Ghazālī's Juristic Treatment of the *Sharī'ah* Rules in *al-Mustaṣfā*

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Introduction

Ghazālī's approach to *uṣūl al-fiqh*, as articulated in his last and greatest work of Law, *al-Mustaṣfā*, is based on the premise that, in essence, this science is knowledge of how to extract *aḥkām* (rules) from the *Sharī'ah* sources.[1] (As for the science of *fiqh*, it concerns itself particularly with the *Sharī'ah* rules themselves which have been established in order to qualify the acts of the locus of obligation, man.) Accordingly, Ghazālī views it as imperative that any discourse on *uṣūl* focus on three essentail elements: the *aḥkām;* the *adilla* (sources); and the means by which rules are extracted from these sources, which ultimately includes examination of the qualifications of the extractor, namely, the *mujtahid*. This paper lays out Ghazālī's treatment in *al-Mustaṣfā* of the first of these elements, the *ahkām*.

Ḥukm (The Sharī'ah Address)

Linguistically, *ḥukm* is the verbal noun of *ḥakama*, which signifies "withholding, restraint, prevention; and judgment, jurisdiction, rule, dominion, authority, or governing."[2] The technical meaning, however, varies according to its usages in the terminologies of philosophy, Arabic grammar, *uṣūl*, and *fiqh*.

Ghazālī defines *ḥukm* as the *Sharī'ah* address *(khiṭāb al-Shar')* in relation to the acts of the loci of obligation, the address being Allah's revelation to His Messenger. It is divided into two categories: revelation for recitation *(waḥī matluww)*, that is, the Qur'ān; and revelation not for recitation *(waḥī ghayr lww matu)*, namely, the *Sunnah*.[3]

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Another technical *uṣulī* application uses *ḥukm* to signify the fundamental rules inherent in the *Sharī'ah* address, expressing the intent of the Lawgiver, where the commands of the *Sharī'ah* necessitate obligations, and its bans mandate prohibitions. In other words, the genral principles of the rules *(aḥkām)* result in the obligation, prohibition, recommendation, reprehension, or allowance of acts; or establish their rectitude and invalidity. Categorizing the performance of acts as either timely or belated is another nuance of the term *aḥkām* in *uṣulī* image.

Ghazālī further distinguishes between rules that 'qualify' acts as obligated or prohibited, and rules that express the 'conditions' posited by the *Sharī'ah* indicating their obligatoriness or prohibition, such as reaching puberty, which is a condition obligating a person to perform or refrain from certain acts. In later *uṣulī* works, these distinct types of rules were assigned terms according to their function, *al-ḥukm al-taklīfī* (the qualifying address) and *al-ḥukm al-waḍ'ī* (the positing address). In *fiqhī* terminology, *ḥukm* is the rule that a *mujtahid* arrives at, based on the *Sharī'ah* sources and in accordance with their general principles concerning an act of the loci of obligation.

Ghazālī insists that *ḥukm*, be it in the *uṣulī* or the *fiqhī* sense, must be related to the acts of the loci of obligation. So the *Sharī'ah* Texts concerning Allah or His attributes, the affairs of preceding nations, the events in the time of the Prophet, or the description of the Day of Judgment are not considered *Sharī'ah* rules per se, for they neither qualify the acts of the loci of obligation nor reveal their requirements.[4] Ghazālī also makes the fine but significant point that the *Sharī'ah* rules are not actually directed to the physical aspects of creatures; that is, to the hands or tongue of a person, or to, for example, alcohol.[5] Rather, rules qualify acts relating to or emanating from the physical being of creatures, like stealing, eating carrion or the flesh of swine, backbiting, or consuming alcohol. Thus, rules obliging the maintenance of health or cleanliness are related to the acts through which these tasks are performed, not to the body itself. Similarly, rules pertaining to contracts, rites of worship, and avoidance of prohibitions are likewise related to man's acts.

To further clarify this, he notes that the *Sharī'ah* address expressed in the following verse does not indicate the prohibition of the mentioned beasts' corpses, but the *act* of eating them:

> Forbidden to you are carrion, blood, the flesh of swine, what is invoked in the name of other than Allah, that which is killed by strangulation or violent blow or fall or gore, or from that which has been devoured by beasts of prey, except for that which you have sacrificed duly.[6]

And this is the case in the verse below as well:

> Forbidden to you are your mothers and daughters, your sisters, your

> aunts, paternal and maternal, your brother's daughters, your sister's daughters, your mothers who have given you suckle, your suckling sisters, your wives' mothers.[7]

So, the forbidding of mothers, sisters, and the rest is not directed at their physical beings per se, but at marrying them and the implications of so doing.

Ghazālī, furthers the discussion by saying that acts coming under theb categories of the *Sharī'ah* rules must meet certain requirements. First, their performance must be possible; so that bidding the performance of two opposite acts simultaneously or "denaturing a species" is impossible.[8] Second, they must be attainable by the locus of obligation. For instance, it is not possible to ask Zayd to fulfill a contract exclusively binding on 'Amr. Third, they must be distinguished from other acts in the mind of the commanded individual and be known as an address from Allah. Fourth, their nature must be in conformity with obedience to Allah, as is the case with most of the rites of worship. For one cannot be commanded by the *Sharī'ah* to perform an act which demands disobedience to Allah, such as worshipping other than Him.

Al-Ḥākim (The Ruler)

Ghazalī's definition of *ḥukm* as the *Sharī'ah* address, whose actual source is Allah alone, reflects the classical Islamic view of Law. He does, though, focus on the term, *address,* and qualifies that the status of an addresser—be he an angel, a prophet, a *mujtahid,* or a *faqīh*—as one who pronounces a rule; for each of them in reality conveys the *Sharī'ah* rule. However, the critical distinction is that only *the* Addresser, Allah, is capable of 'originating' rules and revealing them. Therefore, says Ghazalī, only He is deserving of absolute obedience, for His is the creation and the command.

