁹ Elsewhere, he writes that legal rulings are legislated for “the aims and purposes of human beings” (*li-maqāṣid al-ʿibād*).⁸⁰ Al-Āmidī adds that “legal rulings are not intended for their own sake, but for the sake of fulfilling human objectives.”⁸¹

According to the author, that legal rulings are legislated for purposes (*maqāṣid*) and rationales (*ḥikam*) is known by consensus (*ijmāʿ*)⁸² and by an argument from reasonableness (*al-maʿqūl*), namely, that it is more agreeable to reason that God acts purposively than that He does not. Because God is wise (*ḥakīm*) in His creative acts (*ṣunʿihi*), acting with purpose is either obligatory or it is not. If it is obligatory, then there will always be a purpose. If it is not

77 Āmidī, *Iḥkām*, 3:327f.

78 Ibid., 3:329.

79 Ibid., 3:339.

80 Ibid., 3:357.

81 Ibid., 3:312.

82 For al-Āmidī, consensus (*ijmāʿ*) includes the agreement of all Muslims – jurists and non-jurists alike (Weiss, *The Search for God’s Law*, 205–7). Again, here al-Āmidī reiterates that while there is a consensus that God’s rulings (*aḥkām*) always have a rationale and objective, some argued that this is so because God is obligated (the Muʿtazilīs) while others argued that this occurs concomitantly, not as a matter of obligation (the Ashʿarīs) (Āmidī, *Iḥkām*, 3:358).

obligatory, then acting purposively is more reasonable (*aqrab ilā muwāfaqat al-mā'qūl*) than acting without purpose. Al-Āmidī offers another argument from reasonableness: Legal rulings, which were conveyed by the Prophet Muḥammad, are a mercy to humankind (citing Qur'ān 21:107, 7:156); therefore, it would contradict this mercy if rulings lacked rationales. Thus, we can have probable knowledge (*ẓann^{an}*) that God's actions are purposive. If His creative acts are purposive, then His legislation is purposive since His rulings are His creation.⁸³

This last statement must be highlighted: God's "rulings are [objects of] His creative act" (*al-aḥkām min ṣun'ihī*).⁸⁴ It is because al-Āmidī holds that legal rulings are objects of creation that we can draw a connection between purposiveness in God's actions and purposiveness in legal rulings. The connection is made explicit by the author himself. Moreover, al-Āmidī is not saying that God *acts wisely* in the way al-Zarkashī does when distinguishing between rationales and purposes in order to deny divine purposiveness. Rather, al-Āmidī is specifically claiming that God acts for a *wise purpose*.

Al-Āmidī proceeds to elaborate on the nature of divine purposiveness. If we find that a legal ruling produces a benefit (*mustalzim^{an} li-amr maṣlaḥī*), then either this benefit is the objective behind the ruling or the objective is not apparent (*lam yuḥzar lanā*). Only if a legal ruling is established as an act of worship (*ta'abbud^{an}*) is the objective not apparent. Significantly, a ruling established as an act of worship, unlike a ruling that is intended to serve a benefit, is the

83 Ibid, 3:358f.

84 The editor of the *Iḥkām* remarks that the view that rulings are created is closer in line with the Mu'tazilī doctrine that God's speech is created. As an Ash'arī, writes the editor, al-Āmidī contradicts himself here because he holds that God's rulings are His speech (*khiṭāb*), but also that God's speech is uncreated, pre-eternal, and inheres in His essence (ibid., 3:358 note 2). However, this "contradiction" does not negate my argument because al-Āmidī has already affirmed that God's actions are purposive, whether or not legal rulings are a part of them. In addition, it is unlikely that al-Āmidī would have contradicted himself when making such a bold, univocal claim, or that he would have repeatedly made so serious a mistake, since he later refutes seventeen objections made against this claim. The objections are introduced with the following heading: "the legislation of rulings are [objects of] the creative act of God, may He be Exalted (*shar' al-aḥkām min ṣun' Allāh ta'ālā*); His creative act either entails a wisdom and purpose or it does not, and the former is impossible, for seventeen reasons" (ibid., 3:361). For the refutations, see ibid., 3:364–8. It seems that at least some Ash'arī jurists viewed legal rulings as objects of God's creation. This may be why Fakhr al-Dīn al-Rāzī goes to great lengths to refute the notion of purposiveness in God's actions when discussing purposiveness in the law. Lastly, the createdness of legal rulings is explained by al-Āmidī himself, who writes that legal rulings are not equivalent to God's speech and are created. See O6 and R6 below.

exception to the rule (*khilāf al-aṣl*). As a matter of principle, a jurispudent assumes that rulings serve an objective (i.e., a benefit). If a benefit is identified, it is likely that this benefit is the intended objective that the ruling seeks to achieve.⁸⁵ According to al-Āmidī, the idea that rulings are presumptively purposive follows from two reasons: Firstly, the majority of legal rulings have an intelligible purpose and are not merely instituted for worship; and secondly, if a ruling has an intelligible meaning (*ma'qūl al-ma'nā*) people will more readily accept it, making it more suited to the purpose of the law.⁸⁶

At the same time that al-Āmidī argues that there is a consensus that rulings procure benefits, he acknowledges that there is a disagreement over the nature of this correlation between law and human welfare. Regarding this disagreement, al-Āmidī mentions seventeen objections put forth by an imaginary interlocutor. The interlocutor says, “We do not admit that the legislation of rulings entails rationales and objectives because legislation is a creative act of God, may He be Exalted. His creative act either entails a rationale and purpose or it does not, and the former is impossible for seventeen reasons.”⁸⁷ We limit ourselves here to six objections and al-Āmidī’s responses to them:

Objection 1: Whether God creates the actions of humans to serve Himself or to serve them, He would still be the creator of disbelief and other evils. Such actions serve no purpose or rationale.⁸⁸

Response: It was never argued that *all* of God’s actions entail a rationale. Rather, it has been claimed that rationales exist only in rulings that are possible means to fulfilling a rationale, which excludes evil acts and acts of disobedience. Although it is conceded that all of God’s actions entail a rationale, it is possible that the examples mentioned in the objection entail a rationale known only to God.⁸⁹ (One notices here a difference from what al-Āmidī writes in the *Abkār*, where he maintains that certain actions can never be purposive. The key difference is that in the *Abkār* he denies the existence of a *purpose* or *objective* [*gharaḍ*] for certain examples, but he does not deny the existence of a *rationale* [*ḥikma*]. In the *Iḥkām*, al-Āmidī affirms the *possibility* of there being a *rationale* – it is also possible that there isn’t one – which is not the same as a *purpose*).⁹⁰

