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# Inferences by Parallel Reasoning in Islamic Jurisprudence

## Al-Shīrāzī's Insights into the Dialectical Constitution of Meaning and Knowledge

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Volume 19

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# Inferences by Parallel Reasoning in Islamic Jurisprudence

## Al-Shīrāzī's Insights into the Dialectical Constitution of Meaning and Knowledge

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ISSN 2214-9120 ISSN 2214-9139 (electronic)
Logic, Argumentation & Reasoning
ISBN 978-3-030-22381-6 ISBN 978-3-030-22382-3 (eBook)
https://doi.org/10.1007/978-3-030-22382-3

*For*
*Cheryl, Laura Milena and Djamal-Alexander*
*Shahid Rahman*

*For*
*My late father Muhammad Noor and my mother Nuriah*
*Muhammad Iqbal*

# Preface

In his PhD dissertation *The Economy of Certainty* that set a landmark in the field and was written in 1984 but only published in 2013, Aron Zysow (2013, p. 159) proposed to study *uṣūl al-fiqh* (أصول الفقه), or Islamic legal theory, under an epistemological perspective, or more precisely as the *Islamic counterpart to* [contemporary] *philosophy of science*, motivated by the observation that *fiqh* (the Islamic legal system as interpreted from the *Qur'ān* and the *Sunna* by the jurists) constituted one if not the predominant science in classical Islam. Indeed, an epistemological perspective on *uṣūl al-fiqh* brings to the fore the fact that Islamic jurisprudence is deeply rooted in the task of pursuing rational knowledge and understanding.

Actually, the epistemological perspective is at the centre of the present study, and we hope that the development of such a stance will help to elucidate some of the fundamental concepts underlying the schemes for legal reasoning within *uṣūl al-fiqh.* The key point is that *uṣūl al-fiqh* is shaped by the epistemological task of making apparent the meaning of the norms for human conduct embodied in *fiqh.*

On the other hand, we should not lose sight of the point that *uṣūl al-fiqh* constitutes the body of knowledge and methods of reasoning that Islamic jurists deploy in order to provide solutions to *practical legal problems* linked to the dynamics of legal systems. Clearly, working out solutions to practical legal problems commits one to the practice of legal reasoning.

Furthermore, the general principle underlying legal reasoning is that law is largely a matter of practice and that one of the most suitable instruments for legal practice is argumentation (*jadal*). More precisely, since the ultimate purpose of such a kind of rational endeavour is to achieve decisions for new circumstances or cases not already established by the juridical sources, the diverse processes conceived within Islamic jurisprudence were aimed at providing both epistemological and practical tools able to deal with the evolution of the practice of *fiqh*. This dynamic

feature animates Walter Edward Young's main thesis as developed in his book *The Dialectical Forge: Juridical Disputation and the Evolution of Islamic Law*.[1] In fact, the main claim underlying the work of Young is that the dynamic nature of *fiqh* is put into action by both the dialectical understanding and the dialectical practice of legal reasoning. These already set out the motivations for the development of a dialectical framework such as the one we are aiming at in the present study.[2]

The finest outcome of this approach to legal reasoning within *fiqh* is the notion of *qiyās* (قياس), known as *correlational inference*.[3] The aim of correlational 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 forms follow the following patterns:

- In order to establish if a given juridical ruling applies or not to a given case, called the *branch-case* (*al-farʿ* (الفرع)), we look for a case we already know that falls under that ruling – the so-called root-case *(al-aṣl* (الأصل)). Then we search for the property or set of properties upon which the application of the ruling to the source case is grounded (the *ratio legis* or *legal cause* for that juridical decision).

  If that grounding property (or set of them) is known, we ponder if it can also be asserted of the new case under consideration. In the case of an affirmative answer, it is inferred that the new case also falls under the juridical ruling at stake, and so the range of its application is expanded. When the legal cause is explicitly known (by the sources) or made explicit by specifying a relevant set of properties, the reasoning schema at work is called *qiyās al-ʿilla* or correlational inference by the *occasioning factor*. Let us recall the classical example: date liquor intoxicates, just as (grape) wine does, so it is prohibited like wine. The canonical analysis identifies four elements in such an argument: the branch-case or case under consideration, date liquor; the root-case or case verified by the sources, wine; the character they have in common, their power to intoxicate; and their common, legal qualification, prohibition (inferred in the case of date liquor, verified by the sources in the case of wine). The crucial step that underlies this form of argumentation is the identification of the

[1] Young (2017, pp. 21–32) acknowledges and discusses his debt to the work of Hallaq in many sections of the book.

[2] Also relevant are the following lines of Hallaq (1997, pp. 136–137), quoted by Young (2017, p. 25): *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.*

[3] Cf. Young (2017, p. 10). The term quite often has a broader meaning which encompasses legal reasoning in general. However, Young's choice for its translation renders a narrower sense that stems from al-Shīrāzī's approach.

occasioning factor, the *'illa*, that lies behind its prohibition. The point here is that applying the general schema that *drinks that have the power to induce intoxication should be forbidden* to the case of date liquor *occasions* its interdiction.

