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Norms and Values in Islamic Legal Reasoning: The Case of Listening to Music (*Samāʿ*)

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Abstract: This essay examines the ways in which pre-modern Muslim jurists adapted their legal methods to accommodate the complexity of the act of listening to music. I classify those methods from the least to the most inclusive of underlying notions of moral value. This study shows that models on opposite ends of the spectrum function in similar ways. Whether, as in Ibn Ḥazm's work, the scope of legal norms is confined to the immediate textual meaning, or, as in Ibn Taymiyya's thought, the formulation of norms corresponds to an underlying moral aim, the result is a broad treatment of all phenomena that relate to music (*samāʿ*). By contrast, Ghazālī's discussion of *samāʿ* is guided by the need to attain conviction of the appropriate course of action rather than the pursuit of an objective truth about the legal-moral status of the act of listening to music, resulting in a subtle case-by-case evaluation, rather than an overarching judgment. While this study does not attempt to give a comprehensive historical account of how and why scholars of Islamic law attempted to restrict or permit certain musical experiences, we can ultimately see how the *sharʿa*, a legal system that is fundamentally concerned with moral behavior, purported to advance reasonable models for the assessment and regulation of complex social phenomena.

Keywords: law and morality; norms and values; law / fact distinction; music; *maṣlaḥa*; *ʿilla*



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1. Introduction

This article studies five pre-modern Muslim treatments of the legal and moral implications of the act of listening to music (*samāʿ*). The article focuses on the manner in which the jurists in question adapted their legal methods and concepts to accommodate the moral and spiritual complexity of the phenomenon of music and the act of experiencing it. Our study will focus on the writings of the Andalusian Zāhirī Ibn Ḥazm (d. 1064), the Ḥanbalī Taqī al-Dīn Ibn Taymiyya (d. 1328) and his disciple Ibn Qayyim al-Jawziyya (d. 1350), the Shāfiʿī-Ashʿarī Abū Ḥāmid al-Ghazālī (d. 1111) and his less renowned brother Aḥmad al-Ghazālī, also known as Majd al-Dīn (d. 1126).¹ Our analysis will focus on the dynamics of the norms and values underlying each jurist's reasoning. I argue that those dynamics determine the capacity of each model of legal reasoning to capture and deal with the factual and spiritual complexity of the act of listening to music. Each legal model, in turn, affects the choice and use of central notions such as benefit and harm, and the identification of the legally relevant attributes of music. The study of those theoretical and methodological positions will help us understand each jurist's definition of the physical act of listening to music and their assumptions on the nature, faculties, and aims of the human soul. We will then discuss the effects of those legal designs on the approach of each jurist to specific legal sources, particularly the Sunna of the Prophet.

A note on scope and terminology is warranted at the outset. The legal opinions studied in this paper represent examples of the efforts to assess the experience of listening to music, reflecting different sets of jurisprudential similarities and contrasts. Those examples are, however, too limited in number, and in some instances, too unrepresentative of mainstream *madhhab* opinions to help us reconstruct the debates on listening to music and *samāʿ* among the law schools in a broad sense. The common subject matter among the legal-moral

analyses examined in this article is a phenomenon referred to as *samāʿ*. While I will mostly render *samāʿ* as “listening to music” in this essay, we must be aware of the lack of the exact identity between the two concepts. The modern connotation of this term fails to capture the specificity and diversity of the notion of *samāʿ* (Nettl 2014). As modern observers, we are inclined to think in terms of the universal category of music that encompasses a board range of types of rhythmic and melodic sound-making intended for an audience (Al Faruqi 1985, pp. 6–7; Shehadi 1995, p. 7). This is also largely true of the modern Arabic use of the term *mūsīqā* and its variations in spoken dialects. As a result, we may inaccurately assume that Muslim jurists who dealt with *samāʿ* were all concerned with the same general subject which we would feel tempted to define as the lawfulness of listening to music. However, while it is possible to justify our broad use of the originally Greek term “music” by the relative detachment of the modern experience of listening to artistic sound formations from particular social settings because of the increase in the media of sound propagation, this was clearly not the case in the medieval Muslim world (Nettl 2014).

Unlike the modern use of the term “music”, the reference by pre-modern Muslim jurists to *samāʿ*, *ghināʾ*, *malāhī*, or other concepts that we are disposed to describe as musical, is most centrally directed to a specific type of listening experience that involves a definite range of instruments and attached to a certain set of social practices. As a result, those terms, or other similar expressions, compared to the notion of music, exclude a wide range of possible genres of sound formation, and include a wider set of social and ideological connotations (Baig 2008, pp. 5–8). *Samāʿ*, moreover, poses an additional difficulty due to its usual association with Sufism (Ibn Taymiyya, p. 6). In many instances, it may appear that the legal debate surrounding listening to music is really a battle for or against Sufism or specific Sufi practices. However, it would be inaccurate to completely define the debate in those terms. As we will discuss below, many jurists acknowledge the existence of non-Sufi musical practices.

To overcome this terminological difficulty, Lois al-Faruqi suggested the use of “artistic engineering of sound” to refer to the concepts treated by Muslim scholars that we may understand to be related to music (Al Faruqi 1985, p. 7). This expression is broad enough to cover the diversity of the notions at hand for the purpose of classification according to genre and majority moral assessment. However, for the purposes of exploring the theoretical parameters of those legal opinions, it is important to not only understand that these expressions are not identical to “music”, but to consider the possibility that every jurist had a unique understanding of *samāʿ*. Therefore, it is more helpful for our purposes to use the closest literal equivalent of *samāʿ* (listening to music), while keeping in mind the set of different connotations that different scholars attached to this term.

The way legal designs succeed or fail in reasonably assessing complicated social realities is part of a larger set of socio-legal questions that this study does not directly address. For example, the extent to which a system of law-making is heavy-handedly moralistic or strictly literalist is often a reflection of a particular legalistic attitude towards social morality and practices, such as in our case the seemingly ordinary act of listening to music. How jurists perceive the law’s mission in facilitating and curtailing such ordinary behaviors is a broader socio-legal issue that we only begin to allude to in this study. Yet another broad question concerns historical trends in encouraging or discouraging musical behavior in Islamic moral and legal thought, and how such trends may correspond to particular social or spiritual developments in Islamic history. While we can see here that, for example, Ghazālī’s more evolved model of assessment of music’s morality was closely tied with his Sufi project, studying such historical trends would require an altogether different study.

2. The Dynamics of Norms and Values and the Complexity of *Samāʿ*

In this section, we will discuss the extent to which each jurist’s legal model was designed to capture and regulate the complexities of the act of listening to music. I will classify those models from the least to the most inclusive of underlying notions of moral

value. This results in a spectrum of legal models, ranging from those relying entirely on a moral dichotomy of good and evil, to those that follow strictly from the literal meaning of legal sources. Those differences in theoretical design, it must be noted, are related to the method of juristic deduction of norms from revelation, as opposed to the theological understanding of the nature and origin of the revealed law. In other words, our inquiry into the interplay of norms and values in the writings at hand is an attempt to comprehend the assumptions of those jurists concerning the ways in which the law becomes manifest to human awareness, and not an effort to explain their positions on the way the law comes to exist in the first place (on this distinction, see (Weiss 1990, pp. 53–71)). My aim from this classification is to argue that, with respect to the ability to respond to the factual and spiritual complexities of the act of listening to music, models on the extreme ends of the spectrum function in similar ways. Whether, as in Ibn Ḥazm, the scope of legal-moral norms is strictly confined to the immediate textual meaning, or as in Ibn Taymiyya's *Risāla*, the formulation of norms corresponds fully to the underlying values, the result is a broad treatment of all phenomena that relate to *samāʿ* without addressing the subtlety and diversity of those phenomena. This result can consist of a wholesale neutrality or reprehensibility of listening to music, according to each jurist's jurisprudential assumptions. These two extremes reflect similar legalistic attitudes towards the law's role, whether they advocate a wholesale moralistic dismissal or a general indifference of the law towards the act of experiencing music.

At the moralistic end of the spectrum, it is easier to argue that a broad norm, such as prohibition, is imposed on a certain broadly defined practice, or set of practices. Ibn Taymiyya's methods illustrate this tendency. The reliance upon revealed texts as a sole source of legal guidance and the assumption that textual norms achieve a defined moral aim makes it difficult to convincingly argue that phenomena that are not directly addressed by revelation are in line with its underlying values. What follows is a wholesale rejection of all *samāʿ*-related phenomena. In Ibn Taymiyya's analysis, the assumption of the comprehensiveness and perfection of divine revelation indicates that actions not directly addressed by it should be considered prohibited since they do not conform to the singular model of moral values underlying the revealed law. By contrast to extreme models that are either explicitly literalist or inherently value-centric, Ghazālī adopts a nuanced approach to *samāʿ*.² He neither relies upon a notion of a fundamental moral value, nor limits his reasoning to the immediate and objective textual meaning. Ghazālī's discussion of *samāʿ* is guided by the need to attain conviction by the inquiring jurist of the appropriate course of action rather than the pursuit of an objective normative truth. Ghazālī's understanding of legal reasoning (*ijtihād*) as an effort to harmonize, on the one hand, the epistemologically oriented process of legal deduction, and, on the other hand, the factual phenomena as analyzed by the jurist, opens the door for a dynamic and detailed analysis and assessment of *samāʿ*.

Ibn Ḥazm is our example of a jurist who entirely and explicitly rejects the reliance upon any notion of legal purpose or values in his treatment of *samāʿ*. In *Risāla fī al-ghināʾ al-mulhī a mubāḥ huwa am mahẓūr* (An Epistle on Disorienting Singing [and] Whether it is Permissible or Prohibited), Ibn Ḥazm regards the law as a set of objective norms that regulate the course of human actions in this world and their effects in the next. The law, defined as a singular objective truth, can only be known through the clear and immediate meaning of a statement acquired through revelation,³ which is understood as a teaching (*ikhbār*) from God.⁴ In order for this *ikhbār* to effectively take place, it has to consist of a comprehensible and authentic text that leaves no room for doubt (*bi l-naṣṣ illadhī lā shakka fīhi*) (Ibn Ḥazm 1980, p. 439). Ibn Ḥazm's argument of textual certainty is, for him, substantiated by textual evidence. He justifies his restriction of the presence and extent of legal norms to literal textual meaning by citing verse 119 of *Sūrat al-Anʿām* (6:119) of the Quran: "He has explained to you that which He has forbidden unto you" (Ibn Ḥazm 1980, p. 435). This requirement is the only source and guide in the process of determining the law; no values or purpose transcends or defines the process of legal reasoning.