Based on this, neither an angel, nor a prophet, nor a common man—be he the ruler or master—has actual sovereignty, nor are any of these capable of originating rules. If obedience to them is warranted, it is so only on the basis of Allah obliging it.[9]

Stressing that originating obligations and prohibitions is an activity that only Allah is capable of, secures order and guards against universal chaos. For if the ability to originate rules was available to those who can pronounce rules, then it is conceivable that the obliging of an act by some pronouncers which others have prohibited, and the inverse, would prevail, leaving no standard and creating confusion.[10] By adhering to this view, Ghazalī establishes the justification for any Muslim to reject legislation that commands or prohibits unless it comes from Allah or is based on His *Sharī'ah.* Furthermore, Muslims have the right to demand proof that the command is based on revealed authority *(sam')* from those who declare prohibitions or obligations.

After establishing this point, Ghazālī finds himself compelled to discuss the place of reason *('aql)* in relation to revelation and devotes an elaborate discussion to this subject.

Reason and Revelation

Ghazālī's five qualifications of man's acts are an attempt to set measurable criteria by which to identify and categorize the *Sharī'ah* rules expressed by the Qur'an, the *Sunnah,* and *Ijma'.* He concedes, however, that all human acts in all times and places are not specified by the *Sharī'ah.* So he must account for reason's role in his scheme as well. He supposes a state of pre-revelation before the coming of the *Sharī'ah,* or after, for those unaware of it. This raises two important questions: (1) Is *Allah* the sole imposer of obligation, or does reason share in this? (2) Are human acts liable to *Sharī'ah* judgments in the state of pre-revelation?

Reason and the nature of human acts form the core of the dispute between the Ash'arite, Ghazālī and the Mu'tazilites. Ghazālī's position in *al-Mustaṣfā*—consistent with his other theological and *uṣūlī* works available to us—is that reason cannot create rules for man's acts, and any *Sharī'ah* context that seemngly implies so is figurative. Reason identifies the character that the *Sharī'ah* imparts to human acts in forming rules, but is not a source of their origin. Moreover, these characters are not essential ones that render them inherently good or evil.

Ghazālī repudiates the Mu'tazilites—particularly of Baghdad—who, allegedly under the influence of Greek philosophy, hold that reason not only recognizes good and evil but determines them, since good and evil are essential qualities of acts. Accordingly, pre-revelation acts are obligatory, prohibited, or allowed by virtue of reason. Rather, he insists, it is the *Sharī'ah* that classifies acts. What is good is so because *Sharī'ah* directed or allowed it. And what is evil is such because *Sharī'ah* forbade it. And the degree of an act's goodness or badness is determined by the strength of the *Sharī'ah's* bidding or prohibition.

Thus, Ghazālī rejects the Mu'tazilite notion of intrinsic goodness or badness in human acts, as well as reason's role as an originating source for commands and prohibitions. An obligatory act is so because of the extrinsic character of revealed "obligatoriness," and such is the case with the other classifications.

Al-Mustaṣfā examines this issue in relative detail owing to its central importance to the *Sharī'ah* rules. It summarizes the Mu'tazilite positions on the pronouncement of good and evil *(taḥsīn* and *taqbīḥ)* and their classification of acts in the absence of revelation, paving the way for Ghazālī's response.

He starts by defining the terms, *ḥusn (good)* and *qubḥ (evil),* in order to confine the disagreement. *Good* and *evil,* he says, are used technically in three

applications, two of which are related to an act's doer and one that pertains to the *Sharī'ah* command itself.

The first is popular usage, which is relative, restricting *good* and *evil* to the objectives of the doer. All acts that conform with one's objectives are good and are termed *hasan*. Acts that thwart one's interests are evil and therefore called *qabīḥ*. When, for example, a king is killed, says Ghazālī, it is deemed good by his enemies and evil by his supporters.

Second, these terms are applied to all acts that one is permitted or expected to do. If you have the right to do it, then it is good. If you do not, then it is evil. Therefore, all acts of Allah are good for He is capable of doing them. Allowed acts *(mubāḥ)* are likewise good because one is able to do them.

In the third usage, the term *ḥasan'* applies exclusively to what the *Sharī'ah* declares good. Thus, any commanded act is good, be it obligatory or recommended. But this application pronounces neither good nor evil upon the *mubāḥ* act because the *Sharī'ah* is indifferent in regard to it.

Ghazālī's approach in defining terminology first enables him to marshal his definitions in order to refute the Mu'tazilite doctrine of the essentiality of good and bad acts (necessarily recognized as to reason and subject by a consensus of all rational human beings). He illustrates an act of lying to dramatize his views. He suggests the case of a prophet being pursued by an assassin. The would-be killer asks someone of the prophet's whereabouts, but that someone lies in order to mislead the assassin and protect the prophet. Ghazālī argues that this lying is *ḥasan* because of the good derived from it, i.e. the saving of the prophet's life. Indeed, he says, it is more than good. It is obligatory upon the person who knows the prophet's whereabouts. In fact, he sins and disobeys if he does not lie.

Thus, evil is not an intrinsic character of lying per se. Otherwise, it could not have changed from evil to good and would not have been praiseworthy on the part of its doer. Therefore, reason declares an act good instead of evil in relation to the agent and the circumstance of the act. Ghazālī concludes his treatise by analyzing the roots of error in the pronouncement of good and evil. He reduces them to four: (1) confusion in the use of terminology; (2) subjective assessment of acts based on personal aims; (3) faulty generalization in characterizing *ḥasan* and *qubḥ* in disregard of exceptions to the rule; and (4) reason's erroneous imagination caused by association. One may, for instance, show aversion to multicolored rope that resembles a harmful snake.

After formulating the sources of error, Ghazālī defines key terminology that expresses their causes, which he again employs as the balance with which to weigh his opponents' arguments. He couches his position in one case, citing those contentions of the Mu'tazilites that hold that all acts, before the coming of the *Sharī'ah*, are in the state of *ibāḥa* (allowed). He says that one might tolerate this argument, provided the term, *ibāḥa,* means acts which the doer is

free to perform or neglect. But this, he notes, is a misuse of terminology. He refutes the definition of *'ibāḥa'* and restates his position that issuing the *Sharī'ah* rules is exclusively within the domain of the divine address. And since there is no address before revelation, there is no *ibāḥa.*

A second position attributed to other Mu'tazilites, namely that acts in the prerevelation state are analogous to the manipulation of another's property and are therefore forbidden, is refuted by his second and fourth definitions, which contend that such acts are neither rationally acceptable nor reported in the *Sharī'ah.*[11]

Finally, he repudiates those Mu'tazilites who advocate the suspension of judgment in the absence of *Sharī'ah,* saying that if they mean that there are no rules until the *Sharī'ah* comes, this can be tolerated. But if *suspension* connotes the stoppage of action until *Sharī'ah* that is wrong.