When the grounds behind a given juridical ruling neither are explicit nor can they be made explicit, the reasoning schema at work is either *qiyās al-dalāla*, or correlational inferences by indication, or *qiyās al-shabah*, or correlational inferences by resemblance. Whereas the former are based on pinpointing specific relevant parallelisms between rulings (*qiyās al-dalāla*), the latter are based on resemblances between properties (*qiyās al-shabah*). Thus, *qiyās al-dalāla* and *qiyās al-shabah*, sometimes broadly referred to as arguments by analogy (or better by the Latin denomination arguments *a pari*), are put into action when there is an absence of knowledge of the occasioning factor grounding the application of a given ruling. The plausibility of a conclusion attained by parallelism between rulings (*qiyās al-dalāla*) is considered to be of a higher epistemic degree than the conclusion obtained by resemblance of the branch-case and the source case in relation to some set of (relevant) properties (*qiyās al-shabah*). The conclusions obtained by either *qiyās al-dalāla* or *qiyās al-shabah* have a lower degree of epistemic plausibility than the conclusions inferred by the deployment of *qiyās al-'illa*, where the occasioning factor can be identified.[4]

More generally, one interesting way to look at the contribution of the inception of the juridical notion of *qiyās* is to compare it with the emergence of European Civil Law. Indeed, European Civil Law emerged as a system of general norms or rules that were thought to generalize the repertory of cases recorded mainly by Roman Law. The emergence of *qiyās* can be seen as the inception of an instrument to identify or grasp the general meaning behind the cases recorded by the sources and the tradition. The dynamics triggered by implementing such an instrument "forges" the laws that structure Islamic Law.

Our study, focused on Abū Isḥāq al-Shīrāzī's (393H/1003 CE-476H/1083 CE) classification of *qiyās* as discussed in his *Mulakhkhaṣ fī al-Jadal* (*Epitome on Dialectical Disputation*), *Maʿūna fī al-Jadal* (*Aid on Dialectical Disputation*) and *al-Lumaʿ fī Uṣūl al-Fiqh* (*Refulgence of Islamic Legal Theory*), develops an examination based on a dialogical approach to Per Martin-Löf's (1984) *Constructive Type Theory* (CTT). According to our view, such an approach provides both a natural

[4]One striking example of the implementation of such a method is Arsyad al-Banjari's (1957, 1983) development of a dialectical model for integrating traditional Indonesian uses into Islamic Law. See Iqbal/Rahman (2019) and Iqbal (2019).

understanding and a fine-grained instrument to stress three of the hallmarks of this form of reasoning:[5]

(a) The interaction of hermeneutic, heuristic and epistemological processes with logical steps
(b) The dialectical dynamics underlying the meaning-explanation of the terms involved[6]
(c) The unfolding of parallel reasoning as similarity in action

What the dialogical framework adds to the standard natural deduction presentation of CTT is that this approach not only provides insights into the dynamics of meaning underlying the notion of *qiyās* but also leads to a conception of logic where logical rules too are understood as emerging from dialectical interaction. In other words, the dialogical reconstruction of the different forms of correlational inference is not to be conceived as the concatenation of a dialogical structure + logical rules + semantics + knowledge + jurisprudence but rather as a unifying system where all those levels are constituted, or *forged* at once by argumentative interaction; they are *immanent* to a dialogue that makes reason and knowledge happen. For a discussion on *immanent reasoning*, see the chapter IV.

Let us have a first glimpse at how this framework works out in the context of the traditional objections to *qiyās* discussed in Soufi Youcef's introduction to the present work.[7] The main objections can perhaps be summarized as follows:[8]

1. Within *fiqh*, one very rarely finds attempts to deduce a general rule from the specific rule for each legal act. What we actually find in the legal writings more often than not are specific rules.
2. Finding out the general rules by abduction or induction is not only pretentious, but it also leads to uncertainty. How do we ever know that we identified the most appropriate or *relevant* properties? This casts doubt on even *qiyās al-'illa*, purported to provide the most certain conclusion attained by legal reasoning.

[5]Miller (1984) is one of the first to mention the dialogical framework of Lorenzen/Lorenz (1978) as a suitable approach for the study of Islamic argumentation. The dialogical approach to CTT is called *immanent reasoning* (see Rahman/McConaughey/Klev/Clerbout (2018)). In fact, there is an ongoing work on deploying the dialogical setting in order to reconstruct logical traditions in ancient philosophy (see Castelnérac/Marion (2009), Marion/Rückert (2015), Crubellier/McConaughey/Marion/Rahman (2019)).

[6]The term *meaning-explanation* is due to Martin-Löf and has a natural dialogical reading (see Rahman/McConaughey/Klev/Clerbout (2018, Chapters II and III)); it amounts to setting the meaning of an expression by rules that establish how to challenge and defend it. Moreover, these rules also include formation prescriptions, that is, rules that prescribe the type of an expression: Is it an independent type like the set of natural numbers? Or is it a dependent type like a propositional function which renders a proposition from elements picked out from a relevant set, e.g. $French(x) : prop\ (x : Human)$ that can be glossed as "the proposition that x is French can be asserted from suitable candidates of the set of Humans"?