Beyond the narrowly defined scope of legal norms, human existence and behavior should, by default, proceed in an unimpeded and legally neutral manner. This default range of human actions to which no legal-moral consequence is attached is devoid of norms altogether. Since the text of the law does not regulate the physical act of listening to music beyond any doubt, this act is, by default, legally neutral. This conclusion is in line with Ibn Ḥazm's assertion in his work on legal theory *Al-ihkām fī uṣūl al-aḥkām* that all things before revelation are "neither forbidden nor allowed"⁵ (Ibn Ḥazm 1968, p. 59). In the absence of an immediately comprehensible and authentic revealed text, humans are incapable of attributing norms to actions since "reason may not allow or prohibit things but can only discern existents as they are and understand speech" (Ibn Ḥazm 1968, p. 61). To successfully lead to legal compliance without reliance upon the limited human rational faculty, the revealed texts must be immediately comprehensible.

With respect to prophetic traditions, Ibn Ḥazm's concept of textual certainty encompasses both the attribution of the text to the Prophet and the meaning of its letter. As a result, the slightest doubt surrounding the authenticity or the meaning of a *ḥadīth* is sufficient to deny that it establishes any norm whatsoever. On those grounds, Ibn Ḥazm cites and rejects twelve *ḥadīths* that are commonly used by the opponents of *samāʿ* to argue for the prohibition or reprehensibility of audition (Ibn Ḥazm 1980, pp. 430–34). He dismisses eleven of them on the basis that certain transmitters are unknown (Ibn Ḥazm 1980, pp. 434–35). Concerning the remaining *ḥadīth*, he denies that it indicates prohibition by establishing the doubtfulness of its literal meaning, which we will discuss below in the context of the notion of *ʿilla*. In short, Ibn Ḥazm's search for objective literal certainty led him to classify the broad question of listening to music as a legally neutral matter by default.

Ibn Taymiyya, by contrast to Ibn Ḥazm, starts his reasoning from a fundamental belief in the moral aim of legal norms. Although, like Ibn Ḥazm, he is searching for an objective and unique legal truth,⁶ Ibn Taymiyya explores this reality within the moral foundations of the legal system rather than just the immediate meaning of the text. Ibn Taymiyya's discussion of listening to music in his *Risāla fī l-samāʿ wa al-raqs* (A Letter on Listening and Dancing) is based upon a dualistic moral model that assumes the presence of a unique righteous path opposed to an erroneous one. This opposition manifests itself in a strict dual classification of human actions into the "path of the people of failure (*khusāra*), and the path of the people of success (*ḥalāl*)" (Ibn Taymiyya 1993, p. 29). The Prophet's message and the legal norms derived from it are defined by and serve to guide the believers toward the second path and away from the first. Those who wish to find the righteous path and achieve *ḥalāl* must "hold tight to the Quran and the Sunna", as opposed to surrender to the temptations of "deviation and corruption (*ḍalāl wa mafṣada*)", which include music (Ibn Taymiyya 1993, pp. 36–37). The moral purpose of legal norms is symbolized by the righteous path, the attainment of which is only possible by following the guidance of revelation.⁷ This sharp moral duality and the central role of the revealed text in tracing its boundaries are further explained by Ibn Taymiyya in his discussion of *samāʿ* in *al-Istiqāma* (Uprightness). In the context of his critique of Abū al-Qāsim al-Qushayrī's claim that every type of listening is commendable, Ibn Taymiyya argues,

We can only commend the state (*ḥāl*) of each category of people (*qawm*) to the extent that it has been commended by God and his Prophet by virtue of the Quran and the Sunna and reprimand the state of each category of people to the extent that it has been reprimanded by God and his Prophet by virtue of the Quran and the Sunna (Ibn Taymiyya 1983, p. 221).

Ibn Taymiyya assumes that every command is designed to help the believers achieve what is beneficial and every prohibition is designed to help them avoid what is harmful. This assumption justifies his attribution of moral values to the mental and spiritual effects of diverse acts of audition by measuring them against the purpose or rationale of the legal system. Hence, listening to the Quran is clearly desirable because it allows believers to "redress their hearts and purify their souls" (Ibn Taymiyya 1993, p. 14). Types of listening

that do not help achieve this benefit or any other, which, according to Ibn Taymiyya, include listening to music, cannot possibly be deemed to comply with the fundamental aims of the law.

In line with the moral underpinnings of his analysis, Ibn Taymiyya grants a central role to the notion of agency as a decisive factor in determining what constitutes an action and, therefore, what can be subject to legal assessment. He holds that “any command or prohibition regarding the five senses can only relate to what involves the person’s will and action (*qaṣd wa ‘amal*). On the other hand, what happens beyond a person’s control cannot involve command or prohibition” (Ibn Taymiyya 1993, p. 28). Simple occurrences that do not involve a conscious decision to listen to certain sounds and to react to what one is listening to cannot constitute assessable actions and are altogether beyond the reach of legal analysis. Intention (*qaṣd*) in this context is a product of a free will that has a clear choice between a difficult and narrow righteous path and a multitude of erroneous ones. Irmeli Perho points out that “Ibn Taymiyya’s own view on man’s free will approached that of the Mu‘tazilites” in upholding the notion of a sovereign free will and rejecting the Ash‘arī theory of acquisition (*kasb*), according to which humans can only “will” to commit actions metaphorically, whereas their agency is acquired from, and fully subject to, God’s will (Perho 2001, p. 62). This legal method fits into a particularly strict view of human behavior. Life is essentially a challenging moral test, and only strict and deliberate abstention from anything not sanctioned by the moral law provides a chance of success.

In his treatment of listening to music, Ibn Taymiyya’s disciple Ibn Qayyim al-Jawziyya remains faithful to many of his teacher’s jurisprudential assumptions, although his analysis is more centered on the Sufi type of *samā‘*. Ibn Taymiyya’s notion of a single righteous path is conspicuously present in Ibn al-Qayyim’s *Kashf al-ghīṭā’ ‘an ḥukm samā’ al-ghinā’* (Uncovering the Assessment of Listening to Singing). He maintains that the moral standard symbolized by a path is not only unique, but also very difficult to uphold. While finding and following this path constitutes the supreme goal (*al-maṭlab al-a‘lā*), whoever decides to pursue this goal is bound to be “lonely, like a traveler who is not diverted by the splendor of fruit and coolness of shade” (Al-Jawziyya 1991, p. 49). An individual who lacks the necessary determination will “find the path of righteousness too difficult and the path of deviation appealing” (Al-Jawziyya 1991, p. 50). For Ibn al-Qayyim, listening to music as opposed to the Quran, for example, amounts to choosing the latter path over the former. It is equivalent to following one’s “taste, ecstasy and mood, rather than God and his Prophet” (Al-Jawziyya 1991, p. 48). While compliance with the norms of the *sharī‘a* is a difficult task, straying from it is both tempting and viciously circular: in addition to deserving divine punishment, deviation decreases one’s ability to return to righteous values and, therefore, results in more disobedience and punishment. This cycle could continue indefinitely (Al-Jawziyya 1991, p. 58). Like his teacher, Ibn al-Qayyim’s legal analysis rests on a view of human life as essentially a series of hardships, which must be dealt with through a very strict moral code.

For both jurists, every human action can be attributed to a moral value based on its potential to satisfy the aims of the law’s norms. Since the only acceptable way to satisfy those aims is to follow the guidance of God and his Prophet, matters that have not been clearly sanctioned by the Quran or the Sunna, such as listening to music, cannot be deemed to fulfill those aims and, therefore, are subject to a wholesale prohibition. As we will discuss in the following sections, Ibn al-Qayyim, unlike his teacher, partially nuanced this conclusion by focusing on Sufi listening and maintaining the admissibility of *samā‘* under certain conditions.

Majd al-Dīn’s reasoning in *Bawāriq al-ilmā’ fī l-radd ‘alā man yuḥarrim al-samā’* (The Scintillating Sparkles in Response to Those who Prohibit Listening to Music) is particularly instructive given that he adopts a legal-moral pattern that is comparable to Ibn Taymiyya and Ibn al-Qayyim’s, yet embraces a different notion of truth and thus reaches diametrically opposed conclusions (Robson 1938).⁸ Majd al-Dīn’s analysis illustrates the difficulty of consistently arguing for the permissibility of an action that is not elaborately addressed by

textual sources once legal norms have been assumed to serve a unique fundamental value. For Majd al-Dīn, the purpose of legal norms is to serve the supreme value of acquisition of divine wisdom (‘Abd al-‘Azīz 2000, p. 53; Robson 1938, p. 137). A legal design based on a specified value, as previously seen in Ibn Taymiyya and Ibn al-Qayyim’s opinions, favors the wholesale rejection of listening to music since the revealed sources do not positively establish its compatibility with their underlying moral aims. To overcome this challenge, Majd al-Dīn resorts to a double tactic. On the one hand, he claims that a narrowly defined type of *samā‘* performed by a select group of Sufis is inherently compatible with the values of the law. This specific practice is a medium of acquisition of wisdom and, as such, is in a sense above legal scrutiny. On the other hand, to establish the permissibility of *samā‘* in general, he adopts a very expansive interpretation of several *ḥadīths* in which the Prophet had allegedly allowed singing and playing the tambourine (‘Abd al-‘Azīz 2000, p. 48; Robson 1938, p. 132).

This dual tactic supports Majd al-Dīn’s adoption of multiple hierarchically classified norms, whereby *samā‘* is “permissible for the masses, commendable for the desirers, and imperative for the followers (*awliyā*) of God” (‘Abd al-‘Azīz 2000, p. 66). The top of this hierarchy involves the practices of a narrow elite justified by cosmological concepts and values, while the bottom includes a popular practice sanctioned by specific textual sources. The scope of the permissibility of listening by the masses (*al-‘awāmm*), as opposed to Sufis, encompasses “listening to poetry, the tambourine, and to singing” (‘Abd al-‘Azīz 2000, pp. 54, 65; Robson 1938, pp. 134, 151). Those three elements are broad enough to include numerous types of listening to music beyond Sufi audition. Majd al-Dīn adopts an expansive and radical norm, rightly leading him to be considered a “defensive” and “unqualifiedly enthusiastic proponent of *samā‘*” (Lawrence and Ernst 2002, p. 44). Since listening to music is analogous to “listening to the words of the Truth [i.e., God]”, Majd al-Dīn maintains that a person becomes “an unbeliever if he is convinced of its prohibition, and a sinner if he refrains from it” (‘Abd al-‘Azīz 2000, p. 55; Robson 1938, p. 132).