Yet Ghazālī's skillful argumentation seems more to mirror legal affiliations and doctrinal difference of opinion than offer a practical, substantive alternative to the Mu'tazilite position that Reason has legislative capacity. When Ghazālī accepts the principle of *Istisḥāb,* he acknowledges that the *Sharī'ah* does not qualify all human acts or specify either reward or punishment for them before revelation. Thus, these acts remain in the status of the original state of freedom from accountability, and Reason, by way of *ijtihād,* rules upon them. However, he emphasizes that the role of the former—(as identifier, not originator) of *Sharī'ah* rules. He then proceeds with his discourse on *Sharī'ah* rules, their divisions, and their requirements.

Al-Maḥkūm 'Alayhi (The Locus of Obligation)

The *Sharī'ah* rules delineate the locus of obligation as either obligatory, recommended, permissible, reprehensible, or prohibited. Ghazālī refers to two fundamental conditions that one must fulfill to be eligible for *taklīf:* ability *(qudra);*[12] and capacity *(ahliyya).*[13]

Ability, in Ghazālī's mind, rests on one's potential to understand a command or prohibition posited by a *Sharī'ah* address. He holds tenaciously to the view that implicit in every *Sharī'ah* command is the command to understand the responsibility. It is impossible, as he sees it, to demand understanding from someone or something not capable of it. For "intending" to comply with a command is necessary, and one cannot intend anything unless he comprehends it. So, inanimate objects and animals, for example, are not under obligation.[14]

As for capacity, it is reason, the instrument of discernment, that is of central import, for it is the determinant of eligibility for and liability to obligation. Ghazālī notes that since the locus of obligation is a living human equipped

with reason, a faculty not perceivable by our senses, the *Sharī'ah* accepts the signs of maturity, namely the coming of age and normal development, as manifest indications of sound reason.[15]

Ghazālī distinguishes between man's ability to be charged with *Sharī'ah* obligations—which earn a person, whether young, old, male, or female, certain rights and rewards—and the *Sharī'ah* obligations which render him liable in this world and in the hereafter for performing or neglecting commands.

The first capacity is *ahliyyat al-wujūb,* being eligible for *taklīf.* Its essential requirement is being a living human. The second capacity is described as *ahliyyat al-adā',* the capacity of the human to perform, which requires maturity, sanity, freedom, and the like.[16]

Delving into greater detail concerning *ahliyyat al-adā',* Ghazālī refers to the impossibility of obliging the minor, the forgetful, the intoxicated, the insane, and the nonexistent,[17] all of which share a common trait—lack of reason. He explains that it is not possible for the *Sharī'ah* address to lay obligation upon a minor because of his underdeveloped faculty; nor the intoxicated owing to his temporary loss of reason through intoxication; nor the insane for his insanity; nor the forgetful for his inability to retain the address in mind.

Ghazālī's opponents, however, argue that since the Qur'ān has specifically addressed the intoxicated person—*"Oh believers draw not near to prayer when you are intoxicated until you know what you are saying,"*[18]—one, therefore, may be commanded without understanding the command. Ghazālī responds that the command expressed in this verse may be interpreted in two ways.

First, this was revealed before the prohibition of alcohol. Consequently, the prohibition is not directed at prayer. Ghazālī cites in support of this interpretation an Arabic saying, "Draw not near the night prayer when your stomachs are full," meaning, do not eat in excess so that it becomes burdensome to pray.[19]

Second, the address is directed at those near intoxication but still capable of comprehending the address.[20] But this reply is weak because the verse is addressed to the entire *ummah,* not to the intoxicated in particular. Even if we suppose the latter, it is certain that the verse would be related to them upon returning to sobriety. In any case, the address was later abrogated by the blanket prohibition of drinking alcohol.

Ghazālī further states that an intoxicated person is responsible for his acts during his intoxication. So, if he pronounces divorce or offends someone, he is liable. As for the minor, necessary expenditures, penalties, *zakāt,* and other such things are indeed obligations to be fulfilled but by his guardian. The intoxicated person, on the other hand, since he generated the acts, must be liable for them.[21]

Regarding the Ash'arite position that it is possible to lay an obligation upon a person who does not yet exist, Ghazālī defends this possibility by saying that since the laying of obligation is by Allah, it is possible for it to

precede the existence of someone. The obligation is binding when the person comes into being and is capable of understanding the *Sharī'ah* address.[22] He gives the example of a dying father whose wife has a child in her womb. The father commands that his children spend his wealth in a prescribed manner. It is linguistically and customarily possible to say that he has entrusted all of his children to carry out his will, including the unborn, provided the unborn is born and is later capable of understanding the command.

Al-Maḥkūm Fīhi (The Subject to Rule, The Acts)

Since the essence of *taklīf* is the acts which the loci of obligation are either obligated to or prohibited from performing, they are, then, that to which the *Sharī'ah* address is directed. This is perhaps why Ghazālī stipulates that a charged obligation be openly or at least potentially knowable, meaning that charging to perform the *Sharī'ah* acts should be promulgated and not concealed in the mind of the Lawgiver or His Messenger. Also the locus of obligation must have the capacity to perform, that is, to possess reason enough to comprehend the intent of the Lawgiver and to understand the act required of him, either directly or through those who know. For example, the abundance of manifest signs in the physical world (nature) and the proofs existing in the Qur'ān are sufficient for any rational person to recognize the existence of Allah and that He is the source of obligation, according to Ghazālī. Therefore, a person cannot use ignorance as an excuse for justifying noncompliance.