85 Ibid., 3:359.

86 Ibid., 3:349f.

87 Ibid., 3:361.

88 Ibid. This argument is repeated in the thirteenth objection. Ibid., 3:363.

89 Ibid., 3:365.

90 See O2–3 and R2–3 above from the *Abkār*.

Objection 2: If God's actions entail a rationale, He would not have caused the prophets to die, granted Satan an extended lifetime, or sentenced people eternally to the Hellfire. None of these serve a rationale.⁹¹

Response: The response to the first objection applies here as well.⁹²

Objection 3: If God acts pursuant to a purpose or rationale, then at the moment that God conceives of this rationale (*taḥaqquq al-ḥikma*), producing the action becomes either (i) necessary, such that its nonoccurrence is rendered an impossibility (*yajib al-fi'l bi-ḥayth lā yumkin 'adamuhu*) or (ii) it is not necessary. In the former case, God's volition is compromised since He would be compelled to act (*yaṣīr al-bārī ta'ālā muḍṭarr^{an} ghayr mukhtār*). If the action is not necessary, then it may or may not be brought into existence, and either possibility might preponderate (i) due to an objective or (ii) something else. In the case of preponderance by virtue of an objective, the result is an infinite regress, while the case of preponderance due to something other than an objective is consistent with the position that God cannot act purposively.⁹³

Response: God's ability to conceive of a rationale does not necessitate the existence of the action that would produce it (*wujūd al-fi'l wa-in qudira taḥaqquq al-ḥikma ghayr wājib*). A rationale exists as a relatum of both God's power and will (*bal huwa tabi'a li-ta'alluq al-qudra wa'l-irāda bihi*). Hence, God acts with volition, not by necessity.⁹⁴

Objection 4: If God's actions are purposive, then the purpose (P₁) would either be created or pre-eternal. If it is pre-eternal, then the action is pre-eternal, which is impossible. If it is created, then its creation either requires another purpose (P₂) or it does not. The former leads to an infinite regress while the latter proves the argument of the interlocutor.⁹⁵

Response: P₁ is created, but it is not in need of P₂. A purpose can only be claimed if it is possible, and it is not possible for P₁ to need P₂ because that results in an infinite regress. If P₁ requires a purpose, that purpose is itself.⁹⁶ In other words, P₁ is the one and only intended purpose.

91 Ibid., 3:361.

92 Ibid., 3:365.

93 Ibid., 3:361.

94 Ibid., 3:366.

95 Ibid., 3:362.

96 Ibid., 3:366.

Objection 6: God's ruling (*ḥukm*) is His speech (*kalāmuhu, khiṭābuhu*), which is pre-eternal. A purpose cannot be pre-eternal because then there would have to be another pre-eternal entity other than God – namely the purpose, since it does not inhere in God's essence – which is impossible. If the purpose is created, then God's pre-eternal speech is occasioned by something created (*fa-yulzam minhu ta'līl al-qadīm bi'l-ḥādīth*), which also is not possible.⁹⁷

Response: Al-Āmidī explains the relationship between legal rulings and God's speech in several parts of the *Iḥkām*. He states that a legal ruling is not the same as God's pre-eternal speech (*al-kalām al-qadīm*). Al-Āmidī defines a legal ruling as the “address of the Legislator that has legal import.”⁹⁸ A legal ruling is not equivalent to God's speech because it is qualified speech, that is, qualified by having a specific relatum (*khiṭāb muqayyad bi-ta'alluq khāṣṣ*). In other words, God's speech relates to specific events or things. Different rulings result from different things to which God's speech relates.⁹⁹ Thus, legal rulings are created. Even if they are not created, however, a ruling might still have a purpose because the purpose might arise after the pre-eternal ruling. In that case, God would have established a ruling pre-eternally in order to serve a created purpose at some point in the future.¹⁰⁰

Objection 10: A rationale exists later in time than the establishment of the ruling that gives rise to it, and what exists later in time cannot be the cause (*'illa*) of what temporally precedes it.¹⁰¹

97 Ibid., 3:362.

98 The relatum of this act of communication is either a demand (e.g. obligation, prohibition) or a legal qualification (e.g. validity, invalidity, permissibility). Ibid., 1:132–3.

99 Ibid., 3:314, 366.

100 Āmidī, *Iḥkām*, 3:366. Al-Rāzī argues for the lack of purposiveness in legal rulings because they are God's speech (*khiṭāb*), which is pre-eternal, and pre-eternal speech cannot be purposive (Rāzī, *Maḥṣūl*, 5:127). Commenting on this, al-Qarāfī writes that pre-eternal speech must relate to a demand (*iqṭidā'*) and a decision (*takhyīr*), or else it would not be a ruling. A legal ruling is composed of both pre-eternal speech and this relatum, where the latter lacks an ontological existence (*'adamī*). Thus, a ruling is a type of relationship (*nisba*) between pre-eternal speech and human actions. Such a relationship has no ontological existence, for which reason the ruling has no ontological existence because things composed of phenomena that are both ontologically existent (i.e. speech) and non-existent (i.e. the relatum of speech) are themselves ontologically non-existent. Because a ruling is ontologically non-existent, it can be established by something else, namely, a purpose. Qarāfī, *Nafā'is*, 7: 3217–8.

101 Āmidī, *Iḥkām*, 3:363.

Response: While a rationale does temporally follow the establishment of a ruling, it is not a cause *of* the ruling (i.e., a *‘illa* in the sense of effectuating the ruling [*mu’aththir*]), but rather a cause *for* the ruling (i.e., a *‘illa* in the sense of prompting the ruling [*bā’ith*]) (*fa-innamā yamtani’ an takūn ‘illa bi-ma’nā al-mu’aththir lā bi-ma’nā al-bā’ith*).¹⁰²

In concluding this section, I would like to draw the reader’s attention to al-Āmidī’s innovative method of positing divine purposiveness in the *Ihkām*, in which he uses two different lines of reasoning. Al-Āmidī relies on al-Ghazālī’s empiricist method when he argues that divine purposiveness is knowable by studying God’s habit (*‘āda*). However, what distinguishes al-Āmidī from other Ash’arīs – including al-Ghazālī, al-Rāzī, and, later, al-Zarkashī – is his use of a more “natural” and abstract theological argument, which provides that God acts purposively because that is consistent with His wisdom, and because for God to act in this way is more reasonable than His not doing so. Al-Āmidī discusses the concept of God’s habit differently than other Ash’arīs, such as al-Rāzī, for whom God’s habit reconciles the fact that God does not act with purpose with the fact that the law is established for the welfare of humans (see below). Al-Āmidī utilizes this concept to uphold God’s volition. In other words, God regularly acts with a purpose out of choice. By contrast, al-Rāzī writes that God “legislated legal rulings for the benefit of human beings (*li-maṣlaḥat al-‘ibād*),”¹⁰³ but that benefits are concomitant with rulings (*mutaqārinayn*). For him, it remains established beyond a doubt that legal rulings are not purposive (*lā tu‘allal bi’l-aḡhrāḍ*).¹⁰⁴

102 Ibid., 3:367.

103 Fakhr al-Dīn al-Rāzī, *al-Maḥṣūl fī ‘ilm al-uṣūl*, ed. Jābir Fayyāḍ al-‘Alwānī, 6 vols. (3rd ed., Beirut: Mu’assasat al-Risāla, 1997), 5:127, 172.