Although he strongly argues for the permissibility of *samā‘*, Majd al-Dīn’s methodology betrays similarities with Ibn Taymiyya and Ibn al-Qayyim, who held the opposite doctrinal view, particularly with respect to the diametrical opposition between following the Prophet’s example and going astray. Rather than challenge the “narrow path” paradigm, Majd al-Dīn merely advances a different view of how to navigate such a path. Majd al-Dīn’s notion of wisdom functions as a guiding principle in his legal system in a way very similar to the idea of *ḥikmah* or benefit in Ibn Taymiyya’s theories. However, Ibn Taymiyya’s reliance on a notion of benefit as a foundation of his legal reasoning directly conflicts with and justifies his attack on the Sufi characterization of *samā‘* as a path to the profound truths of existence. In fact, Ibn Taymiyya maintains that those justifying *samā‘* based on its mystical attributes “do not resort to knowledge of text but, rather, refer to subjective experiences (*al-adhwāq*), and spiritual and ecstatic states (*al-ḥāl wa l-mawājīd*)” (Ibn Taymiyya 1993, p. 39). From Ibn Taymiyya’s standpoint, the conceptual difficulty with resorting to similar notions to justify listening to music is that such arguments do not coincide with “God’s intent from religion”, which he equates with the value of benefit. Thus, replacing God’s will with one’s own judgment amounts to a return to the state of lawlessness: “they renounced certain earthly pleasures (*shahawāt*) only to pursue some other pleasures” (Ibn Taymiyya 1993, p. 39).

Ibn al-Qayyim extends his teacher’s criticism of the assertion that Sufi audition is beyond legal scrutiny. He takes the command in *Sūrat al-Nisā* (4:60) “if you differ in anything refer it to Allah and His Messenger” to indicate that every matter that may raise disagreement between the believers including “the teachings of Islam and truths of the faith [...] the actions of the hands [as well as] the actions of the hearts, their tastes and ecstasies”, is subject to assessment (Al-Jawziyya 1991, p. 52). He takes Ibn Taymiyya’s claim of the futility of using one’s own observation as sources of norm-making a step further. According to Ibn al-Qayyim, a person who attempts to rely upon his own spiritual experience and, consequently, does not “obey God and His Prophet” will inevitably “see

his heart further diverted from the right path as a result of its initially diverting from it" (Al-Jawziyya 1991, p. 54). Sinful acts constitute simple disobedience, whereas conscious following of one's ignorance is multifarious disobedience. According to this pattern, the mere act of listening to music for the sake of distraction is a simple sin, while Sufi audition is a complex deviance: "The major disaster [related to listening] is its attribution to the Prophet's path and norms [...] and an even greater catastrophe is the belief that it is a way to become closer to God" (Al-Jawziyya 1991, p. 58). Ibn al-Qayyim denounces those who "take their subjective inclinations for gods" (Al-Jawziyya 1991, p. 49). The contrast between knowledge (*ilm*) and subjective inclination (*hawā*) is central in both Ibn al-Qayyim and Ibn Taymiyya's analyses. *Ilm* is a reflection of God's supreme will, whereas *hawā* is a product of human whims. Following one's whims is equivalent to being "detained in one's own prison" (Al-Jawziyya 1991, p. 49). The frequent error of favoring one's own inclinations is a result of the arrogance that life in this world generates. However, after death, "the veil will be removed and the dust will be cleared" (Al-Jawziyya 1991, p. 50).

We have seen so far that, despite the profoundly different conclusions of the jurists discussed above, the pursuit of objective value-based truths concerning *samā'* resulted in their adoption of broad norms that lump together various practices that may involve significant differences in their nature and effect. By contrast, Abū Ḥāmid al-Ghazālī provides in his masterwork *Iḥyā' ulūm al-dīn* (The Revival of Religious Sciences) a legal treatment of *samā'* that captures much of the complexity of this phenomenon and accounts for the possibility of many types and combinations of sound-production and emotional responses to music. Although Ghazālī's legal model, like Ibn Ḥazm's, rejects the idea of a single underlying moral value, he does not rely upon the singular and objective literal meaning of the text.

The key notion that explains Ghazālī's model is his definition of text (*naṣṣ*) and inference (*qiyās*) at the outset of his analysis of *samā'* in epistemological terms. His division of legal sources into text and inference corresponds to a distinction within the human consciousness, as opposed to an objective hierarchy of sources. Broadly speaking, *naṣṣ* refers to knowledge arrived at by immediate sense perception, while *qiyās* pertains to knowledge constructed through a process that involves the rational faculty. He defines text (*naṣṣ*) as "whatever the Prophet made explicit (*aẓharahu*) by speech or action", and defines inference (*qiyās*) as "the meaning understood from the Prophet's speech or action" (Al-Ghazālī 1967, p. 345). Thus, a norm will be considered textual when it can be known with certainty through a sense experience of the Prophet's words and actions or authentic reports thereof and will be deemed inferential when it is ascertained by processing those sense experiences through one's cognitive faculty.

The aim of Ghazālī's discussion is not to arrive at a singular legal outcome that "resides" within the text, but to reach the highest possible level of conviction of the propriety of his norms on *samā'* within the limits of human reasoning⁹ (Lowry 2007, p. 24). This design sets the stage for a very important role of *qiyās*. This notion is neither understood as a systematic legal mechanism used to achieve an extension of the text where "there is no directly relevant revealed text", nor an evaluation based on the underlying value of the law¹⁰ (Lowry 2007, p. 32). It is an inevitable method of elaboration of legal norms as a result of the lack of direct access to the pure source of legal knowledge and, in the specific case of *samā'*, the impossibility of finding a convincing answer in prior opinions, and, therefore, the futility of *taqlīd* (Al-Ghazālī 1967, p. 345). Ghazālī's definition of the legal sources explains the absence in his argument of the sharp distinction between the objective textual and the subjective rational realms that we find in Ibn Ḥazm's treatment of *samā'*.

Rather than a set of objective realities that affect the otherwise legally neutral human behavior, Ghazālī views the juristic formulation of norms as a human attempt to benefit from the not fully graspable gift of revelation. As a result, a legal-moral assessment is a dynamic phenomenon that can potentially affect the smallest or broadest of factual details, depending on the question asked and the outcome of reasoning (*ijtihād*), which he defines as "the search for the foundations of prohibition and permissibility" (Al-Ghazālī 1967, p. 345).

Thus, while the law *potentially* regulates every detail of human behavior, there are *actual* norms only when an identity can convincingly be shown to exist between the normatively decisive elements of legal-moral rules and complex social phenomena as analyzed through a legal lens. We will delve into the details of the idea of normatively operative elements in the next section. This assessment of human behavior extends to internal and external experiences, passions and actions alike. For instance, as we will see below in detail, the representation of a forbidden image to the soul is, although an internal action, prohibited, since it may induce someone to commit a forbidden outward act (Al-Ghazālī 1967, p. 346).

Ghazālī, unlike Ibn Ḥazm and Ibn Taymiyya, does not limit his legal analysis to intentional, as opposed to fortuitous, occurrences. In fact, this distinction appears blurred because of Ghazālī's rejection of the notion of human agency as a supreme and free faculty with unrestricted power over the rest of the soul's faculties and the body. This is an illustration of the Ash'arī theory of acquisition according to which "God creates the action, but also, at the same moment, creates in man the acquisition of that action" (Perho 2001, p. 61). This position permits Ghazālī to include in his analysis of listening to music primarily accidental happenings such as hearing animals and birds, as will be shown in the following sections. Although he adopts a notion of permissibility by default in the absence of a different norm, Ghazālī refuses to limit his legal analysis to the observation that the legal sources do not present a conclusive norm with respect to *samā'* (Al-Ghazālī 1967, p. 345). Rather, he submits the various components of this phenomenon to an elaborate process of *qiyās*, as previously defined. The resulting analysis involves a detailed discussion of the physical and spiritual attributes and effects of the act of listening to music, the interpretation of the relevant legal sources, and the establishment of connections between the realms of social practice and norm-making. Rather than ascribing a blanket norm to the complex act of listening to music in its entirety, Ghazālī divides it into its basic elements and arrives at a multitude of norms using multiple inferences. We will examine this process in more detail in the next section.

3. Moral Values and the Formulation of the Legally Operative Attribute (*'illa*)

In the previous section, we discussed the different positions that jurists held with respect to the moral underpinnings of the process of norm formulation, and their impact on the breadth of the norms they adopted regarding listening to music. In this section, we will consider more closely the impact of those methodological designs on their understanding and application of certain forms of legal analysis, particularly with respect to the notion of the defining attribute (*'illa*). Ibn Ḥazm, in line with his overall jurisprudence, advanced a concept of defining attributes that was firmly anchored in the literal meaning of the text (El-Tobgui 2003, p. 333). His treatment of the only *ḥadīth* that he considered authentic in this context illustrates the way in which his prioritization of the normative effect of legal texts can serve as an effective tool that limits the boundaries of norms to the immediate sense of the text.

In this *ḥadīth*, the Prophet had reportedly construed the prohibition in the sixth verse of *Sūrat Luqmān* (31:6) "some people spend their time and substance in acquiring idle diversions to lead people astray from the path of Allah" as pertaining to listening to music. Ibn Ḥazm, without contesting the authenticity of this *ḥadīth*, maintains that "to lead people astray from the path of Allah without knowledge" constitutes a normative condition rather than a descriptive statement. The verse provides that the believers ought not to lead people astray from God's path by acquiring idle diversions, rather than simply state that the believers who commit such action will inevitably lead people astray from God's path. Deviating from God's path is the sole textual definition of the prohibited action (i.e., "acquiring idle diversions") and, as such, is a necessary and sufficient condition of the prohibition. Every action committed *with the intent* to deviate from God's path is a prohibited idle diversion, whereas every idle diversion is not necessarily a prohibited deviation from God's path. Ibn Ḥazm concludes that, "whatever is acquired in order to deviate from God's path is a sin and prohibited, even if it was the purchase of a copy of or

learning to read the Quran" (Ibn Ḥazm 1980, p. 435). To hold that this *ḥadīth* establishes a general prohibition of the physical act of listening to music *as such* is an erroneous interpretation that violates the letter of both the *ḥadīth* at hand and the related Quranic verse.

