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# UNFOLDING PARALLEL REASONING IN ISLAMIC JURISPRUDENCE

## *Initial Remarks to the Epistemic Features and Dialectical Meaning within*

### *Abū Ishāq al-Shīrāzī's System of Co-relational Inferences*

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**Abstract:** One of the epistemological results emerging from this initial study, is that the different forms of *co-relational inference*, known in the Islamic jurisprudence as *qiyās* represent an innovative and sophisticated form of reasoning that not only provide new epistemological insights of legal reasoning in general but they also furnish a fine-grained pattern for *parallel reasoning* that can be deployed in a wide range of problem-solving contexts and that does not seem to reduce to the standard forms of analogical argumentation studied in contemporary philosophy of science. More specifically the main claim is that a dialectical framework provides the right instrument to stress two of the most salient features of this form of inference: (1) its heuristic nature and (2) the dynamics underlying the meaning-explanation of the terms involved. Both display what we take to be the main epistemological idea behind the *qiyās*, namely: the open texture of the meaning of normative statements. To put it more generally, the notion of co-relational inference suggests that every form of reasoning by symmetry presupposes that the meaning of the terms involved is open to changes in relation to its scope.

## **Introduction:**

*Uṣūl al-fiqh* (أصول الفقه), that is, the science of Islamic jurisprudence, is deeply rooted on the notion of rational knowledge and understanding. Indeed, *fiqh* constitutes the body of knowledge and methods of reasoning that the Islamic jurists extract from the juridical understanding of the sources in order to provide solutions to legal problems. The point is that, according to *uṣūl al-fiqh* legal knowledge is achieved by rational endeavour, the intellectual effort of human being: this is what is meant when the term *ijtihād* (اجتهاد), endeavour of the intellect, is attached to *fiqh*. Let us quote the beautiful paragraph on *ijtihād* by Wael B. Hallaq in his landmark work *A History of Islamic Legal Theories* (1997).

*In his Mustasfā Ghazali depicts the science of legal theory in terms of a tree cultivated by man. The fruits of the tree represent the legal rules that constitute the purpose behind planting the tree; the stem and the branches are the textual materials that enable the tree to bear the fruits and to sustain them.*

*But in order for the tree to be cultivated, and to bring it to bear fruits, human agency must play a role. [...] We shall now turn to the “cultivator,” the human agent whose creative legal reasoning is directed toward producing the fruit, the legal norm. The jurist (faqīh) or jurisconsult (muftī) who is capable of practicing such legal reasoning is known as the mujtahid, he who exercises his utmost effort in extracting a rule from the subject matter of revelation while following the principles and procedures established in legal theory. The process of this reasoning is known as ijtihād the effort itself. Hallaq (1997, p. 117).*

One of the most remarkable features of the practice of *ijtihād* is that it presupposes that *fiqh* is dynamic in nature. Indeed, since the ultimate purpose of such kind of rational endeavour is to achieve decisions for new circumstances or cases not already established by the juridical sources, the diverse processes developed within Islamic jurisprudence presuppose that juridical meaning is subject to changes.

This dynamic feature animates Walter Edward Young's (2016) main thesis as developed in his book *The Dialectical Forge: Juridical Disputation and the Evolution of Islamic Law*. In fact the main claim underlying the work of Young – that originates in the work of Hallaq, his PHD-advisor – is that the dynamic nature of *fiqh* is put into action by means of a dialectical understanding and practice of legal reasoning. Young (2016, chapter 2.2) acknowledges and discusses his debt to the work of his mentor in many sections of his book. The following lines of Hallaq, quote'd by Young(2016) in the second chapter of his monography, are particularly interesting to our own research:

*In one sense, dialectic constituted the final stage in the process of legal reasoning, in which two conflicting opinions on a case of law were set against each other in the course of a disciplined session of argumentation with the purpose of establishing the truthfulness of one of them. The aim of this exercise, among other things, was to reduce disagreement (ikhtilāf) among legists by demonstrating that one opinion was more acceptable or more valid than another. Minimizing differences of opinion on a particular legal question was of the utmost importance, the implication being that truth is one, and for each case there exists only one true solution. Hallaq (1997, p. 136-137).*

Similar applies to the following remark of Hallaq also quoted by Young:

*The most common method of exposition—though exceptions are many—is that of the question-answer: ‘If someone says such and such, we reply with such and such.’ But this method is versatile, and an analysis of the logical structure of questions, and especially answers, shows that fo adopted for their use the entire gamut of arguments we nowadays subsume under logic and rhetoric. Hallaq (1997, p. 137).*

According to this perspective, the practice of *ijtihād* takes the form of an interrogative enquiry where the intertwining of giving and asking for reasons deploys the means to feature the notion of meaning that grounds legal rationality.<sup>1</sup>

Coming back to the specific aims of our study it is apparent, that the dialectical constitution of legal reasoning within *fiqh* is particularly crucial to those inferential processes known as *qiyās* (قياس), aptly translated by Young (2016) as *co-relational inference*.<sup>2</sup> The aim of co-relational inferences is to provide a rational ground for the application of a juridical ruling to a given case not yet considered by the original juridical sources. It proceeds by combining heuristic (and/or hermeneutic) moves with logical inferences. The simplest form follows the following pattern:

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<sup>1</sup> Cf. Hallaq (1987, 2009). Another early study that stressed this point is Larry Miller's (1984) PHD-thesis of 1984 on the development of dialectic in Islam.