104 Ibid., 5:179. Concerning al-Rāzī’s above-mentioned criticism of Ash’arī jurists for muddling the issue of divine purposiveness by rejecting it as a theological doctrine while affirming it as a legal one, and al-Rāzī’s use of the concept of divine custom, Vasalou writes: “The denial of causal and normative force on the ontological level had an immediate corollary on the epistemological level. For if the connection between legal provisions and human interests is known only through an inductive reading of scripture (*istiqrā’*), and not as the entailment of a rationally self-evident moral principle to which God’s behavior is necessarily subject, what results is not certainty but probability (*ẓann*). What this renegotiation of ‘language as against its interpretation’ seemed to amount to was epistemology without ontology; a justification of our usage of certain notions while denying them ontological foundation ... As such, we may continue to discuss divine action in these terms – we may call this a kind of license or *rukḥṣa*, granted in recognition of our characteristic epistemic needs as human beings. (Vasalou, *Ibn Taymiyya’s Theological Ethics*, 163–4).” While Vasalou’s explanation accounts for al-Rāzī’s position, it is not an

The Correlation between Divine Purposiveness and Legal Theory

The impact of the doctrine of divine purposiveness on legal theory is to be found in the treatment of legal analogy (*qiyās*), the method by which positive law is extended to cases not addressed in the source texts, i.e., the Qurʾān and Sunna. Specifically, divine purposiveness relates to the conceptualization of a ruling's *ratio legis* (*ʿilla*), the element in a case that triggers the legal ruling and is the basis on which rulings are extended to new situations.¹⁰⁵ If two cases share the same *ratio legis*, the ruling with regards to the original case (*al-aṣl*) extends to the ruling of the derivative case (*al-farʿ*). For instance, the source texts (in this example, the Qurʾān) indicate that grape-wine (*khamr*) is impermissible. By analogy, beer, which is not mentioned in the source texts, is also impermissible. The *ratio legis* for the impermissibility of grape wine is that the drink possesses the feature (*waṣf*) of intoxication. It is this feature that occasions the ruling. Beer shares this feature and the same ruling is therefore extended to it as well.

Aaron Zysow mentions two different models espoused by legal theorists who describe the ontology of the *ratio legis*: the sign model and the motive model. Some jurists argued for the sign model, characterizing the *ratio legis* as a *muʿarrif* (identifier) or *amāra* (sign); under this model, the *ratio legis* merely indicates the existence of a legal ruling. According to the motive model, the *ratio legis* is a *muʿaththir* (efficacious), *dāʿī* (motivator), or *mūjib* (causer); this model characterizes the *ratio legis* as an element that actually occasions the legal ruling.¹⁰⁶ Al-Āmidī, who ascribes to a subcategory of the motive model, describes the *ratio legis* as a “*bāʿith*,” which Bernard Weiss correctly translates

accurate description of al-Āmidī's project. It is important to note here that al-Rāzī did not view legal rulings as objects of God's creation while al-Āmidī did. Hence, al-Āmidī's language of divine purposiveness is by no means a *rukḥṣa* for him.

105 I am aware that this characterization is not a neutral explanation of the *ratio legis*, but follows the motive model, which is explained below.

106 Aaron Zysow, *The Economy of Certainty* (Atlanta: Lockwood Press, 2013), 222–36. Felicitas Opwis writes that the sign model was used by those who held that the purpose of the law is inaccessible to human reason, while the motive model was used by those who held that the purposes are intelligible (Felicitas Opwis, *Maṣlaḥa and the Purpose of the Law: Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century* [Leiden: EJ Brill, 2010], 33f). Pace Opwis, al-Rāzī, who was a firm proponent of the sign model, also held that the objectives of the law are intelligible (although he argued against divine purposiveness). According to Zysow, the motive model was linked to the use of relevance (*munāsaba*, see below) in deriving the *ratio legis* (Zysow, *The Economy of Certainty*, 236). But the sign model also allows for the use of relevance, as the example of al-Rāzī demonstrates.

as “occasioning” or “prompting.” In light of al-Āmidī’s above-mentioned response to the tenth objection against divine purposiveness, it is noteworthy that he chooses to characterize the *ratio legis* as a *bā’ith* and not a *mu’aththir*, since for him the latter implies natural causality while the former does not. I consider al-Āmidī to be adopting a subcategory of the motive model because he conceptualizes the *illa* as being a *reason for which*, as opposed to a *cause by which*, a ruling is established.

Al-Āmidī argues for this subcategory of the motive model, maintaining that it is not possible for a *ratio legis* to be a sign (*amāra*). For him, the motivating nature of the *ratio legis* requires that it have a rationale (*ḥikma*) that is intended (*maqṣūd*) by God. If the *ratio legis* is a feature (*waṣf*) lacking a rationale, merely a sign, then it is not possible to use it as a *ratio legis*, for two reasons. Firstly, as a sign, the *ratio legis* serves no purpose other than to identify the ruling. But since a ruling is already identified by the source text, the *ratio legis* is superfluous. Secondly, because the *ratio legis* is known and derived from the ruling, it cannot also inform us of the ruling.¹⁰⁷

In light of the above, a jurist is faced with the question of whether the actual rationale itself can serve as the *ratio legis*. Would this not then allow for the possibility of establishing normative legal rulings by the intellect without recourse to revelation? Al-Āmidī, siding with the majority, addresses this issue by arguing that a rationale can serve as the *ratio legis* only if it is determinate (*muḍḍabīṭa*) and apparent (*zāhira*);¹⁰⁸ a *ratio legis* cannot be an indeterminate (*muḍḍariba*) or obscure (*khafīyya*) rationale. In other words, the *ratio legis* must be measurable. If it is not itself the rationale, the *ratio legis* may be a

107 Āmidī, *Iḥkām*, 3:254. Noting the fact that most Ash’arīs adopted the sign model and most Mu’tazilīs adopted the motive model, Āyid al-Shahrānī links the difference between the positions to the debate on ethical value. He also distinguishes between the *ratio legis* as a *mu’aththir* (something efficacious) and as a *bā’ith* (something that prompts), attributing the former understanding of the *ratio legis* to the Mu’tazilīs and the latter to al-Āmidī. The author cites a number of Ash’arī legal theorists who rejected the Mu’tazilī understanding of the *ratio legis* because they considered it to be based on the Mu’tazilī definition of ethical value (Āyid al-Shahrānī, *al-Taḥsīn wa’l-taqbīḥ al-‘aqliyyān wa atharahumā fi masā’il uṣūl al-fiqh ma’ munāqasha ‘ilmīyya li-uṣūl al-madrasa al-‘aqliyya al-ḥadītha*, 3 vols. [Riyadh: Dār Kunūz Ishbīliyyā li’l-Nashr wa’l-Tawzī’, 1429/2008], 2:271–80).