Ibn Ḥazm's treatment of this *ḥadīth* corresponds to his position explained in the previous section. The prevention of the deviation from God's path does not constitute an overarching moral principle that transcends and determines the aims of the legal system, neither is it an inherent attribute (*illa*) of the studied phenomenon that matches it with the textual injunction and triggers the application of the legal norm. In fact, Ibn Ḥazm's rejection of the reliance upon rationally determined attributes of actions to derive norms by inference (*qiyās*) is one of the most prominent aspects of his jurisprudence to which he dedicated a major portion of his *Iḥkām* (El-Tobgui 2003). He accepts *illa* only when it is provided by the immediate meaning of the text and treats it as an objective truth. In this specific case, the commission of an action to lead people astray from God's path is not a reference to the actual effect of the action, but to the mere intention of its perpetrator. Every action committed *with the intent* to deviate from God's path is a prohibited diversion. Intent in this context is treated as an objective fact that is closely attached to the action and determines its norm. Thus, Ibn Ḥazm maintains that music can be assessed based on the listener's intentions (Ibn Ḥazm 1980, p. 438). The act of listening to music (including the intent behind it) should be considered permissible if the listener did not intend (*nawā*) to deviate from the obedience (*ṭā'a*) of God (Ibn Ḥazm 1980, p. 439).

Unlike Ibn Ḥazm, Ibn Taymiyya and Ibn al-Qayyim employ a concept of *illa* that stems from the predominant effect and, therefore, moral value of the actions at hand. Ibn Taymiyya's assessment of listening to music, as previously shown, revolves around the need to find and follow the unique righteous path. Being effectively led to that path is a benefit (*maṣlaḥa*) that corresponds to the purpose of the law. Accordingly, for Ibn Taymiyya, every legal concept must be based on the attainment of *maṣlaḥa*. If a jurist attempts to assess an action without measuring it against the model of "those who fear God and are close to Him", his legal arguments will "constitute nothing but absurd sophistry" (Ibn Taymiyya 1993, p. 29). This is a continuation of the narrow duality we have previously discussed, wherein moral life follows the narrow example of actions positively sanctioned by the divine law.

Ibn Taymiyya strictly defines the type of *maṣlaḥa* that underlies legal norms. It must be either perfect (*khālīṣa*) or probable (*rājiḥa*) (Ibn Taymiyya 1993, p. 46). If an act includes both benefit and harm but harm is more probable, it is altogether prohibited. Furthermore, he assumes a lack of benefit in the absence of textual prescription: "if listening contained a *maṣlaḥa* it would have been commanded by God and his Prophet, for God says: 'Today I have completed your religion for you.'" (Ibn Taymiyya 1993, p. 38). This set of assumptions provides a basis for a mechanism that allows the deduction of legal norms in the absence of a clear text by assessing the potential effects of the action at hand (Ibn Taymiyya 1993, p. 47).

Ibn Taymiyya adopts a broad prohibition of listening to music because "it does not, *in itself*, provide the knowledge and states that God and his Prophet wish [...] and has not been commanded by God, his Prophet, the predecessors of the *umma* and the prominent scholars" (Ibn Taymiyya 1993, p. 47). A notion of *maṣlaḥa* that corresponds to the values underlying the law justifies the deduction of norms by inference. In that case, however, inference means the comparison of actions according to their moral effects, rather than their legally relevant attributes (*illa*). Ibn Taymiyya maintains that listening "is for the soul, what wine is for the body" (Ibn Taymiyya 1993, p. 49). This analogy is not based on an understanding of intoxication as a specific physiological effect, but as a reprehensible state of unconsciousness. This effect of music prevents conscious and active obedience to God and, therefore, leads the soul astray from the righteous path by "discouraging from the remembrance of God or, more specifically, prayer, even more than wine does" (Ibn Taymiyya 1993, p. 37).

Ibn al-Qayyim shares Ibn Taymiyya's assumptions concerning the moral values underlying legal norms and the rationale of the prohibition of *samā'*: "we must see whether this [type of] *samā'* contains a benefit or harm. If the benefit surpasses the harm, it is not prohibited, if the harm surpasses the benefit, it is prohibited" (Al-Jawziyya 1991, p. 92). The comprehensiveness of all divinely ordained norms and the uniqueness of the Prophet's path mean that what is permissible must be prescribed by God or the Prophet (Al-Jawziyya 1991, p. 60). This, for Ibn al-Qayyim, reduces all conceivable pro-listening arguments to two possibilities: either listening to music has explicitly been sanctioned by God and his Prophet, which he maintains is not the case, or it is permissible without being prescribed by God or his Prophet, which leads to the absurd conclusion that the law is incomplete (Al-Jawziyya 1991, p. 60).

This dualistic moral model is reflected in the context of his analysis of the Quran's prohibition of "acquiring idle diversions". Unlike Ibn Ḥazm, Ibn al-Qayyim does not maintain that diverting from God's path is the actual practice that is subject to prohibition. Rather, he views it as an attribute of "idle diversions" that reflects their inherent reprehensibility and justifies their prohibition. Accordingly, whenever listening to music constitutes an idle diversion, as opposed to an active, conscious effort to adhere to the Prophet's model, it will necessarily lead to *mafsada* in the form of distraction from (*i'rād*) God's path (Al-Jawziyya 1991, p. 62). Furthermore, this diversion could result from the absent-mindedness that music causes, which is like the intoxicating effect of wine (Al-Jawziyya 1991, p. 93).

For Majd al-Dīn, by contrast, legal purpose is tied to the supreme ideal of acquisition of spiritual wisdom. To justify his assertion that Sufi audition is in harmony with the rationale of the law and, therefore, obligatory for God's *awliya'*, Majd al-Dīn resorts to a particular use of the notion of license (*rukḥṣa*). He argues that, if a lighter form of an obligation has been explicitly permitted, this permission has to be accepted and acted upon, based on the *ḥadīth*: "whoever does not accept God's license will bear sins equal in size to mount 'Arafah" (ʿAbd al-ʿAzīz 2000, p. 52). "God's license" in this *ḥadīth* is understood to mean a particular exception to commit an act that is otherwise prohibited or omit an act that is otherwise mandatory, which Majd al-Dīn clarifies by drawing an analogy with shortening the prayer during travel, since otherwise performing the full prayer is mandatory (ʿAbd al-ʿAzīz 2000, p. 52). Sufi audition is a "necessary deficiency after perfection" (ʿAbd al-ʿAzīz 2000, p. 52). The perfection here is a reference to "hearing", in the sense of reception of wisdom from God (ʿAbd al-ʿAzīz 2000, p. 53). While this direct acquisition or "hearing" of the divine wisdom is a supreme and ideal goal of human existence, and, therefore, mandatory, Majd al-Dīn concedes that such acquisition requires a set of skills that very few humans possess. Therefore, for the sake of fulfillment of this obligation, Majd al-Dīn maintains that believers have a *rukḥṣa* to enjoy Sufi listening instead, which is an easier and less perfect form of hearing that fulfills the obligation in the same way performing a shorter form of prayer fulfills the general obligation to pray. For those unable to acquire wisdom from God, yet able to appreciate Sufi listening, this type of listening is obligatory.

ʿ*Illa*, in Ghazālī's analysis, is understood not as the rationale of the norm, but as an attribute of the factual matter that indicates the application of the norm to it.¹¹ It serves, in a sense as an intermediary realm that allows for the establishment of links between norms and facts. This notion of ʿ*illa* constitutes a legal instrument capable of generating quasi-textual solutions to a wide range of complex and unprecedented factual situations. I say quasi-textual because, as mentioned above, Ghazālī limits textual norms *stricto sensu* to those that can be immediately known from the text without resorting to any type of cogitation. The type of *qiyās* that Ghazālī applies, to which he gives a very broad definition, is not textual, in this strict sense of the term, but all its components are derived directly or indirectly from the text. In addition, the overall aim of this process of *qiyās* is, in theory, not a result of any specific speculative or philosophical worldview that transcends the content of the text. Therefore, Ghazālī's *qiyās*, which is centered on the notion of ʿ*illa*, represents a balance between the necessity to stay within the general boundaries of the text, and the need for a comprehensible and consistent legal reasoning.

To identify the legally relevant attributes of the act of listening to music, Ghazālī divides this act into several basic constituents, which consist of listening to rhythmic and pleasant tunes that can move the soul, often accompanied by comprehensible words. Ghazālī holds that listening to pleasant sounds, which is the first component of listening to music, is permissible based on a simple inference and his understanding of several textual sources. First, since it is permitted to see pleasant sights, such as nature or “a pretty face”, and smell pleasant scents, there is no reason why hearing pleasant sounds should be treated differently (Al-Ghazālī 1967, p. 345). The implicit ‘illa, or decisive attribute, in this analogy is the “pleasantness to the senses”. In addition, Ghazālī concludes from certain textual sources which implicitly praise pleasant sounds that the latter is permitted, such as the *ḥadīth* according to which “God does not send a messenger who does not have a pleasant voice” (Al-Ghazālī 1967, p. 346). Or, based on a verse vilifying unpleasant noise “Verily, the sound of a donkey is the ugliest of all sounds”, Ghazālī concludes *a contrario* that pleasant sounds are laudable. Thus, it is impossible to prohibit the physical act of listening to pleasant sounds by virtue (based on the ‘illa) of their being pleasant (Al-Ghazālī 1967, p. 345).

The same applies to the attribute of rhythm: the satisfaction we find in rhythm is common among singing, instrumental music, and the sounds of certain birds and animals. Thus, it would be absurd to prohibit rhythmic sounds based on the ‘illa of their pleasantness alone without prohibiting listening to the sounds of birds and animals (Al-Ghazālī 1967, p. 347). According to a similar analogy, the words of a song cannot be prohibited based on their comprehensibility alone, but can only be evaluated based on the admissibility of their content (Al-Ghazālī 1967, p. 348). With respect to music’s ability to move the soul, Ghazālī maintains that it is an inevitable natural occurrence, and, as such, has no specific prohibitive ‘illa. This attribute “moving of the soul” that is found in human listening is also common, for instance, to camels when they hear the *ḥidā’*, and to other animals upon hearing melodic sounds (Al-Ghazālī 1967, p. 351). Thus, it is impossible to prohibit listening to melodies based on their ability to stir the soul.

The validity of the treatment of each of these components separately for Ghazālī’s discussion of *samā’* is based upon the crucial assumption that “whenever a permissible [act] is joined to another permissible [act] the outcome may not be prohibited, *unless the sum includes [something] prohibited that the components do not contain*” (Al-Ghazālī 1967, p. 348). This statement may at first appear absurd, since, if the sum of many components contains “something” additional, it can no longer be properly considered as the mere sum of these components, and its prohibition would be the result of the prohibition of that additional “thing”. For example, if obscene or sacrilegious language is performed in the form of rhythmic and pleasant melodies, the resulting song could no longer be considered as the sum of individually permissible components. However, what Ghazālī means by “a prohibited [thing] that the components do not contain” is an additional attribute (‘illa) of the sum that may trigger a different norm, rather than a new concrete component. For instance, in the hypothetical and unlikely case in which a set of melodies, rhythms, and words that are each individually permitted would, when combined, lead to a state of intoxication identical to that which is caused by wine, this type of music would be prohibited as such due to the textually prohibited ‘illa of intoxication without the need to identify an individually prohibited component.