[7]As we will discuss in our conclusion to the present book, some contemporary philosophers, such as John Woods (2015, pp. 273-280), raised similar objections to the use of analogy in legal reasoning.

[8]For a thorough discussion on these points, see Zysow (2013, pp. 160-191).

3. The uncertainty of the results of applying *qiyās* stems from the fact that understanding the general norm behind a specific juridical ruling requires the deployment of an interpretative process rather than of a dubious epistemological argument.
4. Interpretation requires revelation.

According to our reconstruction of al-Shīrāzī's system of *qiyās*, the point on how to grasp the general meaning behind a specific law does not commit one to discover laws (legal laws are not discovered). Neither induction nor abduction is at work here. The process involved consists in the ability to grasp that the specific rule instantiates a general one, by making apparent the meaning constitution behind that specific rule.

Roughly, the generalization behind, which is very close to what Woods (2015, p. 278)[9] calls *generalization schema*, can be seen as a process of *exemplification*,[10] whereby one instance is grasped as exemplifying the whole (pars pro toto) – just as a sample of a carpet exemplifies the whole carpet. So the generalization schema exemplified by the case of wine can be formulated as follows:

The consumption of drink $x$ is interdicted
Drink $x$ has the property of inducing intoxication

This supports the assertion:

- The capability of drink $x$ to induce intoxication leads to its interdiction.

More precisely, given some ruling $\mathcal{H}$ applied to some case $b$, i.e given the specific ruling $\mathcal{H}(b)$, when we delve into the *meaning-explanation*,[11] we might come to see that it is an instance of the following schema:

$\mathcal{H}(x)$ *true* $(x : \mathcal{P})$
"it is true that ruling $\mathcal{H}$ applies to $x$, provided $x$ instantiates property $\mathcal{P}$",

which adds to the precedent schema the point not only that the inferential schema at stake has the form of a hypothetical judgement but also that the interdiction is an interdiction *specific to objects* (in our example, drinks) *instantiating the property* $\mathcal{P}$ (of inducing intoxication). Clearly, the interdiction of consuming some drink is different from the interdiction of, say, stealing. The legal consequences of the correspondent transgressions are certainly different.

Moreover, the *'illa* is the application of the schema to a particular specific instance. Technically speaking, in our framework, the causative feature of the occasioning factor amounts to shaping it as an application of the function that instantiates the schema. This allows us to distinguish the property relevant for

[9] As we will discuss in the conclusion of the present book, Woods' (2015, pp. 273-280) take on reasoning by the precedence in Common Law is strikingly close to al-Shīrāzī's system of *qiyās al-'illa*. The same applies to Brewer's (1996) *Exemplary Reasoning: Semantics, Pragmatics, and the Rational Force of Legal Argument by Analogy*.

[10] Here, we are using Goodman's notion of exemplification – see Goodman (1976, Chapter II).

[11] See above our footnote on the notion of *meaning-explantion*.

some specific juridical sanction from the actual procedure of triggering that sanction for some particular case instantiating the property. It is the triggering procedure that provides the notion of occasioning factor with its causal force.

Intuitively, given the schema $\mathcal{H}(x)$ *true* $(x : \mathcal{P})$,
if $a$ instantiates $\mathcal{P}$,
then, there is a method (in the practice a juridical procedure), encoded by the function $b(x)$, that when applied to $a$ renders the specific ruling $\mathcal{H}(a)$.

So far so good, but how do we know that this is the meaning behind $\mathcal{H}(a)$? How do we know that the chosen property is the relevant or the appropriate one? To come back to our canonical example, how do we know for certain that the property of inducing intoxication leads to the interdiction of consuming wine?

It is here that al-Shīrāzī's method of efficiency *taʿthīr* comes into action. In a nutshell, according to our analysis, al-Shīrāzī's notion of occasioning factor includes the following three main components:

1. *Waṣf*, the property $\mathcal{P}$ relevant for a juridical sanction $\mathcal{H}$, such that the latter is defined as being specific to the set of cases defined by $\mathcal{P}$ (e.g. those interdictions $\mathcal{H}(x)$ that apply to consume those drinks that instantiate the set $\mathcal{P}$ of drinks inducing intoxication).
2. The efficiency feature or *taʿthīr* that provides the means to test whether the property $\mathcal{P}$ purported to be relevant for the juridical sanction at stake is indeed so. The test declines into two complementary procedures: testing co-extensiveness or *ṭard* (if the property is present then the sanction too) and co-exclusiveness or *ʿaks* (if the property is absent then so is the juridical sanction – the consumption of vinegar is in principle not forbidden). While co-extensiveness examines whether sanction $\mathcal{H}$ follows from the verification of the presence of the property $\mathcal{P}$, co-exclusiveness examines whether exemption from the sanction $\mathcal{H}$ follows from the verification of the absence of $\mathcal{P}$.
3. The causal feature, i.e. the legal method encoded by the function $b(x)$, that when applied to some instance $a$ of the relevan property $\mathcal{P}$ renders the ruling $\mathcal{H}(a)$ specific to that property. More precisely, when we focus on the causal feature of the occasioning factor, the function will be written as *ʿilla*$(x)$. The function *ʿilla*$(x)$ admits the substitution *ʿilla*$(a)$ for some case $a$ (that satisfies the *waṣf*), only after the efficiency of the property $\mathcal{P}$ has been verified by the test *taʿthīr*.