108 Al-Āmidī stated the condition that the *ratio legis* must be apparent and clear (*zāhira jalīyya*) in another of his works, cited by al-Zarkashī in *Bahr*, 4:121. I assume that the citation is from al-Āmidī’s *Ghāyat al-amal fi ‘ilm al-jadal*. Al-Zarkashī refers to this text when he writes, “... this was cited by al-Āmidī in his *Jadal*.” To my knowledge, this work is still unpublished, but a manuscript of it exists in the Bibliothèque nationale de France. Sayf al-Dīn al-Āmidī, *Al-Gadal*, Bibliothèque nationale de France (Paris #5318), f. 93v-132.

feature of the ruling that entails a rationale, although it weighs more heavily when the feature of the ruling is the actual rationale.¹⁰⁹

An obscure rationale, writes al-Āmidī, cannot be the *ratio legis*, for three reasons. Firstly, a rationale may vary with different individuals and circumstances, thereby also making the task of discovering it very difficult. God's habit (*da'b*) as a legislator is to provide information that inspires confidence and is readily apparent. This is done in order to make the job of the jurispudent easier (*daf^{an} li'l-'usr*) and to prevent the legal system from falling into chaos (*takhabbuṭ al-aḥkām*). As an example, al-Āmidī mentions the dispensations afforded to travelers, e.g. one may be excused from fasting in order to relieve hardship. The *ratio legis* that occasions this dispensation is made determinate by qualifying the type of travel (e.g. it must be a long journey defined by a minimum distance). The *ratio legis* is not the existence of the actual hardship because the concept of hardship is obscure and relative. A porter, for instance, who may experience more hardship than a traveler, does not qualify for this legal dispensation.¹¹⁰

Second, al-Āmidī argues that if we relied exclusively on an obscure rationale, we would be undercutting much of the existing legal system. The rationale underlying the prohibition against the consumption of alcohol is to prevent the harm caused by intoxication. The *ratio legis* is made determinate by the feature of intoxication present in the substance. If the rationale alone is the *ratio legis*, it would be permissible to drink grape-wine so long as one does not become intoxicated.¹¹¹ Presumably, this would result in an unpredictable and unmanageable legal system. Further, the task of extending the law to derivative cases based on such a *ratio legis* would also become muddled.

Third, if one allows an indeterminate, obscure rationale to be the *ratio legis*, the task of the jurist becomes far too difficult. The amount of effort exerted in searching for such a *ratio legis* would be unreasonable, but the Qur'an says, "[God] did not place upon you any difficulty in the religion."¹¹²

The fact that the *ratio legis* must be a determinate feature of the ruling and not an abstract rationale limits the ways in which it can be identified. This allows al-Āmidī to assert the primacy of scripture and to prevent a type of liberal consequentialism, that is, a form of legal reasoning principally driven by consideration of the ends. Al-Āmidī mentions seven methods by which a ruling's

109 Āmidī, *Iḥkām*, 3:254f.

110 Ibid., 3:255.

111 Ibid., 3:255f.

112 Qur'an 22:78; Āmidī, *Iḥkām*: 3:256.

ratio legis can be discovered:¹¹³ (1) a consensus exists on what the *ratio legis* is; (2) based on an explicit text in the Qur'ān and/or Sunna; (3) by deriving it from an implicit meaning in the Qur'ān and/or Sunna; (4) through a process of elimination; (5) by demonstrating the relevance (*munāsaba*) of a feature in the ruling in light of a known rationale; (6) by identifying the 'similitude' of a feature in the ruling¹¹⁴; (7) by "noting concurrence between a particular feature of a case and the rule that governs that case," or by the co-presence and co-absence of the *ratio legis* with the ruling.

All of these methods through which the *ratio legis* can be extracted are dependent on, and limited by, the source texts – the Qur'ān and Sunna. In other words, the rationale of the legal ruling is determined by revelation, which in turn limits the extent to which a ruling can be adapted or applied to new cases. This is obvious in methods 1, 2, and 3. For method 4, the *ratio legis* and the rationale are delimited by revelation because the original case is directly derived from the source texts. Therefore, any potential *ratio legis* in the ruling has been implicitly affirmed by revelation. The same applies to method 7. Method 6, as Weiss mentions, is a modified version of method 5. It is employed when the relevance of the *ratio legis* is not directly evidenced – as in method 5 – but may be suggested. We will focus, therefore, on method 5, which is the most pertinent to our concern.

According to method 5, the *ratio legis* of a ruling can be identified when one of the ruling's features is determined to be relevant. Al-Āmidī defines relevance (*al-munāsib*) as:

An apparent (*ẓāhir*), determinate (*muḍabib*) feature that causes the ruling based on it to procure that which can correctly be said to be the purpose (*maqṣūd*) underlying the legislation of that ruling ... whether that purpose is the obtainment of a benefit (*maṣlaḥa*) or deterrence of a harm (*mafsada*).¹¹⁵

¹¹³ Weiss, *The Search for God's Law*, 586f.

¹¹⁴ I will not elaborate on the criterion of similitude (*shabah*) so as not to stray too far from the point. The criterion of similitude depends on the scriptural sources to the same degree as the other methods. On similitude, see further Weiss, *The Search for God's Law*, 620–3; see also Wael Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī Uṣūl al-Fiqh* (Cambridge: Cambridge University Press, 1997), 104.