Ghazālī’s analysis, thus, is constituted of multiple inferences that justify the attachment of a single norm to each physical component of listening to music. The resulting argument supports the permissibility of the physical act of listening to comprehensible words arranged to melodic, rhythmical tunes capable of moving the soul *as such*. As we will see in the following sections, the broad range of possible social settings, psychological predispositions, and messages conveyed during the process of listening to music may result in the emergence of new ‘illas that would justify the prohibition of specific instances of listening to music.

4. The Factual and Conceptual Parameters of *Samāʿ*

In this section, we will study the effect of the divergent jurisprudential assumptions and methodologies of each jurist in their attempts to define the act of listening to music and its possible effects on the soul. We will see that the analysis and classification of this phenomenon depends in scope upon the moral assumptions and legal methodology of each jurist. Ibn Ḥazm, as we have seen, maintains the neutrality of the act of listening to music as such, and submits it to evaluation based on the general text-based norm-evaluating acts based on the intentions behind them. This explains his indifference to the concrete details of music and his focus on subjective intentions. While he neither posits nor denies the possibility that music might have an inherent power to move the soul in specific manners, the only effects that Ibn Ḥazm held could be submitted to moral evaluation are the ones that the listener intended (*nawā*). For that, Ibn Ḥazm relied upon the Prophet's frequently cited saying "actions truly depend upon intentions, and each person [obtain] what they intended" (Ibn Ḥazm 1980, p. 438). As the title of his work on *samāʿ* indicates, Ibn Ḥazm's investigation is confined to listening to what he called *al-ghināʾ al-mulhī* (entertaining singing) (Ibn Ḥazm 1980, p. 430). He explicitly describes the type of practice he proceeds to assesses as "distracting" to exclude types of musical experiences that have a mere utilitarian aim such as *ḥidāʾ* (chanting designed to incite camels).

The definition of the subject of his inquiry as *mulhī*, however, does not in itself entail a specific legal or moral value. This notion of *mulhī* singing corresponds to Ibn Ḥazm's opposition of acts of obedience (*ṭāʿa*) to acts of distraction (*lahw*) (Ibn Ḥazm 1980, pp. 438–39). This division does not serve as an immediate basis for a values assessment: actions falling under either category could be characterized as righteous (*ḥaqq*) or deviant (*ḍalāl*) based on the relevant intentions (*niyyāt*) (Ibn Ḥazm 1980, pp. 438–39). As a result of his stress upon intention as opposed to the physical act of listening to music, Ibn Ḥazm provides an equal assessment of the acts of singing and listening. He refers to instances of singing and listening all throughout his work as interchangeable for the purposes of legal assessment. Being the performer or the listener is irrelevant for the purposes of determining the values of the action, since this evaluation will ultimately depend on the intention of each individual.

Considering his opposition between righteousness and deviation, and of the assumption that both paths are choices available to the free will, Ibn Taymiyya primarily treats listening to music as one of many possible willful uses of one's sense of hearing. The idea that human actions are products of free will and that there is only one acceptable course of action with respect to every endeavor is central to Ibn Taymiyya's categorization of *samāʿ*. While he agrees with Majd al-Dīn's general assertion that *samāʿ* (understood as a sub-category of *samʿ*, or hearing) includes a wide range of conscious actions that should ultimately aim at the attainment of wisdom, Ibn Taymiyya holds a different notion of what constitutes "wisdom" as opposed to *lahw* (Ibn Taymiyya 1993, p. 18). For Ibn Taymiyya, the Quran is the only source of wisdom, the "best of all words, and the origin of faith in God" (Ibn Ḥazm 1980, p. 21). The obvious answer to the question of what constitutes a correct use of one's sense of hearing is one that is exclusively derived from the Quran. All other instances of willful attentive listening are "kinds of deviation" (Ibn Ḥazm 1980, p. 26).

Listening to music, for Ibn Taymiyya, does not belong to a detailed category of experiences that takes into consideration the melodic, rhythmic, or poetic aspects of music. As a result of his adoption of a notion of a unique righteous course of action, Ibn Taymiyya negatively defines the broad category of deviant uses of one's sense of hearing against the specific permissible types of listening. Instead of defining the prohibited types of listening with precision, he vaguely refers to them as actions habitually performed by groups of individuals who are not worthy of being emulated, such as Sufis and Neo-Platonists, or as types of listening that resemble certain explicitly prohibited practices, such clapping and whistling (*al-mukāʿ wa l-taṣḍiyya*) (Ibn Ḥazm 1980, p. 21). This notion, which represents the epitome of the deviant use of one's sense of hearing, is derived from verse 35 of *Sūrat al-Anfāl*, which describes the prayers of polytheists as "mere clapping and whistling".

The direction of the willful choice of listening to specific sounds and not others is strongly supported by a clear notion of moral values. Ibn Taymiyya relies upon a combination of Quranic verses that refer to notions of listening (*samāʿ*) and meditation (*tadabbur*) (such as *al-Aʿrāf*: 204, *al-Zumar*: 17–18, *Muḥammad*: 24, *Luqmān*: 7) to show that choosing to use one's sense of hearing correctly entails beneficial (*maṣlaḥa*) cognitive, spiritual, emotional, and often physical experiences: “this [desirable type of] listening has such devotional effects as sacred knowledge and purification of one's state that cannot be briefly described. In addition, it has positive effects over the body such as the piety of the heart, the tearfulness of the eyes and the trembling of the skin” (Ibn Ḥazm 1980, p. 20).

As previously shown, Ibn al-Qayyim agrees with the moral assumptions of Ibn Taymiyya yet attempts to actively assess the moral effects of different types of listening, rather than cast a broad prohibition over all activities that do not clearly correspond to the righteous path. Accordingly, Ibn al-Qayyim defines listening as a phenomenon with a specific ability to move the soul in a certain way, as opposed to Ibn Taymiyya's definition as a conscious decision to employ one's God-given sense of hearing. The human soul, according to Ibn al-Qayyim, needs to be in a constant state of sobriety and awareness. It is worth noting that the connection between sobriety and piety is comparable to the Stoic dismissal of the passions as “false judgments”, and the identification of virtue with knowledge, with the very substantial difference that “knowledge” in the Stoic sense stems from reason, whereas, in Ḥanbalī thought, revelation is the only admissible source of knowledge (Levi 1964, p. 11). Singing (*ghinā*), is a sound that excites “exhilaration and pleasure” (*al-ṭarab wa al-ladhdha*), while lamentation is a sound that induces melancholy (Al-Jawziyya 1991, p. 63). Those two opposing states of the soul are equally harmful since they can both lead a person to lose control and become unable to follow God's commands, and, therefore, are an evident source of *mafsada*: “if such a sound and its accessories affect the soul, which depends on the power of the sound and the weakness of the soul, Satan will then act upon it (*istafadhaha*) and reach his aim by inciting to disobey God” (Al-Jawziyya 1991, p. 63). The alternative righteous course of action is explicitly prescribed by God and his Prophet: patience in case of distress, and thankfulness in cases of blessedness (Al-Jawziyya 1991, p. 63).

In line with his attempt to establish the inherently beneficial character of Sufi listening, Majd al-Dīn views *samāʿ* as a sub-category of *samʿ* (literally hearing). The idea of “hearing” in Majd al-Dīn's thought is closely connected to the notion of acquisition of knowledge. Based on his understanding of verse 23 of *Sūrat al-Anfāl* “and if God knew that there was good in them, He would have made them hear”, Majd al-Dīn concluded that *samʿ* in *yusmiʿuh al-haqq* (make them hear the truth) is a notion that subsumes and exceeds *samāʿ*, or listening to music (ʿAbd al-ʿAzīz 2000, p. 47; Robson 1938, p. 127). This classification of *samāʿ* as a special form of acquisition of wisdom shows that Majd al-Dīn's definition of music is not primarily based on its physical qualities. Rather, for Majd al-Dīn, *samāʿ* is a state of readiness to identify and receive “the benefits, lights and ecstasies of music” (ʿAbd al-ʿAzīz 2000, p. 47; Robson 1938, p. 127). What distinguishes music (which he refers to as *mūsīqā*) from other categories of sounds is not its pleasantness, rhythm, or connection to the sense of hearing, but the “spiritual conditions” that it is capable of inciting (Robson 1938, p. 122).

Majd al-Dīn's approach to music is distinctly Sufi. Unlike Ghazālī who, although revealed a clear Sufi inclination in his writing, treats Sufi audition as one of many possible and beneficial kinds of listening to music, Majd al-Dīn's treatment of listening to music suggests that he viewed the Sufi *samāʿ* as the point of reference and the type of music worthy of passionate legal justification. As Javād Nūrbakhsh explains, the understanding of *samāʿ* as a type of divine communication from which only a chosen few can benefit is central to the Sufi notion of mystical audition (Nūrbakhsh 1986, pp. 126–27). Majd al-Dīn's definition of music as a sort of acquisition of knowledge reveals his understanding of wisdom as the unique and supreme objective of human actions and passions. That entails that the legal

effort to guide human behavior should be directed toward that goal: “the expression ‘make them hear’ is broader than the Quran, *ḥadīth*, poetry or otherwise” (Robson 1938, p. 122).

In line with his methodology centered on finding the legally relevant attributes of the factual matter (*illa*), Ghazālī minutely analyzes the concrete components of music and its effects on the soul. A major attribute of music that it inherently and inevitably produces is pleasure (*ladhdha*) (Al-Ghazālī 1967, p. 351). Ghazālī’s reliance on the notion of *ladhdha* to define the musical experience differs from the way other jurists treated the idea of *lahw*. While Ibn Ḥazm’s reference to distraction serves as a boundary to the factual phenomenon he studies without ruling out the possibility of existence of non-distracting types of music, Ibn Taymiyya and Ibn al-Qayyim used *lahw* as an indication of the moral value of listening to music, Ghazālī suggested that pleasure is an inherent attribute of any sound formation that qualifies as singing. Ghazālī, unlike Ibn Taymiyya and Ibn al-Qayyim, does not posit any moral implication to the distinction between serious (*jidd*) and distracting (*lahw*) activities. Although he acknowledges this as a valid dichotomy, Ghazālī assumes that, compared to the infinitely more important next life, everything in the present world is a form of *lahw* (Al-Ghazālī 1967, p. 362). This concept of *lahw* as a general condition that is devoid of specific moral significance includes every form of intellectual inquiry, regardless of its sophistication, given the limitations of human reason.