As pointed out by Zysow (2013, p. 215), the doctrine of efficiency represents an impressive attempt to answer the cardinal questions of those that opposed the deployment of *qiyās*. Notice that the method of efficiency not only tests the relevance but also responds to the point on the legal foundation of the general rules. The fact is that the general schema is both grounded and extracted from specific rulings found in the sources. Moreover, by means of *taʿthīr*, the occasioning factor is identified as the application that yields a ruling grounded in the sources.

Still, Abū Hāmid al-Ghazālī, who vehemently defended the deployment of *qiyās*, points out that co-extensiveness or co-presence and co-exclusiveness or co-absence do not always render the most appropriate or relevant (*munāsaba*) property for the

ruling under consideration. His example involves the property of some particular smell, which is present when wine is present and absent when wine is absent, but these observations do not lead to the conclusion that particular smell of wine is the relevant property for its interdiction.[12]

What al-Ghazali observes is that though the tests of *ṭard* and *ʿaks* pave the way for grasping the intention behind the norms given by the Lawgiver, this might not be enough: grasping the meaning might require additional hermeneutical procedures.[13] Nevertheless, formulating explicitly a claim on the precise form of a general schema implicit in the use of a specific ruling brings this schema out into the open as liable to challenges and demands for justification.[14]

More generally, the idea is that the rational process invoked by the argumentative framework depends on the possibility of making explicit (in the form of claims) implicit commitments on the meaning-explanation of a ruling. In other words, the rational epistemological endeavour underlying *qiyās* consists in the possibility of publicly expressing claims concerning the general constitution of a ruling in order to subject them to ponderation and criticism.

Thus, on the one hand, our reconstruction might provide researchers on the Arabic tradition with some instruments for epistemological analysis, and on the other, we hope to motivate epistemologists and researchers in argumentation theory to explore the rich and thought-provoking texts produced by this tradition in order to also tackle issues concerning parallel reasoning in other legal or scientific contexts.

Altogether, we dare to say that at the centre of al-Shīrāzī's argumentative framework is the idea that rationality is featured by the task of bringing to the *space of games of giving and asking for reasons* those commitments and entitlements that structure the network of implicit beliefs and notions underlying legal practices.

Clearly, we indulge here (and before), in the anachronism, beside others, of deploying Robert Brandom's (1994) terminology in the context of a dialectical practice which is far in time and space from the background of his studies. Perhaps, this also suggests that the emergence of the dialectic stance on the rational assessment of notions and beliefs implicit in social practices has quite a long and rich history behind it. This is a general lesson of the Elders we should not ignore.

The book is structured as follows:

After an overview of the emergence of *qiyās* and of the work of al-Shīrāzī penned by Soufi Youcef, we start by discussing al-Shīrāzī's classification of correlational inferences of the occasioning factor (*qiyās al-ʿilla*) in the second part. The third part

[12] Al-Ghazālī (1324H, pp. 307-308). Cf. Hallaq (1987, pp. 61-62).

[13] Putting aside important differences, we might parallel al-Ghazālī's point with Frege's view that though concepts are ontological independent of the logical analysis that makes them explicity and publicly accessible to human understanding, this analysis clears the way to the grasping of those concepts. However, different to al-Ghazālī, Frege thinks that logical analysis is the *only way*.

[14] At this precise point, parallel reasoning in Common Law and *uṣūl al-fiqh* take different paths. Indeed, according to Woods (2015, p. 280), the generalization schema behind a parity argument is very rarely made explicit. We come back to this point in the conclusion.

of the volume discusses the system of correlational inferences by indication and resemblance (*qiyās al-dalāla*, *qiyās al-shabah*). The fourth part develops the main theoretical background of our work, namely, the dialogical approach to Constructive Type Theory. This we present in a general form and independently of adaptations deployed in Parts II and III. Part IV also includes an appendix on a brief overview of Martin-Löf's Constructive Type Theory written by Ansten Klev. We conclude the book with some brief remarks on contemporary approaches to analogy in law and also to parallel reasoning in general.

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# Acknowledgments

Herewith, we would like to thank Prof. Roshdi Rashed (CNRS, SPHERE, Paris VII), chief editor of the Cambridge journal *Arabic Sciences and Philosophy*, who allowed us to deploy for the first part of our study the paper by S. Rahman and M. Iqbal (2018) "Unfolding Parallel Reasoning in Islamic Jurisprudence. Epistemic and Dialectical Meaning within Abū Isḥāq al-Shīrāzī's System of Correlational Inferences of the Occasioning Factor" (Cambridge journal *Arabic Sciences and Philosophy* 28 (2018), pp. 67-132). Many thanks too to Erwan Penchèvre (Paris VII) for his excellent editorial work on the paper mentioned above and also to Ahmad Hasnawi (CNRS, SPHERE, Paris VII), managing editor of the *ASP* (until June 2018), who contributed to the publication of the paper and who also contributed with many reflections during a seminar at the MESHS-Nord-Pas de Calais, where we presented some early versions of our proposal.