Ghazālī states that along with knowing the prescribed act, one must know that this act's command has been issued from the source of obligation, the only authority capable of originating commands, Allah. This reflects Ghazālī's zeal to demonstrate the validity and authenticity of the sources of Islamic Law—the Qur'ān, the *Sunnah, Ijmā'* and *al-Istishāb wa dalîl al-'aql.*

In summary, every rule wherein it is possible to understand and know its source as legitimately from the *Sharī'ah,* the loci of obligation are obliged to fulfill, whether the rule is known directly or through persons who have knowledge of the *Sharī'ah.*

Concerning the nature of acts that fall under *taklīf,* Ghazālī requires that they be within the capability of the locus of obligation. He argues that "charging the impossible is impossible,"[23] and rejects the idea of obliging an impossible act on the grounds that it is incomprehensible to the locus of obligation. He contends that a thing, before materializing, has an existence in the mind, and it is only sought after when it comes into being or is conceived in the mind.[24] He does not hide his disagreement on this issue with Abū al-Ḥasan al-Ash'arī, the patriarch of many of Ghazālī's views. On the contrary, he criticizes those of his positions that imply the possibility of obliging an impossible act.

Al-Ash'arī's Position and Ghazālī's Reply

Ash'arī's theological position concerning human acts approximates that of the Predeterminists, holding that all human acts are created by Allah.[25] That is, man is essentially impotent, for Allah creates in man the necessary power to perform an act exactly at the time of its being and not before it exists in some potential form. Based on this understanding, it is possible for Allah, in Ash'arī's view, to command a locus of obligation to perform the acts obliged exclusively upon another and to require him to perform impossible acts, for He creates his acts for him.

Ghazālī provides rational and *Sharī'ah* arguments against the three Textual references that Ash'arī cites in support of his position, which are as follows:

First, Ash'arī cites the verse, *"Our Lord, do not burden us beyond what we have the strength to bear . . ."*[26] from "Sūrat al-Baqara," claiming that if it were not possible to oblige an impossible act, Allah would not have instructed His creatures to ask Him to remove from them that which is impossible to bear.

Secondly, since Allah has informed His Messenger that his opponent, Abū Jahl, will not accept his message—and it is impossible for the knowledge of Allah to be contradicted—then the Prophet's invitation to Abū Jahl to believe in his message is equivalent to obliging Abū Jahl with an impossibility. Thus, obliging the impossible is demonstrated, especially when one considers that Abū Jahl is charged to believe in what is revealed to the Prophet—including the fact that Abū Jahl will not believe in him.

The third point is that the objections raised against obliging an impossible act are a result of there being no *Sharī'ah* text that either indicates this or its rational inconceivability. Ash'arī quotes some verses of the Qur'ān in support of his argument that imply the charging of an impossible act, such as His statement, *"Be stone or iron,"*[27] claiming that although this is impossible, He still commands it. Therefore, Ash'arī holds, it is rationally conceivable for a master to require his servant to manage his concerns in two different cities simultaneously. Furthermore, there is no contradiction nor corruption in this; nor is it against popular wisdom, for all the acts of Allah are consistent and contain no corruption. All that He does is good.

Be that is it may, Ghazālī says explicitly that Ash'arī's argument using the verse in "Sūrat al-Baqara" is weak because the verse is not bidding man to ask Allah to remove what is impossible; but rather to ask Him not to lay on an obligation too burdensome and difficult. Any other interpretation, Ghazālī says, is wrong, for this verse neither explicitly nor implicitly indicates otherwise.

In the case of Abū Jahl, Ghazālī says that there was no rational possibility preventing his accepting Islam—particularly when Allah has demonstrated

both universal and Qur'ānic proofs supporting the truth of Muhammad's message. Abū Jahl's course of disbelief is therefore a result of choice based on jealousy and obstinacy, not a consequence of Allah having determined it for him.

Finally, Ghazālī rejects the charging of an impossible obligation regardless of whether or not it conflicts with popular wisdom on the grounds that the essence of laying obligation is bidding, which, in turn, necessarily requires something to be fulfilled. For commanding the performance of an act must be understood by the locus of obligation. To illustrate his point, Ghazālī insists that it is possible to command a person to move—*"taḥarrak!"*—because movement is understood by him. But it is impossible to command him, using Ghazālī's words, with *"Tamarrak!"*[28]—an absolutely meaningless word. Ghazālī cites other examples to further his argument, saying that it is not rationally conceivable to require trees to sew, or to demand blackness to come from whiteness; nor is it possible to demand changing blackness into motion or a tree into a stallion.[29]

Another impossible obligation, according to Ghazālī, is commanding the simultaneous performance of two mutually contradictory tasks. So his opponents project the scenario of a person who is in the field of a usurped farm, and who is at once prohibited by the *Sharī'ah* from staying on usurped land but also forbidden to move because motion would cause damage to the crops, which do not belong to him.

Hypothetically speaking, he is essentially commanded to move and not to move at the same time. Ghazālī dubs this kind of argument sophistry and states that a jurist in a case like this can only rule that the person leave, "to minimize harm."[30] For remaining in his position is more harmful than the alternative, and that which causes the least amount of damage, then, is not only the preponderating obligation but in compliance with the *Sharī'ah.*[31] Furthering his position he cites the verse, *"Allah charges no soul save to its capacity,"*[32] as proof that Allah, the Source of obligation, withholds the obliging of the impossible.

Classification of the *Sharī'ah* Rules

Ghazālī introduces the concept of obligation *(wujūb)* by listing its various definitions held by jurists. For example, *wājib* has been defined as follows:

1. That which is qualified as obligatory.
2. That which one is rewarded for performing and punished for neglecting.
3. That which one must not determine to neglect.
4. That whose abandonment is considered disobedience.

To Ghazālī, all of these definitions are deficient because they identify *wājib*

either by its effect or by one of its conditions. Thus he takes a more holistic approach in defining *wājib* by relating it to the other categories of the *Sharīʿah* rules which also qualify the acts of the loci of obligation, introducing a comprehensive sense of *wujūb* within this structure.