Another significant effect of music is its ability to “move the heart and stir its dominant passions” (Al-Ghazālī 1967, p. 351). This effect is an attribute of “rhythmic tones” (*al-naghāmāt al-mawzūna*) and their “correspondence to the soul” (Al-Ghazālī 1967, p. 351). It does not relate to the “understanding the meanings of verses” (*fahm ma‘ānī al-shī‘r*). This movement stirs the hearts and reveals their content: “hearts are storehouses for treasures and secrets and listening [to music] brings out what is inside the heart by shaking it” (Al-Ghazālī 1967, p. 342). Listening leads to a state of the heart called *wajd* (ecstasy). The way music acts upon the soul, or the heart, is not predictable. Listening merely reveals what already exists and is otherwise hidden within hearts and souls (Al-Ghazālī 1967, p. 343). Accordingly, it is the nature of each person, or the content of his or her heart, that ultimately defines the outcome of the listening experience: those “trained” to be stirred toward God at every sight or sound will inevitably benefit from listening to music, and the opposite is true. The “content of the heart” (*mā fī al-qalb*) is separate from free will or the intention behind the act of listening (Al-Ghazālī 1967, p. 351). In fact, the movement of the soul as a result of listening to melodies is an inevitable, determinable phenomenon that stems from every person’s moral character: “the effect of listening [to music] over the heart is observable, and whoever is not moved by listening [to music] is deficient, lacking in moderation and spirituality, excessively distorted and hardened in character, even in comparison to camels, birds or cattle, since all of them are moved by rhythmic melodies” (Al-Ghazālī 1967, p. 351).

We can see from this discussion that Ghazālī treats the soul as a neutral container that safeguards the products of one’s piety, actions, and desires. Passions are movements of the soul that lead it to long for certain objects, each according to their disposition and level of piety. Those passions include “disturbance, anxiety, delight, sadness, cheerfulness, longing and agitation” (Al-Ghazālī 1967, p. 351). Ideally, the object of any of those passions should be God. It is crucial not to confuse passion or movement of the soul with *ladhdha* or pleasure. While passion is directed towards a determinable, assessable object, pleasure or *ladhdha* is a sensation that results from the mere exposure to a specific sense experience. As a result, pleasure is inherently permissible, while the passions are subject to evaluation based on their objects, as we will see in detail in the following section.

5. “Let Them [Sing]!”: The Functioning and Outcome of the Legal System

The final verdict of each jurist concerning the lawfulness of listening to music is a product of their moral design, legal methodology, and definition of *samā‘*. A jurist’s position on how moral values affect legal norms does not predetermine the final opinion on listening to music. For instance, while Ibn Taymiyya and Majd al-Dīn adopted comparable legal

models in terms of the belief in an underlying value of the normative system, they reached diametrically opposed conclusions. On the technical level, this divergence in outcome is a result of the adoption by the jurists of different views on two matters: the injunction that applies by default in the absence of a textual norm, and the normative authority of the Prophet's Sunna. As will be shown here, a single instance of Prophetic sanctioning of listening signified the establishment of a general permissibility for Majd al-Dīn, an indication of reprehensibility by default for Ibn Taymiyya and Ibn al-Qayyim, a proof of the lack of explicit prohibition for Ibn Ḥazm, and evidence of the lack of prohibitive *illa* for Ghazālī.

Ibn Ḥazm's treatment of the Prophet's Sunna results from his prioritization of the normative values of the revealed texts. This position is expanded by Ibn Ḥazm in two directions: it applies in the case of a lack of a textual norm, and it is valid with respect to the Prophet's actions, and not only his utterances. The combination of those two principles indicates that the Prophet's abstention from preventing a certain behavior is immediately construed by Ibn Ḥazm as a proof of the lack of prohibition. Since every clear textual statement is assumed to carry a norm, every clear Prophetic abstention is deemed to signify the lack of a norm. Ibn Ḥazm cites a *ḥadīth* in which Ibn 'Umar is reported to have been in the company of the Prophet when the Prophet blocked his ears upon hearing a flute (*mizmār*). According to Ibn Ḥazm, this is a proof that listening is not prohibited, since the Prophet "was sent to prohibit the evil and command the good" (Ibn Ḥazm 1980, p. 437).

Ibn Taymiyya's treatment of the Prophetic traditions relating to listening to music illustrates his view of the Sunna as a reflection of the actions and utterances of an exemplary man. To him, rather than systematically crystallize in abstract legal norms, the Prophet's traditions directly indicate what it is like to be an excellent human being. Thus, Ibn Taymiyya's default prohibition of types of listening that are not expressly permitted by textual sources is coupled with a narrow interpretation of occasional cases of permission provided in the Prophet's Sunna. This is most evident in Ibn Taymiyya's treatment of the *ḥadīth* of the "two slave girls". From the Prophet's suggestion to Abū Bakr to "let them [sing], for every people have their own holiday, and this is the holiday of the people of Islam", Ibn Taymiyya concludes that this "was normally not among the habits of the Prophet and his companions" (Ibn Taymiyya 1993, p. 27). Therefore, he limits the scope of the Prophet's sanctioning of music in this instance to the context and individuals involved: "it was a holiday, and youngsters are allowed to play during holidays" (Ibn Taymiyya 1993, p. 27). Based on his understanding of the nature and function of the Prophet's Sunna, this particular *ḥadīth* cannot be rightly considered as an indication that the Prophet normally and habitually listened to singing: "there is nothing in the *ḥadīth* on the two slaves that indicates that the prophet listened [intently] (*istama'a*) to their singing" (Ibn Taymiyya 1993, p. 27). As a result, the only type of permissible *samā'* is one that corresponds to the perfect example of the Prophet and his followers: "listening to God's verses, and listening to the prophets, the believers and the people of science and knowledge" (Ibn Taymiyya 1993, p. 14). This norm, of course, is based upon a determined *maṣlaḥa*: listening is either "performed in a way that is consistent with the religious law" (*yuntafa' bihi fī al-dīn*), or is otherwise reprehensible in general (Ibn Taymiyya 1993, p. 13).

Once he lays out his theoretical arguments, it remains for Ibn Taymiyya to explain how such an obviously prohibited matter could have been widely practiced by self-proclaimed pious individuals. A blanket prohibition of listening to music, for Ibn Taymiyya, entails a wide-scale denunciation of every category of people who practiced or defended it. Thus, he explains that listening was only one of many instances of "hypocrisy and innovation" (*al-nifāq wa l-bida'*) adopted by "groups that affiliate themselves with religion in spite of their excessive ignorance of Islam" (Ibn Taymiyya 1993, p. 24). To prove that committing and defending sinful practices is not unprecedented in Sufi history, he lists among their other habitual deviations "claiming the ability to communicate directly with God" "and maintaining that those artificial habits are among the secrets of the elite (*al-khawāṣṣ*)" (Ibn Taymiyya 1993, pp. 25, 27). In addition, the fact that such "apostates" as al-Fārābī and

Ibn Sinā “had mastered a type of singing called music (*al-mūsīqā*)” is sufficient proof that listening is a repugnant innovation that does not belong to Islam (Ibn Taymiyya 1993, p. 32).

To illustrate the corruption of the Neo-Platonic philosophical, and, as a result, musical traditions, Ibn Taymiyya explains that Neo-Platonists are “polytheists who worshiped planets and statues like Aristotle and his followers among the Greeks” (Ibn Taymiyya 1993, p. 32). In addition, Ibn Taymiyya repudiated every group that had been known to practice or write on listening to music. That includes denouncing theologians (*ahl al-kalām*) as “innovators and deviants”, Ismāʿīlīs as atheists (*malāḥida*), and Ikhwān al-Ṣafā as “sycophants who do not belong to Islam” (Ibn Taymiyya 1993, pp. 34–35). Thus, Ibn Taymiyya provides a detailed list of examples of those who qualify as “people of failure” (*ahl al-khusāra*) as opposed to the people of success (*ahl al-falāḥ*): “those who follow the path prescribed path (*sharīʿa*) of the last Prophet” (Ibn Taymiyya 1993, p. 35).

We have previously seen that Ibn al-Qayyim’s prohibition of listening to music is based on its evident *mafsada* as opposed to its mere lack of *manfaʿa*. Accordingly, his discussion is closely centered on the possible effects of listening to music, which he considers to be “a matter that incites impiety” (Al-Jawziyya 1991, p. 66). His analysis does not concern every type of listening experience, only “this type of listening that characterizes sinners” (Al-Jawziyya 1991, p. 67). As a result of this nuanced approach, Ibn al-Qayyim does not consider the Prophet’s approbation of the two girls’ singing as a minor exception without legal relevance. Rather, he views it as creative of a permissibility of limited scope. He maintains that, in case the singing comes from two pre-pubescent girls (thus, does not arouse sexual desires), on a holiday (does not constitute a habitual deviation from the right path), and the words describe war and courage (and, therefore, do not encourage sin), listening would be permitted.

Along the same lines, Ibn al-Qayyim considers that the types of listening to music that have been performed by pious individuals and have established beneficial effects are permissible. He holds that those “followers of God” such as Yūsuf ibn Al-Ḥusayn al-Rāzi and Dhū l-Nūn al-Miṣrī used to “gather to mention (*yadhkurūn*) God and the Afterlife”, which aroused their passions and willingness to “walk, accompanied by a singer chanting poems related to the love of God and the afterlife” (Al-Jawziyya 1991, p. 75). We can conclude from this report that Ibn al-Qayyim’s partial prohibition of listening to music is not an attack on Sufism as such, but on a particular set of Sufi practices that he viewed as distracting from obedience, unnecessary, and sinful, and on the juristic efforts to justify those practices. This is reflected in the fact that he mentions several conditions that some of his pro-listening predecessors had imposed and urges his contemporaries to fulfill. These include “not to seek listening consciously, listening with a heart filled with God’s remembrance, avoiding following one’s whims, making sure the singing does not include any element that may cause corruption (*fitna*)” (Al-Jawziyya 1991, pp. 85–86).

Majd al-Dīn holds a seemingly asymmetric view of the normative authority of the Sunna. He maintains a general obligation to undertake all actions that the Prophet has positively performed but does not argue for an obligation to refrain from actions that the Prophet has positively refrained from. Majd al-Dīn’s attempt to prove the praiseworthiness of listening to music by the laity is based upon a strict and expansive normative role that he attributes to the actions of the Prophet. This position, he argues, is in line with the general principles of jurisprudence.

It is argued in *usūl al-fiqh* that the mere action of the Prophet indicates permissibility according to Mālik, laudability according to al-Shāfʿī, imperativeness according to Ibn Surayj, Abū Saʿīd al-Istakhrī, and Ibn Khayrān [...] and we say that the likely norms to be derived from the Prophet’s action is imperativeness or laudability (Robson 1938, p. 130).