Special thanks to Walter E. Young (McGill University) who not only inspired the present study by his impressive work on juridical disputation and the evolution of Islamic Law but also assisted with fruitful relevant remarks. We are also grateful to Mawusse Kpakpo Akue Adotevi (Université de Lomé), Matthias Armgardt (Universität Konstanz), Cristina Barés Gómez (Universidad de Sevilla), Eduardo Barrio (Universidad de Buenos Aires), Charles Zacharie Bowao (Université M. Ngouabi, Brazzaville), Nicolas Clerbout (Universidad de Valparaíso), Marcelo Dascal (University of Tel Aviv), Souleymane Bachir Diagne (Columbia University), Mathieu Fontaine (CFCUL-Universidade de Lisboa), Johan Georg Granström (Zürich), Mlika Hamdi (Université de Kairouan), Karl-Heinz Hülser (Univeristät Konstanz), Ansten Klev (Academy of Sciences, Prague), Rodrigo López (Universidad de Valparaíso), Mathieu Marion (Université Montréal), Angel Nepomuceno Fernández (Universidad de Sevilla), Marcel Nguimbi (Université M. Ngouabi, Brazzaville), Gildas Nzokou (Université Omar Bongo, Libreville), Olga Pombo (CFCUL-Universidade de Lisboa), Moussa Abou Ramadan (Université Strasbourg), Juan Redmond (Universidad de Valparaíso), Zaynab Salloum (Université Beyrouth), Mohammad Shafiei (Shahid Beheshti University, Teheran), Göran Sundholm (Universiteit Leiden), Hassan Tahiri (CFCUL-Lisbon), Farid

Zidani (Université d'Alger II), John Woods (University of British Columbia), Joseph David (Yale University) and two anonymous reviewers for their rich and helpful comments on the earlier versions of the contents included in the volume.

The authors would like to thank the Laboratory STL, UMR-CNRS 8163, particularly so to Leone Gazziero (STL), Laurent Cesalli (Genève), leaders of the ANR Project *SEMAINO* (STL), and Claudio Majolino (STL), associated researcher to that project, for fostering the research leading to the present study. Let us point out that the reflections on which this book is based evolved under the influence of the responses of many audiences to which the different versions have been presented in recent years. We are profoundly grateful to all those members of the institutions mentioned above and the laboratory STL who contributed by thinking together about these issues, specially to Giuliano Bacigalupo, Simon Brunin, Christian Berner, Patrice Canivez, Pierre Cardascia, Michel Crubellier, Sandrine Chassagnard-Pinet, Bernadette Dango, Steephen Rossy Eckoubili, Hanna Karpenko, Clément Lion, Zoe McConaughey, Sébastien Magnier, Fosca Mariani, Raffaele Pisano, Louis Rose, Fachrur Rozie, Juliette Senechal, Juliele Sievers, Ruth Webb, and Sequoya Yiaueki. Muhammad Iqbal, the second author of the present book, thanks his home institution *Universitas Islam Negeri Antasari* Banjarmasin, Indonesia, and the funding of the *Indonesian Ministry of Religious Affairs* for a grant that made it possible to develop his research at the University of Lille and the Laboratory STL.

The first author would like to point out that his recent interest in Islamic philosophy, logic, and epistemology is an outcome of his collaboration with Dr. Hassan Tahiri (CFCUL-Lisbon), during the latter's PhD on philosophy of mathematics at the University of Lille and further research on the history of sciences. Rahman's interest in this field continued to grow steadily, thanks to the joint work with Dr. Zaynab Salloum (Lebanese University) on Ibn Sīnā, and with Muhammad Iqbal, the second author of the present book, on legal reasoning within Islamic jurisprudence and epistemology. As the Germans say, PhD students ensure the continuing education of their professors.

# Contents

# Chapter 1
# Introduction: The Life and *Qiyās* of Abū Isḥāq al-Shīrāzī (393H/1003 CE-476H/1083 CE)


In the chapters that follow, Shahid Rahman and Muhammad Iqbal provide us with a comprehensive logical analysis of Abū Isḥāq al-Shīrāzī's two forms of *qiyās*-based argumentation, which they aptly translate as inference by parallel reasoning. Their painstaking labour is bound to interest both the Islamic studies historian and the contemporary logician. For the former, among whom I include myself, their methodological approach of embedding *qiyās* argumentation within its proper historical dialectical context sheds new light on Islamic legal argumentation. Building upon Walter Young's thesis that Islamic legal rules and argumentative principles were "forged" through debate itself,[1] Rahman and Iqbal demonstrate the series of steps al-Shīrāzī deemed necessary to secure a successful deployment of *qiyās* while in a debate gathering. In marked contrast to typical scholarly treatment of *qiyās* which (implicitly) assumes a solitary jurist whose monological comparison of like-cases goes unquestioned, they show how the successful deployment of *qiyās* often depended upon a jurist offering a deeper defense of his background assumptions about two cases. The juristic use of *qiyās* therefore necessitated a wider exploration of the legal system. For the logician, Rahman and Iqbal suggest that the Islamic tradition can enter into conversation with the modern study of dialectical argumentation. Like Amira Mittermaier, whose study of contemporary dreams in Egypt, argues that Ibn 'Arabī and al-Ghazālī are just as valuable as Freud or Sartre to our understanding of dreams and the imagination, Rahman and Iqbal show that al-Shīrāzī and the Islamic legal tradition are worthy interlocutors of Wittgenstein and other contemporary logicians.[2] In particular, they show that meaning and knowledge are immanent or internal to dialogical exchanges insofar as the reasons justifying claims depend on a set of propositions embraced by both participants.