¹¹⁵ Āmidī, *Ihkām*, 3:339. Al-Āmidī rejects Abū Zayd al-Dabbūsī's (d. 430/1038) definition of relevance – defined as that which is agreeable to people of intelligence – because it can be easily contested. A jurist may simply claim that he does not find the *ratio legis* agreeable to him. This may explain why al-Dabbūsī did not allow for the identification of the

The meaning of 'relevance' is clear, but what is meant by 'purpose' (*maqṣūd*)? Al-Āmidī writes:

The purpose of the legislation of a ruling is either the obtainment of benefit, the deterrence of harm, or both. [This is determined] relative to [human beings], since God, may He be Exalted, is beyond harm or benefit. It is possible that [the legislation] serves the legal subject's purpose because it is agreeable and suitable for him.¹¹⁶

Relevance ensures that the *ratio legis* serves a rationale, which, as noted, is a condition of the *ratio legis*. Again, and this must be emphasized, the feature that serves as the *ratio legis* must be apparent and determinate. It is for this reason that al-Āmidī maintains, "even if the purpose of the legislation of the ruling is the rationale, it [remains the purpose only] in a manner in which it is determinate."¹¹⁷ In other words, it is not simply the rationale that is intended by the ruling; what is intended is the rationale *in its being determinate*, either in and of itself or by the feature by which it is entailed. When the rationale is indeterminate, in fact, the law does not intend it.¹¹⁸

Al-Āmidī proceeds to describe the relationship between the rationale and its determiner (*fī kayfiyyat mulāzamat al-ḥikma li-dābiṭihā wa bayān aqsāmihā*). A rationale, he writes, is either entailed by its determiner or it is not. An example of the former is the dispensation afforded to travelers. The dispensation issues from the hardship entailed by traveling, which is made determinate by a certain distance traveled. On the other hand, the determiner does not entail the rationale in the law on the validity of sales. A valid sale results in a benefit, but this benefit is not produced by the transaction itself. The benefit is merely concomitant. However, the law of sales indicates that the rationale it serves is needed.¹¹⁹ In short, the rationale may or may not have an immediate connection to its determiner.

One of the issues addressed by al-Āmidī allows us to better understand his theory on the nature of legal rationales. It is presented in the form of a question: If the intended rationale (*al-ḥikma al-maqṣūda*) is not realized by

ratio legis according to the criterion of relevance (ibid., 3:338f; cf. Zysow, *The Economy of Certainty*, 206 note 286).

¹¹⁶ Āmidī, *Iḥkām*, 3:339.

¹¹⁷ Ibid., 3:289.

¹¹⁸ Ibid. This qualification for the *ratio legis* is mentioned in response to the objection of an interlocutor who argues that the purpose behind the ruling is the rationale, irregardless of the determining feature (ibid., 288–9).

¹¹⁹ Ibid., 3:351f.

the ruling, is the *ratio legis* identified in such a ruling still valid? This question applies to rulings in which the rationale is entailed by the *ratio legis*. According to the majority, a failure to realize the rationale does not invalidate the *ratio legis*. While addressing this issue, al-Āmidī argues that the rationale is intended insofar as it is determinate. A porter experiences hardship, but, unlike a traveler, he is not entitled to a legal dispensation, even if the traveler experiences less hardship or no hardship at all. The determinacy of the *ratio legis* is important for al-Āmidī because it upholds a degree of order and integrity in the process of legal derivation. God's habit is to make the *ratio legis* readily identifiable and objective, not relative to the individual consumer of the law. When the *ratio legis* is objective, we can identify it with a greater degree of certainty.¹²⁰ Here, al-Āmidī has dealt with the situation in which the ruling fulfills the rationale in most but not all cases. This differs from a situation in which it is known with certainty that the ruling will not fulfill a rationale. In that case, the *ratio legis* is invalidated because it is a condition that the *ratio legis* entail a rationale.¹²¹

Fakhr al-Dīn al-Rāzī on Divine Purposiveness and Legal Theory

To better understand how the doctrine of divine purposiveness impacts legal theory, it is necessary to compare al-Āmidī's writings with another Ash'arī-Shāfi'ī jurist who takes a different view on divine purposiveness. Fakhr al-Dīn al-Rāzī is a well-suited candidate for this comparison. A widely influential theologian and jurist, al-Rāzī wrote an important work on legal theory in which he fuses theological and jurisprudential discourses, much like al-Āmidī. This work, *al-Maḥsūl fī 'ilm uṣūl al-fiqh*, which was the subject of nu-

120 Ibid., 3:288–90. Al-Āmidī discusses another interesting scenario where the rationale is present but the ruling is not. He argues that this scenario does not occur due to a deficiency in the *ratio legis*. Rather, even if the case could yield a greater rationale, the different ruling that applies (or does not apply) is due to different qualities that this case may have. He mentions the law of talion (*qisās*), which is intended as a deterrent. If A cuts off B's limb, B is entitled to equal retaliation. One may object that the same ruling, to retaliate by cutting off a limb, does not apply in the case of murder, despite the greater need to deter murder. Because murder has additional features not shared by injury to a limb, it receives a different ruling that is more appropriate (*alyaq*) to the rationale (murder entitles the family of the victim to seek retaliation through capital punishment against the aggressor). Ibid., 3:290f.

121 Ibid., 3:300.

merous commentaries and abridgments, was almost certainly a source for al-Āmidī's *Ihkām*.

In his monograph, *The Teleological Ethics of Fakhr al-Dīn al-Rāzī*, Ayman Shihadeh writes that according to al-Rāzī, God's actions cannot follow from a motive – i.e. they cannot be purposive – because a motive is predicated on the expectation of a benefit or harm, pleasure or pain, which cannot apply to God. Neither does God act with the purpose of benefitting human beings. Al-Rāzī reasons that God is capable of benefitting human beings directly, rendering an action with this purpose superfluous (*ʿabath*). He adds that divine purposiveness is “inconceivable.” Interestingly, al-Rāzī acknowledges that he holds this opinion “contra the Muʿtazila and most jurists.”¹²² Shihadeh writes: “Al-Rāzī seems to reach a point where the nature of divine action becomes very much an unfathomable mystery. We do not understand why God acts and commands. Nor do we understand how God chooses to act and to command ...”¹²³ Shihadeh then draws a connection between divine purposiveness and legal theory by discussing whether it can be said that the law pursues rationales. Unsurprisingly, al-Rāzī affirms that the law is legislated for the benefit of people. He offers a thorough treatment of this issue in the *Maḥṣūl*. As one would expect, the issue is dealt with in the section on legal analogy.¹²⁴

In the *Maḥṣūl*, al-Rāzī rejects the motive model of the *ratio legis* and argues for the sign model. His reasoning is based on his position regarding divine purposiveness.¹²⁵ According to Felicitas Opwis, al-Rāzī maintains a non-committal position on divine purposiveness. She writes that on the issue of “attributing motivation to God's rulings, it is difficult to determine [al-Rāzī's] stand.”¹²⁶ Opwis does not correctly characterize al-Rāzī's view, however.¹²⁷ Al-Rāzī's position in the *Maḥṣūl* is clearly stated: “It is not possible for [God's] rulings to

122 Shihadeh, *The Teleological Ethics of Fakhr al-Dīn al-Rāzī*, 97f. Here Shihadeh quotes from al-Rāzī's *Muḥassal afkār al-mutaqaddimīn wa'l-muta'akkkhirīn* and *al-Arbaʿīn fī uṣūl al-dīn*. In another one of his theological works, al-Rāzī writes that “it is impossible (*yastahīl*) that God's (the Exalted) actions be for the sake of objectives (*aghrād*)” (Rāzī, *Nihāya*, 3:289).