On the other hand, he refuses to establish a general prohibition on the basis of instances of abstention by the Prophet on the premise that “it is not possible for the lawgiver to keep secret a matter that includes a legal norm” (Robson 1938, p. 134).

Thus, he deals with the *ḥadīth* in which the Prophet avoided listening to the sound of the flute and the one in which he allowed the two young girls to sing very differently.

While the first does not establish a prohibition, the second creates an all-encompassing permissibility of listening to music. With respect to *ḥadīth* of the “two slave girls”, it is noteworthy that both Majd al-Dīn and Ibn Taymiyya refer to it as a support for their argument for a broad obligation to follow the Prophet’s example. The difference in conclusions in spite of the similar theoretical assumption can be attributed to the divergence in their views with respect to what constitutes “the Prophet’s example”. It appears that Majd al-Dīn treats the Prophet’s life as a series of events with immediate normative consequence, while Ibn Taymiyya holds a much stricter view of what constitutes an action that belongs to “the Prophet’s example” and is, therefore, permissible. Majd al-Dīn’s treatment of this *ḥadīth* assumes that every action or utterance of the Prophet crystallizes in a general norm that can be applicable to the lives of the believers. Thus, the Prophet’s declaration to Abū Bakr “let them [sing]” is necessarily creative of a specific legal norm, which is permission. Denying this normative authority is a grave error: “Saying that [...] playing the tambourine (*duff*) and singing are prohibited amounts to claiming that the Prophet was present during and approved of the commission of sin. Whoever believes that is an unbeliever by consensus” (Robson 1938, p. 134).

The idea that the Prophet had to be explicit about all prohibitions serves as a justification of both the narrow interpretation of the Prophet’s abstentions and the broad interpretation of his actions. In the case of abstention, the reasoning is straightforward: since the Prophet did not command Ibn ‘Umar to stop listening, there can be no prohibition. Regarding the deduction of permissibility from the Prophet’s action, on the other hand, the requirement of explicitness serves to oppose any argument that aims to restrict the scope of permissibility. For instance, with respect to the possible assertion that the Prophet’s listening to music indicates the specificity of this action to him (*khuṣūṣiyya*) rather than its general permissibility, Majd al-Dīn responds, “If that was appropriate for the Prophet only and not for others, he would have explicitly mentioned this” (Robson 1938, p. 135). It must be noted that Majd al-Dīn acknowledges the *khuṣūṣiyya* of the actions of the Prophet that cannot be logically viewed as creative of general norms. This, however, does not relate to listening to music, to which he applies the principle that it is imperative to “follow the Prophet in everything he did” (‘Abd al-‘Azīz 2000, p. 49).

The possible objection that the Prophet’s reference to holidays indicates that listening to music is only acceptable in those days receives a rather vague treatment from Majd al-Dīn. He simply maintains that, according to Ibn Ḥanbal, “the specificity of the cause does not restrict the generality of the norm” (Robson 1938, p. 133). He justifies this principle by drawing two analogies. On the one hand, he refers to verse (2:5) of the Quran: “Verily those who disbelieve, it is the same to them whether you warn them or do not warn them; they will not believe”, which he maintains is a verse that applies to all unbelievers, although it explicitly only mentions Abū Jahl and Abū Lahab (‘Abd al-‘Azīz 2000, p. 79; Robson 1938, p. 133). On the other hand, he cites verse (17:23) of the Quran to show that a command directed to the Prophet is also a command to the *umma* in general (‘Abd al-‘Azīz 2000, p. 52). In both analogies, Majd al-Dīn appears to be treating the person addressed by the norm and the factual event that renders a particular norm applicable as two examples of what constitutes a cause.

Ghazālī’s final analysis of the different circumstances related to listening to music and their norms is primarily a result of an extension of his methodology that consists of multiple analogies without resorting to expansive interpretations of any single text. Although he quotes a number of traditions in which the Prophet did not object to singing or encouraged Aisha to watch the dancers, those texts serve as a substantiation of the legitimacy of particular types of listening, which Ghazālī had already established by *qiyas* (Al-Ghazālī 1967, p. 354). With respect to the instance in which the Prophet refrained from listening to the flute, Ghazālī holds that while it reinforces his argument that music has no inherent prohibitive attribute (because otherwise the Prophet would have prohibited his companions from listening), it shows that listening to music should only be done in moderation, like any permitted act (Al-Ghazālī 1967, p. 365).

To deal with the complex emotional effects of music, Ghazālī shifts his analysis to a different field that does not pertain to music as physical sound formations: the “content of the heart” (Al-Ghazālī 1967, p. 351). In his search for convincing legal norms, Ghazālī continues to try to fill the gaps caused by the absence of a certain text and authority and the complexity of the phenomenon at hand. Thus, he lists seven “habitual subject matters” of music: pilgrimage, the call for war, listening during combat, lamentation, cheerful occasions, romantic music, and listening that arouses the love of God (Al-Ghazālī 1967, p. 352).¹²

Ghazālī demonstrates the principle that the legal assessment of music should follow the assessment of the passion, which, in turn, follows the assessment of its object. That is the case because the first two parts of this process (namely, music and the movement of the heart/soul) do not have an inherent attribute that justifies a specific legal norm. Thus, the legally relevant attribute must pertain to the object of the music. Rhythm, rhyme, and tone are all instruments that help increase the intensity of the desire. Once they are directed towards a commendable object, the employment of all these tools becomes commendable and, therefore, permitted.

For example, listening to songs of pilgrimage (*ghināʾ al-ḥajjī*) leads to the “excitement of the desire to visit the House of God” (Al-Ghazālī 1967, p. 352). Since “pilgrimage is a form of obedience, and desiring it is laudable”, it follows that “exciting this desire by all possible methods is also laudable” (Al-Ghazālī 1967, p. 352). Similarly, cheerfulness that results from a legitimate happy event such as holidays, weddings, arrival from travel, family gatherings, among others, can be further excited through listening to music and watching dancing and other spectacles (Al-Ghazālī 1967, pp. 355–56). In addition, he maintains that listening to music that excites sexual desire is “permissible if the person being longed for is a legitimate partner” (Al-Ghazālī 1967, p. 356).

With respect to Sufi audition, while Ghazālī appears to consider it particularly desirable, he holds that this type of singing only pertains to a few trained souls. Ghazālī views the love and longing for God as “revelations and pleasures” that cannot be described by words” (Al-Ghazālī 1967, p. 356). Apart from Sufi audition, each of the passions that can be excited by listening is related to observation, representation of the observed objects within the soul, and the arousal or moderation of the passion by the rational faculty. This particular type of listening, however, brings the soul to new depths that it did not know existed: “[the listener] discovers in his soul new states that were never experienced prior to listening” (Al-Ghazālī 1967, p. 356). The state of ecstasy (*wajd*) that results from this type of listening is a result of the connection with the core of the soul’s existence (*wujūd*), and does not need to be fueled by any earthly passion that results from sense observation and desire. The novel and unexpected passions that this experience reveals to the soul are, therefore, in a category of their own: “they belong to challenging occurrences (*kurubāt*) rather than prohibition and permissibility (*al-maʿāṣi wal mubāḥāt*)”.

On the other hand, listening to music could be considered prohibited for different faults that may be found at any stage of the listening process. This could relate to the direct reprehensibility of the subject of the song, the inadequacy of its context, or the moral disposition of the listener. As an example of the illegitimate context, Ghazālī holds that “it should be prohibited to play the *shāhīn*¹³ in a military camp since its sound leads to melancholy and sensitivity and reduces the courage and resoluteness of the soul” (Al-Ghazālī 1967, p. 353). An example of prohibition that results from a reprehensible thought or representation within the listener’s mind includes the habit of certain listeners “to represent to themselves the image of a boy or a woman that they are not permitted to desire” (Al-Ghazālī 1967, p. 356). In that case, the prohibition stems from the internal representation, rather than the specific musical genre. While the performance of inherently sad music to soldiers is prohibited because of the likelihood to produce a prohibited effect, in the case of sexual love, it is doubtful that music can inherently raise the desire for a specific illegitimate partner (unless, of course, this person is physically present or performing, in which case listening would be prohibited due to the exposure to this person, and not because of the

sounds or images). When a listener directs his or her sexual desires toward the image of a potentially illegitimate partner, the prohibited act is the willful representation to the soul of this image because “it engenders the idea of committing prohibited actions” (Al-Ghazālī 1967, p. 356). This representation is prohibited based on its illegitimate object because it includes a “profound illness” which “does not concern listening [to music] as such” (Al-Ghazālī 1967, p. 356).

While being exposed to the spiritual experience that accompanies legitimate listening may be morally beneficial, the type of desire that listening unleashes, and, therefore, the assessment of the listening experience, depends on the moral character of each person. As we have seen, “most of the lovers and the brainless among the youth” allow themselves to represent unlawful images to their imagination when listening incites sexual desires (Al-Ghazālī 1967, p. 356). On the other hand, those who “love God, adore Him and long for Him” will always feel increased love and longing for God upon listening (or any other sense experience, for that matter) (Al-Ghazālī 1967, p. 356). Although Ghazālī maintains that the basic physical attributes of the act of listening to music cannot be prohibited as such, there is a wide range of possible circumstances that relate to the musical content, the social settings, or the moral predisposition of the listeners that may add a prohibitive *‘illa* to the listening experience and, therefore, render it prohibited.

6. Conclusions: Norms, Values, and Legal Change

A central concern of this article is to determine the characteristics of the legal-normative realm as opposed to, in relation to, and in its interaction with complex practices involving elaborate spiritual and ethical dimensions. This question may be founded upon a modern presupposition of a rigid dichotomy of law as an ideal as opposed to the complex and disorganized realm of social ethics, ethical thinking, and spirituality. This view expects the law to function as a logically and coherently articulated set of principles that contain, act upon, and transform the otherwise unorganized non-legal realm. It is important to note that our reading of pre-modern legal analyses in light of this modern supposition does not necessarily mean that a certain legal design’s ability to analyze and respond to the complexities of the world is a criterion that suffices to indicate its superior value. In other words, we should be careful not to “expect that the law must measure up against what *we* consider to be ‘our’ supreme model” (Hallaq 2009, p. 2).