<sup>2</sup>Cf. Young (2016, chapter 4.3).

In order to establish if a given juridical ruling applies or not to a given case, we look for a case we already know that falls under that ruling – the so-called source-case. Then we search for the property or set of properties upon which the application of the ruling is grounded. If that grounding properties are known we ponder if they can also be asserted of the new case under consideration. In the case of affirmative answer it is inferred that the new case also falls under the specific juridical ruling at stake and so the range of its application is extended.

Complications arrive when the rationale behind the grounding of a given juridical ruling are not explicitly known or even not known at all. In such a case other devices are put into action. The latter, as discussed in the next sections, yields a system of different types of *qiyās* that are hierarchically organized in relation to the epistemic strength achieved by their inferential procedures.

With regard to the kind of dynamics created by the practice of the *qiyās* it is fair to say that it constitutes a system of juridical reasoning that is in the middle of two other more radical (and not infrequently contested) forms of rational juridical change called, respectively, *the doctrine of rational juridical preference* or *istihsān*, that might produce the withdrawal of a conclusion achieved by a *qiyās*, and *the theory of public welfare* or *maṣlaḥa*, that can yield the production of a new juridical ruling. We will not deal with these forms *ijtihād* in the present study but, as the title suggest, we will propose a framework that allows making explicit some of the formal traits of the construction of meaning that result from the practice of co-relational inferences.

More precisely, the main claim of our paper is that the dialectical understanding of the *qiyās* also displays the logical and epistemic features of this form of inference if casted in a formal system for rational interaction able to express content-based reasoning. Furthermore, according to our view, the dialogical conception of Constructive Type Theory provides both a natural understanding and a fine-grained instrument for the analysis of.

- 1) The heuristic processes by the means of which the conclusion is inferred by relating it to a reason or occasional factor that allows to infer the legality of a case already acknowledged by the sources
- 2) The presupposition-status of the general rule on the basis of which the legal meaning of the source-case is grounded.
- 3) The need of an *epistemic assumption* on the basis of which the case under consideration is *taken* to be subsumed by the general rule presupposed by the source-case.
- 4) The move that yields an epistemic assumption as some strengthened form of *ra'y* (Arabic: رأي) or *pondered perspective*<sup>3</sup>.
- 5) The dynamics underlying the meaning-explanation of the notion of juridical ruling.
- 6) The notion of epistemic priority that introduces degrees of evidence and that structures the typology of the *qiyās*.
- 7) The dynamic deployment of *ijtihād* in order to achieve a rational decision concerning a new case not yet established by the sources acknowledged by *uṣūl al-fiqh*.

In other words, we claim is that a dialectical framework provides the right instrument to stress two of the hallmarks of this form of inference: (a) it's heuristic nature and (b) the dynamics

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<sup>3</sup> Young (2016, chapter 2.2) translated *ra'y* as *considered opinion*. Young's translation has the advantage that it links this notion with Aristotle's *endoxa* (ἐνδοξα). In our translation, we made the choice to link *ra'y* with it's linguistic root, namely the verb *seeing*.

underlying the meaning-explanation of the terms involved in inferential process. Both display what we take to be the main epistemological idea behind the *qiyās*, namely: the open texture of the meaning (or range of application) of normative statements.

Let us point out that, though our reconstruction is grounded on the textual sources as thoroughly worked out by scholars such as Hallaq (1987, 1997, 2009) and Young (2016) – in fact all of our textual references stem from Young's text. Moreover, we are not claiming that the formalization we develop here is a description of the actual disputation-form in which the *qiyās* is carried out. Our formal reconstruction provides, so we claim, a *dialectical meaning-explanation* of the notion of co-relational inference. However, we think that our work can be further developed into a system for actual juridical disputation, despite the fact that for the moment it takes the form of an instrument (a *language-game* or even of a conceptual genealogy) for the synchronic and diachronic study of the notion of *qiyās*. The former is the subject of work in progress on the logical structure of disputations known as *jadāl* (جدل) in the context of *uṣūl al-fiqh*.<sup>4</sup>

One of the main epistemological results emerging from this initial study is that the different forms of *qiyās* as developed in the context of *fiqh* represent an innovative approach that does not only provide new epistemological insights of legal reasoning in general but they also furnish a fine-grained pattern for *parallel reasoning*<sup>5</sup> that can be deployed in a wide range of problem-solving contexts where degrees of evidence and inferences by symmetry are relevant.

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<sup>4</sup> Worth mentioning is also the fact that, to the best of our knowledge there is no systematic study yet comparing the theory of juridical argumentation as developed within the Islamic tradition with the dialectical form of medieval disputations known as *Obligationes*. Such a study that will fill up some flagrant gaps in the history of the development of rational argumentation is certainly due.

<sup>5</sup> We borrowed the term *parallel reasoning* from Bartha (2010).