123 Shihadeh, *The Teleological Ethics of Fakhr al-Dīn al-Rāzī*, 98.

124 Ibid.

125 Ibid., 98f.

126 Opwis, “Attributing Causality to God's Law,” in *Islamic Philosophy, Science, Culture, and Religion: Studies in Honor of Dimitri Gutas*, ed. David Reisman and Felicitas Opwis (Leiden: EJ Brill, 2011), 397–418, esp. 415; see also idem, *Maṣlaḥa and the Purpose of the Law*, 120.

127 Unfortunately, Opwis does not refer to Shihadeh's monograph on al-Rāzī's theology. On the confusion surrounding this point of al-Rāzī's theology, see Vasalou, *Ibn Taymiyya's Theological Ethics*, 163 n. 70.

be occasioned (*mu'allala*) by motives (*dawā'ī*) and objectives (*aghrāḍ*) ... [it is known] with certainty that God's – may He be Exalted – rulings are not purposive (*lā tu'allal bi'l-aghrāḍ*).¹²⁸ Al-Rāzī is careful to note that God acts for the benefit of human beings, but He does so by virtue of His grace (*tafaḍḍul*) and beneficence (*ihsān*), not by way of obligation (*wujūb*).¹²⁹ Al-Rāzī harmonizes this point with the issue of divine purposiveness in law by invoking the concept of divine custom (*'āda*). Human beings know through inductive reasoning that fire always burns cotton. When fire and cotton come into contact, burning occurs in concomitance with this contact, not as an effect of it; rather, it is God who directly creates the burning in the cotton. Similarly, through an inductive reading of the *corpus juris*, it is known that legal rulings and benefits are regularly concomitant. There is no causal relationship between the two. When a legal ruling is established, we may reasonably assume that it will yield a benefit because it is God's habit that these occur in conjunction with one another.¹³⁰

Moreover, al-Rāzī argues that legal rulings cannot be purposive because legal rulings are God's speech (*khiṭāb*); God's speech is pre-eternal and cannot be purposive.¹³¹ But while legal rulings are speech acts and not objects of God's creation, it is noteworthy that al-Rāzī analogizes them to other objects of God's creation in the universe. By stating that legal rulings are preeternal speech acts, al-Rāzī is negating divine purposiveness under the rubric of causality. By comparing legal rulings to objects of God's creation, al-Rāzī is stating that even if legal rulings were objects of God's creation, they still could not be purposive. The result is the same irregardless of which rubric governs the issue.

The significance of al-Rāzī's explanation becomes apparent when we examine his theory of the relationship between the *ratio legis* and rationales. We have seen how the concept of relevance may be used to identify a ruling's *ratio legis*. Al-Rāzī defines relevance as something that yields benefit (*manfa'ā*) and averts harm (*maḍarra*), i.e., pleasure (*ladhdha*) and pain (*alam*), respectively. He mentions that this definition is accepted by those, including himself, who hold that the *ratio legis* can be a rationale (*qawl man yu'allil aḥkām Allāh ta'āla bi'l-ḥikam wa'l-maṣāliḥ*).¹³² Relevance, al-Rāzī writes, indicates the validity of

128 Rāzī, *Maḥṣūl*, 5:179.

129 Rāzī, *Maḥṣūl*, cited in Shihadeh, *The Teleological Ethics of Fakhr al-Dīn al-Rāzī*, 99f.

130 Shihadeh, *The Teleological Ethics of Fakhr al-Dīn al-Rāzī*, 100f; Rāzī, *Maḥṣūl*, 5:179.

131 Rāzī, *Maḥṣūl*, 5:127.

132 Ibid., 5:157–8. Al-Rāzī offers another definition of suitability that is held by those who reject the use of rationales as *rationes legis*. However, he prefers the definition that accepts the use of rationales as *rationes legis*. Opwis, *Maṣlaḥa and the Purpose of the Law*, 97f.

the *ratio legis*, although it stands with unassailable certainty that God's rulings are not purposive (*ma'al-qaṭ' bi-anna aḥkām Allāh ta'ālā lā tu'allal bi'l-aḡhrāḡ*).¹³³ Arguing against the Mu'tazilīs, al-Rāzī is keen to mention that God's rulings do not carry rationales by obligation (*wujūb*), but by God's grace (*tafaḍḍul*) and beneficence (*iḥsān*).¹³⁴

So far, so good. But al-Rāzī touches on a nerve when he argues that an unapparent or indeterminate rationale may serve as the *ratio legis*. He writes:

If we have probable knowledge (*idhā zanannā*) that a specific ruling established by a source text (*al-naṣṣ*) is based on a specific rationale, and if we have probable knowledge that this rationale is obtained in a different case, it is not impossible for us, based on these two probabilities, to arrive at another probability: that the ruling applies in the latter case.¹³⁵

By removing the requirement of determinacy, al-Rāzī radically expands the scope of the law and the independent authoritativeness of reason in the process of legal derivation. Since al-Rāzī omits al-Āmidī's restricting qualifications, abstract rationales – this includes all rationales, irrespective of their basis in the source texts – become valid grounds by which the law can be extended. In fact, according to Opwis, al-Rāzī does not consider any benefit (*maṣlaḥa*, read: rationale) to be beyond the ambit of the law.¹³⁶ Thus, if a ruling presents a rationale, and that rationale is taken to be the *ratio legis*, the same ruling can be extended to another case that reason determines to exhibit the same rationale, even if the two cases do not share a determinate feature. This results in a curtailment of revelation's primacy because it is reason that determines the rationale when the *ratio legis* is identified according to the criterion of relevance. The authority of reason is expanded by al-Rāzī's view that

133 Rāzī, *Maḥṣūl*, 5:179.

134 Ibid., 5:176.

135 Ibid., 5:287. Felicitas Opwis writes: "Al-Rāzī argues that since the use of a [feature] as a *ratio legis* may be on account of an underlying reason, it is more appropriate that the underlying reason itself serves as the *ratio legis* for the ruling, due to the fact that the characteristic is effective on the ruling only because of the underlying reason that it entails benefit or averts harm. (Opwis, *Maṣlaḥa and the Purpose of the Law*, 123)." Al-Āmidī prefers a rationale that serves as the *ratio legis*, but only when it is determinate. Weiss also notes the controversy over the use of a rationale as the *ratio legis* (Weiss, *The Search for God's Law*, 585). Al-Rāzī is aware of the controversy but argues for the use of an indeterminate rationale as a *ratio legis*. He recognizes a number of objections and offers lengthy rebuttals in defense of his position. Rāzī, *Maḥṣūl*, 5:287–293.

