

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

Islamic Thought and History

الفكر والتاريخ الإسلاميين

Editorial Board

Ahab Bdaiwi (*Leiden University*)
Sajjad Rizvi (*University of Exeter*)
Meryem Sebti (*Centre Jean Pépin*)

Advisory Board

Peter Adamson (*Ludwig Maximilian University*)
Elizabeth Alexandrin (*University of Manitoba*)
Rosabel Ansari (*Stony Brooke University*)
Sean Anthony (*Ohio State University*)
Robert Gleave (*University of Exeter*)
Najam Haider (*Columbia University*)
Razieh Mousavi (*Bard College Berlin*)
Sumeyye Parildar (*Istanbul University*)
Tahera Qutbuddin (*Oxford University*)
Liana Saif (*Amsterdam University*)
Walid Saleh (*University of Toronto*)
Sohaira Siddiqui (*Georgetown University in Qatar*)
Justin Stearns (*New York University Abu Dhabi*)
Mathieu Terrier (*Paris Sciences et Lettres*)
Cyrus Zargar (*University of Central Florida*)

VOLUME 1

The titles published in this series are listed at brill.com/ith

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

By

Felicitas Opwis



BRILL

LEIDEN | BOSTON

Library of Congress Cataloging-in-Publication Data

Names: Opwis, Felicitas Meta Maria, author.

Title: Ethics and analogy (Qiyās) in 5th/11th-century Islamic legal theory / by Felicitas Opwis.

Description: Leiden ; Boston : Brill, 2025. | Series: Islamic thought and history, 3050-6018 ; volume 1 | Includes bibliographical references and index.

Identifiers: LCCN 2024057495 (print) | LCCN 2024057496 (ebook) | ISBN 9789004720770 (hardback) | ISBN 9789004720787 (ebook)

Subjects: LCSH: Qiyās (Islamic law)—Early works to 1800. | Islamic law—Philosophy—Early works to 1800.

Classification: LCC KBP452 .O69 2025 (print) | LCC KBP452 (ebook) | DDC 340.5/9134—dc23/eng/20241205

LC record available at <https://lcn.loc.gov/2024057495>

LC ebook record available at <https://lcn.loc.gov/2024057496>

Typeface for the Latin, Greek, and Cyrillic scripts: "Brill". See and download: brill.com/brill-typeface.

ISSN 3050-6018

ISBN 978-90-04-72077-0 (hardback)

ISBN 978-90-04-72078-7 (e-book)

DOI 10.1163/9789004720787

Copyright 2025 by Koninklijke Brill BV, Plantijnstraat 2, 2321 JC Leiden, The Netherlands.

Koninklijke Brill BV incorporates the imprints Brill, Brill Nijhoff, Brill Schöningh, Brill Fink, Brill mentis, Brill Wageningen Academic, Vandenhoeck & Ruprecht, Böhlau and V&R unipress.

All rights reserved. No part of this publication may be reproduced, translated, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior written permission from the publisher. Requests for re-use and/or translations must be addressed to Koninklijke Brill BV via brill.com or copyright.com.

For more information: info@brill.com.

This book is printed on acid-free paper and produced in a sustainable manner.