He notes that, as a term, ***wājib*** is technically and linguistically used in various ways. Linguistically, *wājib* can mean to fall to the ground. He cites the verse, *"When their flanks fall down [wajabat] [to the ground],"*[33] and he also cites the Arabic expression, "The sun set *[wajabat al-shams]*"[34] In theology, *wājib* is used to describe the necessary existence of Allah *(wājib al-wujūd)*. This is in contradistinction to the impossible or the absurd.

According to the *faqīhs* and the *uṣūlis, wājib* describes those acts which the *Sharīʿah* declares obligatory—regardless of their being contingent, known, and such—in light of the nature of the *Sharīʿah* biddings. Therefore, if the bidding is binding, the desired act is obligatory, and if it is not, the act is recommended *(mandūb)*. But if the *Sharīʿah* bidding makes doing or not doing optional, it is allowed *(mubāḥ)*. On the other hand, if the *Sharīʿah* bidding demands that the locus of obligation forego an act, it is prohibited *(ḥarām)*. But if the prohibition is not binding, then it is reprehensible *makrūh)*.

It is evident, then, that Ghazālī in defining *obligatory* does not isolate it from the family of the five *Sharīʿah* rules. Rather, he discusses its concept in light of the nature of the *Sharīʿah* bidding. Therefore, to him *wājib* (obligatory) or *ijāb* (obliging) is the *Sharīʿah* command which bids doing. He also says that efficacy of the *Sharīʿah* commands binding nature—in both obligations and prohibitions—are the consequences for compliance (reward) and disobedience (punishment).

Furthermore, the performance of *wājib* results in reward and its abandonment is a *cause* of punishment in the Hereafter. Causality here, according to Ghazālī, is as medicine is to healing or striking is to pain. Yet it is not absolute causality because the effect may not show in all cases. It is possible, for example, that a person not perceive pain or injury when afflicted, as in the case of a person in the midst of a fierce battle.

Claiming that this is analogous to performing an obligation or abandoning it, he manifests his *ṣūfī* inclinations, weaving them into the fabric of his legal theory. He states that Allah, by His divine grace, may penetrate the inner being of a person and recognize laudable and praiseworthy characters that alleviate discharging his punishment for neglecting an obligation. Yet this does not exempt the violation from causing punishment on the Day of Judgment.[35]

According to Ghazālī, ***wājib*** is synonymous with *ḥatm* (necessary), *lāzim* (must), *farḍ* (mandatory), and *maktūb* (to be written).[36] He refers to the Hanafite scholars who distinguish *wājib* from *farḍ* (like Abū Zayd al-Dabbūsī), *farḍ* being an obligation firmly established on a conclusive proof—decisive in its meaning and the authenticity of its transmission. *Wājib,* according to

them, is that which has been based on conjecture and not transmitted by an overwhelming, unbroken chain of transmitters. While Ghazālī concedes that they may use these terms, he does so on the condition that their definitions are made clear.[37]

Ghazālī defines *ḥarām,* the prohibited, as *wājibs* antithesis in the family of the five *Sharī'ah* rules. It is, therefore, that about which the *Sharī'ah* declares, "Abandon it!" or "Do not do it!"[38] *Ḥarām* may also be called *maḥẓūr* or *ma'ṣiya.*[39]

Mubāḥ, the allowed, is that wherein the Lawgiver grants option with reference to an act's performance or abandonment, neither praising nor denouncing its doer or abandoner.[40] Contrary to the Mu'tazilites, Ghazālī regards *mubāḥ* as one of the set of five *Sharī'ah* categories, and a de facto condition of those acts which the *Sharī'ah* did not declare prohibited or obligatory.

Mandūb, the recommended, is that whose performance is better than neglecting, but one is not blameworthy for negelecting it. In other words, it is that part of the *Sharī'ah* commands which are nonbinding.

Makrūh, the reprehensible, Ghazālī says, has been used in various ways by the *fuqahā'.* He cites Shāfi'ī using the term *makrūh* as prohibition. It is also used with reference to that whose abandonment the *Sharī'ah* prefers to its performance, although no punishment is prescribed for the latter. It may also mean performance of some act in place of another that is more proper. Finally, it can also refer to all questionable acts. Ghazālī, however, clarifies this last usage that could be confused with the *ijtihād* of qualified authorities—for some consider *ijtihād* to be *makrūh.* But he opposes this interpretation.

1. Special Classifications of Wājib

In detailing a more complete analysis of the *Sharī'ah* rules, Ghazālī classifies them according to particular aspects, for instance the time within which they are to be performed. Concerning *wājib,* for example, Ghazālī divides it according to (a) the specificity of the obliged act; (b) whether it is a collecitve or individual obligation; (c) time restraints in fulfilling the obligation, which includes timely and belatedly performed acts; and (d) the quantity or extent of prescribed acts required to fulfill an obligation.

As for the first, prescribed obligations may give a person options between a number of acts or specify only one act to fulfill the command. These are called, respectively, *'wājib mukhayyar'* (obligation with options) and *'wājib mu'ayyan'* (specific obligation).[41] Obligations such as prayers, fasting, and fulfilling contracts are considered *wājib mu'ayyan,* for they, in particular, must be performed. No other acts can serve as their substitutes. Contrary to

the Mu'tazilites, who object to this classification, Ghazālī claims that there is not only rational proof for this, but *Sharī'ah* proof as well, because the obligations specified in the *Sharī'ah* fall under one of these two categories.

There remain, then, obligations which have options *(wājib mukhayyar)*. For example, in atoning for the breaking of an oath, one has the option to fast three days, to free a slave, or to feed ten indigent persons.[42] Also, the community has the option to choose the head of the Muslim state from among several eligible persons. For the selection itself is an obligation, but not a particular person.[43]

With respect to *who* falls under obligation, Ghazālī classifies *wājib* into either *wājib kifā'ī* (collective obligation) or *wājib 'aynī* (individual obligation).[44] Collective obligations are those which an individual or a group can perform on behalf of the community, discharging the rest from responsibility. For example, securing a viable system of defense is an obligation binding on the community at large. But if a part of the community acquires the necessary knowledge – including science and technology – and implements it, the community would be discharged from the obligation. Otherwise all are responsible.

As for *wājib aynī*, these are the obligations required from every individual who meets the conditions of *taklīf*.