136 Opwis, *Maṣlaḥa and the Purpose of the Law*, 107.

rationales find their point of reference in human subjects. In other words, the rationale determined on the basis of relevance is that which is agreeable to human purposes (*mā yuwāfiq al-insān taḥsīl^{an} wa ibqā^{an}*).¹³⁷ Relevance, and hence the rationale, is to a large extent determined by human reason independently of revelation. When the rationale becomes the only material fact of the *ratio legis*, reason is granted a greater measure of authority. Significantly, al-Rāzī appreciates the importance of grounding his theory in revelation and is therefore careful not to promote a type of rationale-based reasoning that would be viewed as overly rational, or completely untethered from the source texts.¹³⁸

The Implications of Divine Purposiveness for Legal Theory

Al-Āmidī upholds divine purposiveness in the *Iḥkām*, maintaining that the *ratio legis* must entail a rationale, but at the same time must be determinate. His position reinforces the primacy of revelation and circumscribes the jurist's ability to derive law based solely on the consideration of rationales. By contrast, al-Rāzī negates divine purposiveness in categorical terms while affirming that the *ratio legis* entails a rationale, or that it can be an indeterminate rationale. Al-Rāzī reconciles the seeming contradiction between divine purposiveness and purposiveness that can be read into the law (a reading that may arise from the fact that rulings entail rationales) through the doctrine of divine custom.

Since al-Āmidī and al-Rāzī both hold that the law serves human welfare, perhaps, at first glance, it would seem that the issue of divine purposiveness is not of great relevance to legal theory. This is not the case. The significance of this issue relates to the conceptualization of the *ratio legis* and the methods by which it can be validly determined.

Because al-Āmidī affirms divine purposiveness, he makes the identification of this purpose contingent on revelation. Hence, the only way to know God's purpose is from revelation. The primacy of revelation is maintained by grounding the rationale in a determinate feature of the *ratio legis*. It is this determinate feature, whether it itself is the rationale or it entails the rationale, that is indicated by revelation. Moreover, God legislates with the purpose of procuring the rationale only when that rationale is determinate. The jurist's

¹³⁷ Rāzī, *al-Maḥṣūl*, 5:157.

¹³⁸ Legal reasoning independent from scripture, he writes, would compromise the integrity of the jurists in the eyes of the political elite. See his discussion on *al-maṣāliḥ al-mursala* in *ibid.*, 6:163.

task is to search for this determinate feature by investigating the source texts. An indeterminate rationale can never be of legal relevance, so the naked intellect cannot ascertain the normativity of a perceived rationale without recourse to this procedure. A fine line is negotiated between the role of reason and revelation. According to al-Āmidī, it is the latter that prevails.

Al-Rāzī, by contrast, maintains that God acts with a regular habit, but not a purpose. Accordingly, the rationales of the law can be derived without direct reference to revelation because God's habit is not limited to revelation. Rather, it manifests itself in all aspects of creation. God's habit directs the orbit of celestial bodies, the rising and setting of the sun, the burning of cotton when it comes in contact with a flame, and the benefit obtained by legal rulings. Like all natural phenomena, the law functions in a habitual and regular manner. If we find a rationale, it is by virtue of God's habit that there will be a concomitant ruling associated with it. For al-Rāzī, due to this concomitance, the process of identifying the rationale is made to fall largely within the jurisdiction of human reason.¹³⁹

139 Najm al-Dīn al-Naqshawānī (d. 651/1253), the author of a critical abridgment of al-Rāzī's *Maḥṣūl*, advances a third model of the *ratio legis* by which he attempts to reconcile the motive model with the sign model. He writes that, in fact, the *ratio legis* is the rationale, but it is made determinate by a feature (*wasf*) of the ruling. This feature is therefore a sign (*'alāma, dalīl, mu'arrif*) of the rationale, while the rationale is what prompts the individual to act on the ruling (*bā'itha li'l-fā'il*). When one says that the law has a *ratio legis* that is a sign of the ruling, what is intended is the feature of the ruling, which is a sign for the *ratio legis* (cited in Qarāfī, *Nafā'is*, 8:3499). Al-Zarkashī attributes this view to the later Shāfi'īs (*al-muta'akhhirīn*) (*Baḥr*, 5:124–5), although it was held by earlier Shāfi'īs. Interestingly, this opinion finds its roots earlier within the Mu'tazilī tradition. Al-Qāḍī 'Abd al-Jabbār distinguished between *'ilal shar'īyya* and *'ilal 'aqliyya*, defining the former as an element that serves as a reason for an individual to act on the ruling, and the latter as the element that gives rise to the legal ruling. See al-Qāḍī 'Abd al-Jabbār Abū al-Ḥasan al-Asabādī, *al-Mughnī fī abwāb al-tawḥīd wa'l-'adl: al-shar'īyyāt*, supervised by Tāha Ḥusayn, 20 vols. (n.p., n.d.), 17:327. See also Vasalou, *Moral Agents and Their Deserts*, 50f. Al-Zarkashī also states that the definition adopted by al-Naqshawānī helps to reconcile the discord that arises due to the overlap in terminology used by theologians and jurists. He offers an illuminating example: preserving life (*ḥifẓ al-nufūs*) is the *'illa* that prompts (*bā'itha*) a human agent to enact the law of talion (*qiṣāṣ*), a ruling legislated by God. This ruling does not serve as either a reason or motive for God to act or legislate, because God is capable of preserving life without enacting the law of talion. Instead, the preservation of life is the relatum of God's ruling (*yata'allaq amruhu bi-ḥifẓ al-nufūs*), and the preservation of life is intended by God both in and of itself and as a result of the ruling, since talion is the means by which the objective is achieved. In other words, God intends both the ruling and the preservation of life (*fa-kilāhumā maqṣūd li'l-shāri'*): "the preservation of life is the intended objective [of the law] and talion is the intended means [by which the objective is achieved], and God has made it customary that talion is the cause of the

As a consequence of their diverging views on divine purposiveness and the nature of the *ratio legis*, the principle difference between our two authors may be reduced to the following. Al-Āmidī leaves us with a rigidly defined methodology. Seemingly, the law will extend to fewer cases. Al-Āmidī demonstrates a remarkable consistency when he denies the legal import of benefits – i.e., rationales – that are unattested in the source texts (*al-maṣāliḥ al-murasala*), despite the widespread acceptance of their validity amongst the theorists of the Shāfiʿī school. Any rationale that is not supported by revelation is of no legal significance.¹⁴⁰ By contrast, al-Rāzī holds that there is no benefit that the law does not recognize;¹⁴¹ his method of legal derivation is less formalistic and more accepting of individual discretion. Through rational deliberation, the law can be extended to any case that is found to uphold a rationale to which God, as a matter of habit, would apply a ruling.