To Joseph, Axel, and Isabella



Contents

Acknowledgements IX

Introduction 1

- 1 Theological Commitments 15
 - 1 Mu'tazilī and Ash'arī Approaches to Epistemology, Ethics, and Speech 16
 - 1.1 *Human Experience and Normativity* 17
 - 1.2 *Epistemology and Ethics* 19
 - 1.3 *The Role of Revelation* 22
 - 1.4 *Language and Law* 24
 - 2 Al-Māturīdī's Theological Commitments 28
- 2 'Abd al-Jabbār and the Goodness of the Law 31
 - 1 The Ethical Assessment of Acts 32
 - 1.1 *Rational Assessment of Acts* 38
 - 1.2 *Religious Assessment of Acts* 42
 - 1.3 *Ethical Values and Right (Ḥaqq)* 43
 - 2 The Legal Assessment of Acts 47
 - 2.1 *Correspondence of Rational and Religious Legal Normativity* 52
 - 3 Legal Analogy and the Function of the *Ratio Legis* 54
 - 3.1 *The Function of Legal Analogy* 55
 - 3.2 *The 'Illa in Religio-legal Rulings* 57
 - 3.3 *Methods of Identifying the Ratio Legis ('Illa)* 63
 - 4 Conclusions 67
- 3 Abū l-Ḥusayn al-Baṣrī and the *Maṣlaḥa* of the Law 70
 - 1 The Ethical and Legal Value of Acts 70
 - 1.1 *Rational Normativity* 72
 - 1.2 *Religious Normativity* 74
 - 1.3 *Combined Rational and Religious Normativity* 82
 - 2 Legal Analogy and the *Ratio Legis* 83
 - 2.1 *Identifying the Correct Ratio Legis* 89
 - 3 Conclusions 93

4	Abū Zayd al-Dabbūsī and the Wisdom of the Law	96
1	Divine Wisdom, Human Rationality, and Normativity	97
1.1	<i>Rational Assessment of Acts</i>	103
1.2	<i>Assessment of Acts in Light of Divine Command and Prohibition</i>	107
2	Legal Analogy and God's Wisdom	112
2.1	<i>The Ratio Legis (ʿIlla)</i>	113
2.2	<i>Identifying Efficacy</i>	115
3	Conclusions	120
5	Abū Ishāq al-Shīrāzī and the Meaning of the Law	123
1	Linguistic Assessment of Legal Normativity	125
1.1	<i>The Legal Norms of Religious Accountability (Taklīf)</i>	128
2	The Function of Legal Analogy and the <i>Ratio Legis</i>	134
2.1	<i>Identifying the Ratio Legis</i>	142
2.2	<i>Three Dimensions of Meaning</i>	145
3	Conclusions	149
6	Imām al-Ḥaramayn al-Juwaynī and the Purpose of the Law	151
1	Religious Accountability (<i>Taklīf</i>) and Legal Norms	152
1.1	<i>Language and Religious Accountability</i>	154
1.2	<i>Legal Norms</i>	156
2	The Function of Legal Analogy	163
2.1	<i>Determining the Ratio Legis</i>	165
3	Conclusions	175
	Concluding Remarks	179
1	Theological Worldview and the Logic of Ethical and Legal Reasoning	180
2	Law, the Path to Salvation, and the Order of Society	185
	Bibliography	191
	Index	198

Acknowledgements

Books are paradoxically both a singular and a collective product. Our different communities facilitate the maturation of an initial idea into a finished manuscript. As must be the case for many authors, these communities include overlapping academic, friendship, and family circles. This book was made possible by the support of my academic home in the Department of Arabic and Islamic Studies at Georgetown University, as well as by the Freiburg Institute of Advanced Studies (FRIAS), at which I spent several summers as a senior fellow with the Freiburg Research Collaboration Programme (FRESCO). My deepest appreciation goes to those two academic communities for providing intellectual stimulation over the years. At Freiburg, I thank in particular Nadja Germann and Johanna Pink for their intellectual nourishment and camaraderie, often over coffee and ice cream; and to Roland Muntschick (FRIAS) for diligently proofreading my manuscript and supplying library books. I wish to extend my sincere appreciation to Abdurraouf Oueslati at Brill and to the anonymous reviewers of my work for their invaluable feedback. This book has benefitted much from the many scholars and friends whose conversations, questions, and comments were indispensable to my thinking on the subject matter, with particular mention of Ferial Bouhafa, an important interlocutor in the production of the manuscript. To my friends and family in the US and Germany goes my gratefulness for always offering open doors, ears, and companionship. My husband Joseph and adult offspring, Axel and Isabella, deserve medals for their unwavering, loving support and their patience during the many times I have told them “I am almost done.” I dedicate this book to them.