Obligations are also divisible according to the time allocated to perform them. There are two time-specific kinds: restricted obligations *(wājib muḍayyaq)* and obligations with latitude *(wājib muwassa')*. Restricted obligations are those for which the *Sharī'ah* has prescribed a single, specific time for duration that accommodates the performance of the obligation. Fasting is a clear example. Not only is the month of *Ramaḍān* specified, but the time between dawn and sunset as well. Accordingly, fasting in any other month is an invalid performance of the obligation (unless with the excuse allowed by *Sharī'ah*). Also, fasting at any other time of the day is obviously invalid as well. Likewise, fasting two months for the atonement of *ẓihār* (pronouncing one's wife to be prohibited from him, like the back of his mother) must be done consecutively.

Obligations with latitude *(wājib muwassa')* are those whose prescribed times can accommodate the performance of the obligations – any moment within the time range – along with other acts. Such is the case with paying *zakāt* upon reaching minimum requirement; it can be paid any time during the following one-year period. Although the performance of these obligations may be delayed until toward the end of the prescribed time, performing the obligation becomes necessary in the last possible portion of the prescribed time where the obligation, and nothing else, can be accommodated.[45]

Regarding the performance of the obligation with respect to its time, Ghazālī classifies such act as *adā'* (timely performance), *qaḍā'* (belated performance or

restitution), and *i'āda* (repeated performance). An obligated act performed properly in its time is considered adā'. But if it is performed after the expiration of the *Sharī'ah* prescribed time—restricted or with latitude—it is called *qaḍā'.* Also, if one performs it improperly in its time and then repeats it properly while still within its prescribed time, it is called *i'āda.*

In the first situation the locus of obligation deliberately or forgetfully neglects performing an obligatory act in its prescribed time, but the act must be performed[46]—this is considered *qaḍā* (proper).

The second is a case where there is a valid obstacle, such as menstruation preventing a woman from fasting; she must fast additional days after the expiration of the menstruation, which is considered *qaḍā* but only figuratively. (In fact, Ghazālī considers it regular performance.)

The third is a situation where one is validly discharged from an obligation but decides to perform it, as in the case of a traveler in *Ramaḍān,* who is not obligated to fast but still does so. Here Ghazālī cites the Ẓāhirites who hold that fasting during a journey is invalid because Allah said, ". . . *A number of other days . . .,*" where one is commanded to fast "other days." On the other hand, Karkhī, a Ḥanafite, agrees with the Ẓāhirites that one is commanded with "other days," but contends that if one decides to comply with the command and fast during the journey, it is permissible to do so. Ghazālī argues that both opinions are corrupt and invalid, and regards the traveler's fasting as a legitimate performance of a duty. However, he considers it *qaḍa'* in the figurative sense only, saying that the verse mentions the "other days" only to grant laatitude.

The fourth is the case of a sick person. If his sickness is bearable, his situation is identical to that of the traveler. But if his sickness is life-threatening and he still decides to fast, Ghazālī regards his action as a valid performance of an obligation. Yet if he dies, he will be punished in the Hereafter, not for fasting, but for disobeying another command to perserve his health and life.[47] Others, however, do not consider his act *adā'* because he has gone against the exemption of not fasting.

Obligations, with reference to the quantity or extent of prescribed acts required to fulfill them, are also divided into fixed obligations *(wājib muḥaddad)* and unfixed obligations *(wājib ghayr muḥaddad).* Fixed obligations are, for example, rites of worship, payment of loans and debts whose fulfillments are non-negotiable and fixed either by the *Sharī'ah* or by contractual agreement (loans, contributions, etc.). In fact, a person who unilaterally commits himself to contribute a fixed amount of money is obliged to fulfill his commitment to the letter.

Spending for the cause of Allah, enjoining what is right and forbidding what is wrong, helping the poor and the like, are obligations whose fulfillments differ from person to person in accordance with circumstance and abilities, unless the *ummah* reaches consensus on fixing one or another of them.[48]

2. *The Ḥanafites' Classification of the* Aḥkām

The Ḥanafites add two categories of *Sharī'ah* rules to Ghazālī's five: *farḍ* (binding duty) and *makrūh taḥrīman* (prohibitive reprehension), which they determine in accordance with the certainty of a said rule's transmission. *Sharī'ah* obligations reported by way of *tawātur* are called either *farḍ* or *harām*, depending upon their instruction. Those based on a solitary report termed *wājib* (obligatory) or *makrūh taḥrīman*. So, *wājib* is less certain than *farḍ*, and *makrūh taḥrīman* is subordinate to *ḥarām*. Thus, the *Sharī'ah* rules that bid man "to do," according to the Ḥanafites, are *farḍ* and *wājib*. Those that forbid him, in order of potency, are *ḥarām*, *makrūh taḥrīman*, and *makrūh*. And, as with Ghazālī, both the "do" and the "do not do" converge on the *mubāḥ* (the indifferent). Thus, the Ḥanafites classify the rules of the *Sharī'ah* into seven categories.

Interestingly, however, al-Shāṭibī says that shortly after Ghazālī, these five or seven categories of *Sharī'ah* rules were reduced to three under the influence of *taṣawwuf:* the commanded, the prohibited, and the allowed. Violating the commanded, be it obligatory or recommended, is fundamentally a violation against the Commander. And since violating Allah's command is out of Islamic character (a servant must not go against his Lord), it therefore became obligatory to repent against any violation, minor or major.[49]

3. *Ghazālī's Five Categories in Relation to One Another*

It is impossible, in Ghazālī's view, for the *Sharī'ah* to declare one and the same act *wājib* and *ḥarām*, obedience and disobedience. But relative to independent circumstances, it is possible for an act's rule to change. For example, murdering an innocent person is absolutely forbidden. But executing the murderer is necessarily obligatory. Therefore, a *Sharī'ah* rule upon one act may vary in relation to other factors. Ghazālī says that it is "possible for an act having two differing aspects, even though it is one in itself, to be sought after through one of the aspects and reprehensible by the other."[50] Furthermore, the difference in the aspects of an act is equivalent to the difference in the act itself.