One issue al-Āmidī addresses in the *Iḥkām* makes it difficult to determine the substantive difference between his position and al-Rāzī's. Let us consider one passage in the *Iḥkām* in which al-Āmidī responds to al-Rāzī's account of the *ratio legis* (whether his response was written with al-Rāzī's work in mind is unclear). Al-Āmidī writes that if a rationale is known to obtain with certainty in a case, but it is indeterminate, then it cannot serve as a valid *ratio legis*. However, rationales cannot be neglected. While al-Rāzī would argue that the ruling in this case might be derived from the ruling in another case that shares the rationale, al-Āmidī writes that these two cases can have a different *ratio legis* for the same ruling that also serves the same rationale. For Ḥanafī jurists, for instance, intentionality is a condition for enacting certain rulings against murderers. If a sharp murder weapon is used, the murder is assessed as intentional because the use of such an instrument is a determinate indicator of that intentionality. When such a weapon is used, the ruling applies and the rationale is obtained. What if someone dies from being tossed off of a ship? We know with certainty that the act was intentional, although this case lacks the same determinate feature as the former one. According to al-Āmidī, the same ruling can

preservation [of life] (*ḥifẓ al-nufūs qaṣd al-maḳāṣid wa'l-qiṣāṣ qaṣd al-waṣā'il wa ajrā Allāh al-'āda anna al-qiṣāṣ sabab al-ḥifẓ*)." Zarkashī, *Baḥr*, 5:124–5.

140 Āmidī, *al-Iḥkām*, 4:215f. Weiss correctly notes that al-Āmidī argued against the validity of basing the *ratio legis* on an objective in the absence of evidence for fear that a "jurisprudent may be tempted to formulate law on the basis of objectives themselves without any regard for given rules." Weiss, *The Search for God's Law*, 669.

141 As Opwis notes, al-Rāzī holds that general *maṣlaḥas* (read: rationales) are considered by the law. Opwis, *Maṣlaḥa and the Purpose of the Law*, 107; idem, "Attributing Causality to God's Law," 408.

apply in both cases in order to obtain the same rationale. However, the *ratio legis* of each case is different because the determinate feature changes.¹⁴²

According to al-Rāzī, a ruling applies if the circumstance at hand fulfills a rationale, since an indeterminate rationale alone may sufficiently serve as the *ratio legis*. Therefore, if a man is intentionally killed by being tossed off of a ship, the killer can be charged according to the same law that would have applied if he were to have used a knife. The ruling is the same for both cases because they share the same rationale and, hence, the same *ratio legis*. In effect, while al-Āmidī's methodology differs from al-Rāzī's, he allows for the same application of the law. The same ruling applies but with a different *ratio legis* (because its determining feature will be different), although the *ratio legis* serves the same rationale.

It would appear that al-Āmidī's formalistic methodology does not allow for as much flexibility as al-Rāzī's, and certainly not for as much use of unfettered reason. It comes as no surprise that al-Āmidī's position remained that of the majority. With al-Rāzī's method, it is more difficult to hold a jurist accountable for his opinion; the technical procedure of finding a determinate *ratio legis* in the source texts is replaced by individual discretion, and the process, as a result, is less subject to scrutiny and objective review. To uphold integrity, a legal system must function with mechanisms that maintain reasonable predictability and individual accountability. This is the focal concern underlying al-Āmidī's position – recall his apprehension against the legal system falling into chaos (*takhabbuṭ al-aḥkām*) – and it is what drives his critique of al-Rāzī and Mu'tazilī theology and ethics in the *Iḥkām* (his theological writings show greater concern for upholding God's omnipotence). Of course, integrity is a value shared by all legal systems. Consider Frederick Schauer's discussion of American legal debates between formalistic legal reasoning and legal reasoning that seeks to fulfill the purpose behind a ruling:

[T]here is an important group of values – predictability of result, uniformity of treatment (treating like cases alike), and fear of granting unfettered discretion to individual decision-makers even if they happen to be wearing black robes – that the legal system, especially, thinks it valuable to preserve.¹⁴³

142 Āmidī, *Iḥkām*, 3:301–2. Al-Āmidī also argues that a ruling can have more than one *ratio legis* for different cases. *Ibid.*, 3:295.

143 Frederick Schauer, *Thinking Like a Lawyer: A New Introduction to Legal Reasoning* (Cambridge, MA: Harvard University Press, 2009), 35.

The same may be said, indeed it has already been said, about Islamic law.¹⁴⁴ In light of this concern to maintain integrity, it seems, al-Rāzī was always going to be assigned to the minority camp regarding his understanding of the *ratio legis* in legal theory.¹⁴⁵ Whether one views the law as pursuing human welfare by virtue of divine purpose or divine custom – both volitional – makes all the difference.

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¹⁴⁴ See Weiss, *The Search for God's Law*, 572. Khaled Abou El Fadl writes that in Islamic law, “[S]ophisticated conceptual frameworks were developed to regulate the application of the various jurisprudential tools employed in the process of legal determination. These conceptual frameworks were not only intended to distinguish legitimate and authoritative uses of legal tools, but, collectively, they were designed to bolster accountability, predictability, and the principle of the rule of law. (Khaled Abou El Fadl, “The Islamic Legal Tradition,” in *The Cambridge Companion to Comparative Law*, ed. Mauro Bruciani and Ugo Mattei [Cambridge: Cambridge University Press, 2012], 295–312, esp. 297)”.

¹⁴⁵ Al-Qarāfi wrote a massive commentary on the *Maḥṣūl* in which he repeatedly refers to al-Āmidī's *Iḥkām*. Al-Qarāfi inclines to al-Āmidī's criticisms against al-Rāzī. In fact, he directly references al-Āmidī's claim that a rationale cannot serve as a *ratio legis* without being determinate. Al-Qarāfi cites a range of verses from the Qurʾān to demonstrate that God's actions and rulings are purposive, not because God is obligated, but as a matter of fact (Qarāfi, *Nafā'is*, 7: 332of). The same opinion is held by al-Zarkashī, who also relies heavily on the writings of al-Rāzī and al-Āmidī in his encyclopedic tome on legal theory. Zarkashī, *Baḥr*, 4:120.

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