This introduction aims at placing al-Shīrāzī within social and intellectual historical context. The man whose intellectual contributions to *qiyās* is the object of the

[1] Young (2017, p. 1).

[2] Mittermaier (2010).



S. Rahman et al., *Inferences by Parallel Reasoning in Islamic Jurisprudence*, Logic, Argumentation & Reasoning 19, https://doi.org/10.1007/978-3-030-22382-3_1

present study was born in the small Persian town of Firuzabad in 393H/1003 CE. Abū Isḥāq al-Shīrāzī, known throughout Shāfi'ī history as the one and only Shaykh Abū Isḥāq, would go on to become the first law professor of the illustrious Niẓāmiyya College of Baghdad in 459H/1067 CE.[3] His legal texts in the areas of dialectic (*jadal*), substantive law (*furū'al-fiqh*), and legal theory (*uṣūl al-fiqh*) would continue to be reference points for his Shāfi'ī school up until the present.[4] In what follows, I trace al-Shīrāzī's gradual and arduous rise to fame and the scholarly lineages that influenced his theorizations of *qiyās*-based argumentation. By demonstrating that al-Shīrāzī's *qiyās* theory is part of an understudied branch of Baghdad Shāfi'ī theoretical thought, I hope to place in greater relief the original contribution of Rahman and Iqbal's analysis.

## 1.1 From Firuzabad to the Niẓāmiyya: Al-Shīrāzī's Climb Within the Shāfi'ī School Hierarchy

The story of Shirazi's journey to scholarly fame tells us much about the intellectual community to which he would attach himself. Al-Shīrāzī's intellectual journey to the summit of Shāfi'ī scholarship was by no means an easy one. Biographers say nothing of his family background, which gestures towards his poor socio-economic position.[5] In fact, poverty would follow al-Shīrāzī his entire life: Muslim historians even convey that he could not undertake the Meccan pilgrimage for lack of means to purchase a suitable travelling mount.[6] The rise of an economically poor member of society to intellectual fame was not anomalous among the eleventh century Muslim jurists. Abū 'Abd Allāh al-Dāmaghānī, for instance, was a Ḥanafī jurist of poor economic origins who would eventually become chief judge (*qāḍī*) of Baghdad.[7] However, poverty did make al-Shīrāzī's rise a more arduous one than those who came from more established juristic families and goes some ways towards explaining his pedagogical path.

What al-Shīrāzī lacked in financial means, he made up in scholarly determination. As a young man, al-Shīrāzī travelled to Shiraz, the largest city of the central Persian province of Fars, to study under the Shāfi'ī jurist Abū 'Abd Allāh al-Bayḍāwī

[3] Peacock (2015); Talas (1939).

[4] See for instance Brinkley Messick's study of modern-day Yemeni legal scholars (Messick 1996).

[5] The most comprehensive biography of al-Shīrāzī is found in al-Subkī (1964, p. 4:215–256). See also Ibn Khallikān (1978, pp. 1:29–31), Ibn-Qāḍī Shuhba (1987, pp. 1:238–240), Ibn al-Ṣalāḥ al-Shahrazūrī, al-Nawawī, and al-Mizzī (1992, pp. 1:302–10), Ibn Kathīr (2002, pp. 430–442) and Hītū (1980).

[6] Al-Subkī (1964, p. 4:227).

[7] Ephrat (2000, p. 51).

(d. 424H/1033 CE).[8] His native Firuzabad would have been too small for al-Shīrāzī to satisfactorily pursue his educational aspirations. The ancient Persian town was blessed with fertile lands and temperate climate but was dwarfed in size by Shiraz. More importantly, Shiraz had emerged as an intellectual hub boasting jurists and philosophers that would make their mark on Islamic history. In fact, it was from his brief sojourn in Shiraz that he would obtain the title al-Shīrāzī—the one from Shiraz—which gestures towards the relative provinciality of Firuzabad.