An obligatory act, by definition, is distinguished from an allowable *(mubāh)* act. Therefore, when the obligatoriness of an act is abrogated, it does not necessarily become allowable.[51] Rather, it reverts to its pre-obligation status, the character that defined it prior to its becoming obligatory.

Reprehensible acts, like the forbidden, are antithetical to obligation. Thus, a reprehensible act is never included under a command, "to do." It is necessarily expressed in a way that explicitly or implicitly indicates "should not do."

Commanding an act does not necessarily mean the prohibition of its opposite, according to Ghazālī. That is, the imperative mood neither includes nor necessarily implies the prohibition of its opposite. Similarly, a command to do the opposite of a prohibition cannot be inferred, nor should it be construed to mean that the performance of something else is required.[52]

4. *Taklīf* and Conformity to the *Sharī'ah*

Sharī'ah rules may be either intended or required as stipulations for the fulfillment of other rules. However, the laying down of obligation by requiring "this" or "that" act is not conditional upon the existence of contingent rules. True, the rectitude and validity of a said act's performance requires the fulfilling of its conditions. But it is the laying of obligation to perform a single, central act that corresponds to the *Sharī'ah* proof, while accountability is independently established for each contingent act.

For example, Ghazālī says, the *Sharī'ah* obliges man to fulfill the five pillars of Islam: declaration of faith, prayer, fasting, *zakāt*, and pilgrimage. Nevertheless, declaration of faith is a necessary condition for the correct and valid performance of the other four pillars. Furthermore, the *Sharī'ah* requires the on-going acceptance of each for one to remain Muslim. Therefore, conformity with them—each to each and all in all—is a necessary condition of *taklīf*.

As a universal state in Ghazālī's legal doctrine, *taklīf* charges Muslims and non-Muslims alike. For "unbelievers are addressed by the details of the *Sharī'ah* as well, he says. But he adds that unbelievers are not "expected" to perform these obligations, since even if they do, their fulfillment is invalid and meaningless without their formal submission to Islam. Nevertheless, the divine obligation is addressed to all people, Muslims *and* non-Muslims.

In this he takes issue with the Ḥanafites, who postulate that obliging non-Muslims with the details of *Sharī'ah* is rationally inconceivable because of their disbelief.[53] In support of their view the Ḥanafites argue that one who converts to Islam is not obliged to perform restitution for having not fulfilled the *Sharī'ah* obligations prior to his acceptance of Islam. Thus, he is not obligated to perform them to begin with. For had this concept been addressed by the details of the *Sharī'ah* as an unbeliever, it would necessarily follow that he be obliged to "make up" for obligatory acts after his submission. Moreover, no one, including Ghazālī himself (or since), has held such restitution as required.

Ghazālī's response is centered upon the interrogation the unbelievers will face, at the hands of the believers in the Hereafter, about the reason for their punishment and their answer that they were not among those who fulfilled the *Sharī'ah* obligations.[54]

> . . . In Gardens they will question concerning the sinners, "What thrusted you into Saqar?". . :"We were not of those who prayed, and we fed not the needy, and we plunged along with the plungers, and we cried lies to the Day of Doom, till the Certainty came to us."

It appears from his argument that Ghazālī is recalling the duality of legal responsibility in Islam. On one hand, a person is responsible before the *Sharī'ah* in this world; and on the other, he is responsible before the Court of Allah on the Day of Judgment. Only in the sense that they are accountable on the Day of Judgment is Ghazālī's claim that the disbelievers are addressed by the *Sharī'ah's* details acceptable. Otherwise, in requiring the imposition of *Sharī'ah* rule upon non-Muslims, Ghazālī would be contradicting not only himself, but the basic principles of the *Sharī'ah*.

5. Sabab *and the* Sharī'ah *Rules*

Although revelation itself has been completed, Ghazālī reminds us that certain *Sharī'ah* rules are affected by the recurrence of evident manifestations. Whenever these signs appear, it becomes necessary to perform or refrain from one or more acts, in accordance with the five *aḥkām*. This sign is termed *"sabab"* (cause). In ritual performance for example, when the sun sets, prayer is obligated; when a year passes, *zakāt* is due; when *Ramaḍan's* crescent is sighted, fasting is incumbent. Regarding transactions, the marriage contract affects the mutual rights and marital obligations of a man and woman; the divorce contract abrogates them, setting new guidelines; death is a cause for inheritance; the contract of sale causes ownership.[55]

The real cause of these obligations is the *Sharī'ah* address issuing from Allah. But the technical *sabab* is the apparent sign with which revelation has conjoined the performane of specific acts.

'Ṣaḥīḥ (valid), *'bāṭil'* and *'fāsid'* (invalid) are terms used to describe the validity of performing a *Sharī'ah* act. The valid act, in Ghazālī's scheme, is one that corresponds to the *Sharī'ah* rule, regardless of whether it is performed in restitution *(qadā')* or on time. The *bāṭil* act, which is synonymus with the *fāsid* act, is one that does not fulfill the *Sharī'ah* requirements.

However,. the principal approach of the Ḥanafite jurists, or the *fuqahā'* as they are called, defines valid performance as one that discharges responsibility, removing the need for restitution.[56] The dispute between the two views is reflected in the sphere of ritual performance in the following case. If a person prays, thinking that he is ritually pure, Ghazālī and the so-called *mutakallim* jurists regard his prayer as valid; for prayer itself has been adequately performed. But if he later remembers that he was not ritually pure,

then restitution is established by a different command. Based upon the Ḥanafite definition, however, the same prayer is invalid because it does not discharge the person from his obligation to pray, since he has not fulfilled all the prescribed *Sharī'ah* requirements.

Concerning business transactions, a valid contract *(al-'aqd al-muthmir)*, according to Ghazālī, is one that is effected and stipulates the fulfillment of all agreements.[57] Hence, a contract that is not effected is invalid. Yet the Ḥanafites distinguish the invalid contract *(bāṭil)* from the irregular *(fāsid)*. For the latter is essentially a valid *Sharī'ah* contract that includes a violation or a stipulation that disregards the *Sharī'ah*, such as a sales contract that includes a usury clause. In principle, the agreement is lawful but the inclusion of the usury stipulation impairs it.