Although Ghazālī’s elaborate quest for legal certainty best satisfies a modern legal analyst’s expectations of minuteness and comprehensiveness, other jurists have set and achieved different goals from their analyses. While Ghazālī’s major concern was to avoid a situation in which a believer should remain confused (*yabqā mutahayyiran*) or surrender to his or her whims (*tashahhī*) due to lack of knowledge, Ibn Taymiyya’s main motive was to prevent a deviation from the Sunna of the Prophet and the model of those worthy of being emulated (*al-ḥunafā*) (Al-Ghazālī 1967, p. 345; Ibn Taymiyya 1993, p. 35). Majd al-Dīn, by contrast, was mainly concerned with determining the actions that would help humans achieve their goal in attaining true wisdom. Ibn Ḥazm, on the other hand, was essentially motivated by the imperativeness of avoiding the unfortunate possibility of defending legal positions that have not been conclusively communicated to us by God through revelation.

In addition to the differences in objectives and central principles among the legal opinions at hand, those analyses differed in the manner and extent to which they adopted a notion of moral value. In Ibn Taymiyya’s evaluation of listening to music, norms and values are deeply entwined. Ibn Taymiyya’s search for what constitutes correct behavior is simultaneously an inquiry into the praiseworthiness and blameworthiness of the effects of actions. The idea of benefit (*maṣlaḥa*) appears in his analysis as a major point of reference against which actions can be evaluated and norms can be founded. Ibn Taymiyya’s notion of *maṣlaḥa* is not speculatively constructed without regard to textual principles. In fact, what constitutes benefit in his analysis is entirely determined in terms of conformity with the broadly defined model of the Prophet and his faithful companions. Abdul-Hakim al-Maṭrūdī explains that this complex role of *maṣlaḥa* in Ibn Taymiyya’s legal theory can be

summarized in the following basic principles: (1) *maṣlaḥa* is not in an independent source of law, (2) every valid *maṣlaḥa* can be found “within the general norms and principles of the *sharīʿa*”, and (3) any notion of *maṣlaḥa* arrived at by mere speculation is invalid for the purposes of legal analysis (Al-Maṭrūdī 2006, p. 80).

This textual notion of benefit and harm, thus, justifies his reference to what is good/beneficial and what is legitimate interchangeably: actions that belong to the Prophet’s Sunna are beneficial, and actions that have good or beneficial consequences are necessarily part of the Prophet’s Sunna. The claim that listening to music is not a product of correct textual understanding and the assumption that it cannot possibly have any beneficial effect are essentially entwined. Ibn Taymiyya’s distinctly value-oriented approach to listening to music is understandable considering his apparent mistrust of human actions, as they exist without revelation. Unlike Ibn Ḥazm, Ibn Taymiyya does not treat the revealed law as a set of norms that delineate the boundaries of the otherwise neutral human behavior. Rather, Ibn Taymiyya treats revelation as an event designed to actively transform human souls and actions and to guide them away from the multiple erroneous paths toward the single righteous one. Thus, a legitimate action is expected to actively contribute to this transformation by resulting in an increased compliance to the Prophet’s Sunna.

In Ghazālī’s legal opinion on *samāʿ*, norms and values are not as closely connected at every step of the analysis as they are in Ibn Taymiyya’s work. Nevertheless, it would be inaccurate to view Ghazālī’s analysis as a perfectly systematic model that is entirely devoid of notions of good, evil, benefit, or harm. For instance, Ghazālī presents his chapter on *samāʿ* in *Iḥyāʾ ʿulūm al-dīn* as a service to the believers who are seeking the comfort of knowing with sufficient certainty that their actions conform to the divine law. In addition, Ghazālī’s references to the benefits of listening to music, as opposed to the state of coldness that results from avoiding it, and to the possible harmful effects of soothing music on soldiers, appear more as moral evaluations based on first-hand experiences than strictly formalistic attempts to match the predominant attributes of facts with the relevant causes of norms¹⁴ (Opwis 2007, p. 67).

Although Ghazālī does not directly rely upon *maṣlaḥa* in the process of inference, he indirectly introduces *maṣlaḥa* in his legal reasoning through the notion of suitability (*munāsaba*) of the *ʿilla*. With respect to the determination of the relevant defining attribute (*ʿilla*) of any given norm, Ghazālī regarded the possible attainment of *maṣlaḥa* as an element that indicates the suitability of a specific *ʿilla*.¹⁵ Matroudi explains that Ibn Taymiyya viewed the notion of *maṣlaḥa* as it relates to the fulfillment of the *maqāsid* as “only a part of the scope of *maṣlaḥa*” (Al-Maṭrūdī 2006, p. 80). As we have seen, the Prophet’s Sunna served in Ibn Taymiyya’s thought as a central and self-sufficient standard that simultaneously indicated the correct legal norms and provided their moral and teleological foundations.

While our conclusions on the interactions of law and fact, on the one hand, and norms and values, on the other hand, cannot justify a broad claim concerning the usefulness of any legal methodology, our observations on the epistemological nature of the process of *ijtihād* and the roles of the notions of benefit and purpose can be related to an important aspect of the question of change and adaptability in Islamic law. As we have seen, the way each jurist establishes the relationship between norms and values determines his approach to the complexity of the possible affective and spiritual effects of music. The adoption of blanket norms that apply by default and serve an objective moral aim, as illustrated in our discussion of Ibn Taymiyya and Ibn al-Qayyim, allows for the extension of the law to broad ranges of factual situations. In those cases, the text of the revelation is considered to have already conclusively established the law according to clear moral guidelines. Accordingly, unprecedented questions, such as the moral effect of listening to instruments that were not present at the time of revelation, fall within moral categories deemed to have been pre-established by the law in its pristine form.

In Ghazālī’s analysis of the legality of listening to music, by contrast, norms engender a necessity to act to the extent that they are known to be true and certain by the believers. In other words, Ghazālī in that analysis of music does not make a direct claim to the

final truth of his legal opinions or their moral and teleological aims. In that sense, norms only potentially exist within the revealed texts. The juristic effort to formulate legal norms actualizes the law and the legal obligations that it engenders. As a result, new or unprecedented questions do not directly fall within any pre-defined categories. They are processed within the jurist's intellect and matched with his understanding of the legal texts, a process that results in the elaboration of legal norms. In this model, the facts are not acted upon, incorporated within, or managed by the law. Fact and law are not two essentially distinct categories. Rather, they represent two components of an epistemological process that eventually leads to legal knowledge, which constitutes the law. As such, the law does not need to be *changed* or *extended* to be able to accommodate novel situations, since the law has no distinct ontological presence in the first place (or at least no single human being has the authority to declare such presence). Ghazālī's approach, in that sense, provides a valuable model for the adaptability of the law in dealing with complex phenomena. That is not to say that this is true of Ghazālī's approach to law in general, including when dealing with clear or well-established cases, but that this is the approach he adopted when faced with the particularly complex question of listening to music. Legal reasoning, in that case, inherently incorporates the ability to specifically deal with complex factual situations without having to resort to any one pre-existing all-embracing category.

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Notes

- ¹ This range of texts represents various legal and theological schools, as well as Ṣūfī and non-Ṣūfī approaches. Some other premodern treatments of the legal-moral implications of listening to music include *Kashf al-qināʿ* ʿan ḥukm al-wajd wa-al-samāʿ. Aḥmad b. ʿUmar b. Ibrāhīm Abī al-ʿAbbās al-Anṣārī al-Qurṭubī, ʿAlī ʿAbd al-Bāsiṭ Mazīd., ed. Cairo, Maktabat al-Imān lil-Nashr wa-al-Tawzīʿ [2013]. *Nuzhat al-asmāʾ fī masʾalat al-samāʾ*. ʿAbd al-RAḤMĀN ibn Rajab al-Ḥanbalī, Zayn al-Dīn Abū al-Faraj, ed. Riad: Markaz al-Turāth lil-Barmajīyāt, 2013. *Risālah fī ḥukm al-samāʿ wa wujūb kitābat al-muṣḥaf bil-rasm al-ʿuthmānī*, ʿAlī ibn Muḥammad Nūrī al-Ṣafāqīsī, Muḥammad Jamāl al-Dīn. Maḥfūẓ, ed. Beirut: Dār al-Gharb al-Islāmī, Bayrūt, 1986.
- ² For a similar distinction, see [Opwis \(2007\)](#), p. 63.
- ³ Textual injunctions should “be taken according to their literal meanings (*al-akhḍhu bi Ṣāḥirihā*) and be deemed immediately binding”, see [Ibn Ḥazm \(1968\)](#), p. 330.
- ⁴ The concept of *ikhbār* is comparable to Shāfiʿī's idea of *bayān*, See [Lowry \(2007\)](#), p. 25).
- ⁵ On the “before revelation” question, see [Reinhart \(1995\)](#).
- ⁶ On uniqueness of the legal truth in Ibn Taymiyya's jurisprudence, see [Opwis \(2008\)](#), pp. 227–28).
- ⁷ For a similar claim, see [Michot \(2009\)](#).
- ⁸ Joseph Lumbard's *Aḥmad al-Ghazālī, Remembrance, and the Metaphysics of Love*, is very likely the most comprehensive monograph dedicated to Majd al-Dīn in modern, English-speaking scholarship. Importantly, Lumbard observes that, although the overshadowing of Majd al-Dīn by his older brother was a phenomenon to be observed as early as classical bibliographical texts, later on Ṣūfī biographies came to recognize him as the more elaborate theoretician of love and remembrance, by contrast to Abū Ḥāmid's emphasis on Sunnī juridical sciences. Lumbard further emphasizes the independence of Majd al-Dīn's status as a towering Ṣūfī, for example by dismissing a text relying on Abū Ḥāmid's negative views on “the passions” as potentially attributable to Majd al-Dīn. Lumbard's reading of biographical texts suggests, contrary to common assumptions, that Majd al-Dīn's contributions to Ṣūfī thought were a great influence in Abū Ḥāmid's life, not the reverse. See [Lumbard \(2016\)](#), pp. 15, 19, 30, 43–45).
- ⁹ On the uniqueness of revelation for Ghazālī, see [Reinhart \(1995\)](#), p. 72).
- ¹⁰ On Ghazālī's notion of “unattested purpose”, see [Opwis \(2010\)](#), p. 67).
- ¹¹ For this difference between *ʿilla* and *rationale*, see [Hallaq \(1997\)](#), p. 136) where he wrote: “The legal cause embodied in the *ratio legis* is nothing but a “sign” which signifies the legal rule but does not actually “effect” it”.

- 12 These seven cases represent an attempt by Ghazālī to capture as many factual cases as possible, and do not constitute a list of “purposes for which music may be used”, as Amnon Shiloah maintained (Shiloah 1995, p. 43).
- 13 For more on the shāhīn, see (Farmer 1931, p. 360).
- 14 On the complexity of Ghazālī’s concept of maṣlaḥa see Opwis (2007, pp. 65, 66).
- 15 For a detailed discussion of the relation of suitability to public interest, see Hallaq (1997, pp. 88–90).

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