Al-Shīrāzī's teacher, al-Bayḍāwī, had been a disciple (*ṣāḥib*) of Abū al-Qāsim al-Dārakī who was the leader of the Shāfi'īs of Baghdad at the time of his death in 375H/985 CE.[9] Baghdad Shāfi'īs dominated the discursive landscape of Shāfi'ism in the eleventh century. Their interpretative efforts in developing Shāfi'ī thought had gained pre-eminence with the learning circle of Ibn Surayj.[10] Ibn Surayj and his towering disciples such as al-Qaffāl al-Shāshī, Abū Bakr al-Ṣayrafī, Ibn al-Qāṣṣ, Abū 'Alī al-Ṭabarī, and Abū Isḥāq al-Marwazī elaborated upon and determined the doctrinal evolution of al-Shāfi'ī thought. They assessed the sometimes divergent statements of their school master, Muḥammad ibn Idrīs al-Shāfi'ī, weighed and determined the best proofs bearing on contentious legal questions, and extended al-Shāfi'ī's methodological reasoning to new cases. Known for their systematic tackling of legal questions, they made Baghdad the pre-eminent centre of Shāfi'ī learning. Al-Shīrāzī would write that Ibn Surayj's opinions "spread throughout the land" and that Shāfi'īs generally followed his opinions.[11] Aspiring jurists came from near and far to gain knowledge from the Baghdad luminaries, and al-Bayḍāwī continued this trend when he went to study under al-Dārakī before becoming a top Shāfi'ī scholar of Shiraz.

Al-Bayḍāwī initiated al-Shīrāzī to the substantive legal corpus (*furū'al-fiqh*) of the Shāfi'ī school. Al-Shīrāzī's training consisted of learning the vast array of contentious legal issues (*masā'il al-khilāf*) that divided Muslim jurists and the responses his school colleagues provided to them.[12] He was to learn centuries of accrued proofs that Shāfi'īs posited in favour of their doctrinal positions. This was a long and painstaking task, only complicated by the fact that different Shāfi'ī jurists knew and championed different evidences supporting their positions. It was for this reason that the great Imām al-Ḥaramayn, Abū al-Ma'ālī al-Juwaynī, a Shāfi'ī contemporary of al-Shīrāzī, had amassed the divergent legal opinions of Shāfi'īs throughout his significant travels all over the Muslim East in producing his opus of

[8] All biographical entries agree that al-Shīrāzī's study period with al-Bayḍāwī was in Shiraz. I follow them within this biographical sketch. However, the critical historian should know that this might actually be mistaken as al-Shīrāzī himself notes that al-Bayḍāwī lived in Baghdad and biographical sources on al-Bayḍāwī do not place him in Shiraz, see for instance Ibn Qāḍī Shuhba (1987, p. 1:177).

[9] For more on al-Dārakī, see al-Shīrāzī (1970, p. 117).

[10] Al-Subkī (1964, p. 3:22).

[11] Al-Shīrāzī (1970, p. 109).

[12] Al-Shīrāzī often speaks of jurists' preserving school opinions (*ḥāfiẓan li'l-madhhab*), al-Shīrāzī (1970, pp. 130–131).

substantive law, *Nihāyat al-Maṭlab*.[13] Shāfi'īs of the eleventh century often trained with several jurists and moved from one town to another in order to obtain a greater sense of the complex debates existing within their legal school. It was only a matter of time until al-Shīrāzī exhausted the knowledge he could gain from Shiraz and moved on to the city of Basra in Iraq. There, he studied under another of al-Dārakī's former students, the jurist Ibn Rāmīn.[14]

We cannot fully understand al-Shīrāzī's academic context or challenges without taking note of his origins as a non-native Arabic speaker. Basra marked a transition for al-Shīrāzī from a Persian context to an Arab one. Al-Shīrāzī's initiation would have been eased by the cosmopolitan background of his fellow students. Many, including his future teachers, would be of Persian stock, although the *lingua franca* of learning was Arabic and they all gained great proficiency in it. The community of jurists were known as *ṭulāb al-'ilm* (seekers of knowledge) and deemed the search for God's law (*ijtihād*) to be a devotional act that aims to please God. In fact, the eleventh century jurist, al-Khaṭīb al-Baghdādī, would contend that seeking knowledge was the most meritorious of pious acts because it was a precondition to the correct performance of all other devotional acts. The juristic labours of the eleventh century provided crucial guidance to lay-Muslims who were unable to seek out religious learning themselves. These lay-Muslims were busy raising families and seeking a livelihood. They needed juristic guidance to guarantee their proper religious observance. The vocation of a jurist, then, was imbued with a sense of selfless nobility.

Al-Shīrāzī soon made his way to the Caliphal capital of the 'Abbasid dynasty and the intellectual hub of the Shāfi'ī school. He entered Baghdad in 1024 CE at a mere 22 years of age. Baghdad Shāfi'ism was dominated at the time by a pre-eminent scholar named Abū Ḥāmid al- Isfarāyinī. Students rushed to al-Isfarāyinī's lectures. He attracted hundreds of eager students—some accounts say seven hundred—hoping to hear his intricate exposition and commentary of Shāfi'ī law.[15] Some contemporary jurists even judged al-Isfarāyinī superior to al-Shāfi'ī himself. Al-Shīrāzī had occasion to listen and learn from al-Isfarāyinī, but the towering jurist passed away a few years later. The intellectual leadership of the Shāfi'īs then passed on to an elder jurist by the name of Abū Ṭayyib al-Ṭabarī, who would train the successive generations of Baghdad Shāfi'ī leaders. Al-Shīrāzī would stay at al-Ṭabarī's side for decades, in time becoming his most devoted disciple; Al-Ṭabarī would eventually hire al-Shīrāzī to be his class repetitor (*mu'īd*) before bestowing on him the distinction of teaching his own learning circle within al-Ṭabarī's mosque.