This example illustrates a fundamental difference between the approaches of the *mutakallimūn* and the *fuqahā'*. A contract of sale stipulating usury is flatly rejected as invalid by the *mutakallimūn*, Ghazālī included. The Ḥanafites on the other hand contend that what is invalid here is the stipulation of usury. But the rest of the contract may be valid.

These distinctions are technicalities, as Ghazālī notes. However, they help one to properly understand the application of these terms in the legal writings of both schools.

In sum, Ghazālī's legal doctrine establishes that the *Sharī'ah* rules (a) originate from Allah and are manifested through revelation in the *Sharī'ah* address; (b) adhere to the acts of the loci of obligation as Allah detailed their conditions; (c) are classified into five categories with reference to the bidding of the *Sharī'ah* "to do" or "not to do"; and (d) are divisible into subcategories according to their prescribed time, requirements of performance, and validity.

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[1]Abū Ḥāmid al-Ghazālī, *al-Mustasfā*, 2 vols. (Bulāq, Egypt: Amīriyya Press, 1322-24/1905-7, 1:7.

[2]For the linguistic meaning of *ḥukm* see Jamāl al-Dīn b. Muḥammad Manẓūr, *Lisān al-'Arab*, 15 vols. (Beirut: Dār Ṣādir, n.d.), 12:140-145; Ibrāhīm Muṣṭafa et al., *al-Mu'jam al-Wasīṭ*, 2 vols. (Tehrān: Maktabat al-'Ilmiyya, n.d.), 1:189-190; and Edward Lane, *An Arabic-English Lexicon*, 8 parts (Beirut: Libraire du Liban, 1980), 2:616-18.

[3]Ghazālī, *al-Mustasfā*, 1:129.

[4]Ghazālī, *al-Mustasfā*, 1:55.

[5]Ghazālī, *al-Mustasfā*, 1:7.

[6]Qur'ān, 5:4.

[7]Qur'ān, 4:23.

[8]Ghazālī, *al-Mustasfā*, 1:86.

[9]Ghazālī, *al-Mustasfā*, 1:83.

[10]Ghazālī, *al-Mustasfā*, 1:83.

[11]This is inconsistent with the popular Mu'tazilite notion that acts are either 'good' or 'bad.' For more information on the various views and positions, see Zudhī Jār Allāh, *al-Mu'tazila*, 2nd ed. (Beirut: Al-Ahliyya Publications, 1974), pp. 51-156.

[12]Ghazālī, *al-Mustasfā*, 1:83.
[13]Ghazālī, *al-Mustasfā*, 1:84.
[14]Ghazālī, *al-Mustasfā*, 1:83.
[15]Ghazālī, *al-Mustasfā*, 1:84.
[16]Ghazālī, *al-Mustasfā*, 1:84.
[17]Ghazālī, *al-Mustasfā*, 1:85.
[18]Qur'ān, 4:43.
[19]Ghazālī, *al-Mustasfā*, 1:85.
[20]Ghazālī, *al-Mustasfā*, 1:84.
[21]Ghazālī, *al-Mustasfā*, 1:84.
[22]Ghazālī, *al-Mustasfā*, 1:85.
[23]Ghazālī, *al-Mustasfā*, 1:90.
[24]Ghazālī, *al-Mustasfā*, 1:88.
[25]Ash'arī here twists an interpretation of the verse, *"And Allāh has created you and that which you do."* Qur'ān, 37:96.
[26]Qur'ān, 2:286.
[27]Qur'ān, 17:50.
[28]Ghazālī, *al-Mustasfā*, 1:86-87.
[29]Ghazālī, *al-Mustasfā*, 1:88.
[30]Ghazālī, *al-Mustasfā*, 1:89.
[31]Ghazālī, *al-Mustasfā*, 1:89.
[32]Qur'ān, 2:286.
[33]Qur'ān, 22:36.
[34]Among of the linguistic meanings of *wājib* are necessary, requisite, binding, obligatory. Lane, *An Arabic-English Lexicon*, 8:2921-2923.
[35]Ghazālī, *al-Mustasfā*, 1:28.
[36]Ghazālī, *al-Mustasfā*, 1:66.
[37]Ghazālī, *al-Mustasfā*, 1:28, 1:66.
[38]Ghazālī, *al-Mustasfā*, 1:55, 1:66.
[39]Ghazālī, *al-Mustasfā*, 1:28.
[40]Ghazālī, *al-Mustasfā*, 1:66.
[41]Ghazālī calls *'mukhayyar,' 'mubham.' al-Mustasfā*, 1:67.
[42]Qur'ān, 5:92.
[43]Ghazālī, *al-Mustasfā*, 1:67.
[44]Ghazālī, *al-Mustasfā*, 1:68.
[45]Ghazālī, *al-Mustasfā*, 1:69-70.
[46]A person is discharged from punishment for being heedless, forgetful, or sleeping through the time.
[47]*". . . And caste not yourselves by your own hands into destruction . . ."* Qur'ān, 2:195.
[48]Ghazālī, *al-Mustasfā*, 1:70.
[49]Abū Ishāq al-Shātibī, *al-Muwāfiqāt*, 4 vols. ed. 'Abd Allāh Dirāz (Beirut: Dār al-Ma'rifa, n.d.), 3:148.
[50]Ghazālī, *al-Mustasfā*, 1:77.
[51]Ghazālī, *al-Mustasfā*, 1:73-74.
[52]Ghazālī, *al-Mustasfā*, 1:81.
[53]Ghazālī, *al-Mustasfā*, 1:92.
[54]The Ḥanafites have a reasonable answer to this, which can be summarized as follows: The disbelievers' answer is figurative indicating that the original cause for punishment is that they did not accept Islam in the first place, therefore they did not pray and did not perform the *Sharīah* details. Yet Ghazālī does not like this answer. See the full debate in *al-Mustaṣdā, 1:93.*
[55]*Ghazālī, al-Mustasfā*, 1:93.
[56]Ghazālī, *al-Mustasfā*, 1:94.
[57]Ghazālī, *al-Mustasfā*, 1:95.