[13] Al-Juwaynī (2007), Al-Subkī (1964, pp. 5:165–172).

[14] According to biographers, al-Shīrāzī studied with Ibn Rāmīn in Shiraz. This appears improbable since Shīrāzī himself tells us that Ibn Rāmīn was a Basran jurist, al-Shīrāzī (1970 p. 125). Al-Shīrāzī apparently also studied under a jurist named al-Kharazī but al-Shīrāzī does not mention him in his own biographical dictionary (1970).

[15] Al-Subkī (1964, p. 3:62).

During his training with al-Ṭabarī, al-Shīrāzī began distinguishing himself in the science of *khilāf* which dealt with contentious issues between legal schools. In particular, al-Shīrāzī focused on the legal opinions dividing the Shāfi'īs from the juristic opinions of the Ḥanafī school. He authored a book titled *al-Nukat fī Masā'il al-Khilāf bayna al-Shāfi'iyya wa-al-Ḥanafiyya* detailing the divergent proofs each school offered on legal cases.[16] Al-Subkī tells us that "no one equalled al-Shīrāzī" in matters of *khilāf*. The Ḥanafī/Shāfi'ī rivalry was often occasion for debate gatherings between the two schools. Debate gatherings were occasions for jurists of each school to defend their doctrines against their rival detractors. Al-Shīrāzī took a keen interest in also theorizing dialectical argumentation (*jadal*) which he might use in critiquing debate opponents. He authored two extant books of *jadal, Al-Mulakhkhas fī al-Jadal* and the shorter *Al-Ma'ūna fī al-Jadal*. His dialectical proficiency began to attract students across legal schools seeking to learn debating skills. Among his most distinguished students in *jadal* were the Ḥanbalī jurist Abū al-Wafā' Ibn 'Aqīl and the Mālikī jurist, Abū al-Walīd al-Bājī, both of whom authored their own dialectical manuals that resembled and built upon al-Shīrāzī's thought.

After al-Ṭabarī's death in 450H/1058 CE, al-Shīrāzī continued to labour humbly at the juristic craft. Al-Ṭabarī's students included formidable minds. Al-Shīrāzī gradually distinguished himself from most of his colleagues and gained a reputation as one of the two leading Baghdad Shāfi'īs of his time, alongside his rival Abū Naṣr ibn al-Ṣabbāgh. Students in Baghdad began referencing either al-Shīrāzī's *Al-Tanbīh* or Ibn al-Ṣabbāgh's *Al-Shāmil* in their attempts to learn al-Shāfi'ī doctrine.[17] Al-Shīrāzī's legacy within Shāfi'ī thought was cemented by his appointment to the most prestigious professorial chair in the Muslim world. In 1065 CE, the powerful wazir of the new ruling Seljuq Empire, Niẓām al-Mulk, decided to erect a college of unprecedented splendour that would furnish funding for aspiring Shāfi'ī students. He built the college intending that al-Shīrāzī would lead it. However, 2 years later, al-Shīrāzī was nowhere to be found on the College's inaugurating day in 1067 CE. Al-Shīrāzī had misgivings about taking up his new appointment; rumours were swirling across Baghdad that Niẓām al-Mulk had unlawfully expropriated lands on which the College was erected.[18] Al-Shīrāzī had until then lived as a humble ascetic and exemplified the honest and pious living for which his fellow natives of Firuzabad were known. For several weeks, he thus refused to assume the professorial chair until he felt compelled by the strong insistence of his students. Al-Shīrāzī's appointment to the Niẓāmiyya permitted him to more widely disseminate his ideas in the last two decades of his life. During the year prior to his death, al-Shīrāzī travelled on a political mission to Khurāsān.[19] He found that

[16]The *Nukat* is among the few texts al-Shīrāzī authored which is still only available in manuscript form, currently in the Princeton collection. It is available online at http://pudl.princeton.edu/objects/sb397b864 (accessed October 16, 2018).

[17]See Turkī's introduction in the *Sharḥ al-Luma'*(1987, p. 44).

[18]Ibn Athīr (2012, p. 8: 212).

[19]Ibn Athīr (2012, pp. 8:283–284); al-Subkī (1967, p. 4:219); Ibn al-Jawzī (1992, p. 16:227).

every city he passed boasted jurists that had studied under his scholarly guidance and now worked as judges, law professors, and jurisconsults.[20]

## 1.2 The Background History to Al-Shīrāzī's *Qiyās*: The Contentiousness of Inference by Parallel Reasoning

Al-Shīrāzī's life-vocation was to master the legal tradition by delving into and weighing the substantive legal proofs of his Shāfi'ī school. *Qiyās* played a paramount role in this process, by taking the known ruling (*ḥukm*) of an original or root-case (*al-aṣl*) and extending it to an undetermined derivative or branch-case (*far'*).[21] It is instructive to note that every one of al-Shīrāzī's recorded debate transcripts begins with a *qiyās* argument.[22] *Qiyās* itself had a lengthy history. Reviewing this history up until the time of al-Shīrāzī allows us to better comprehend *qiyās*' place within the development of classical Islamic law.

*Qiyās* appears to have emerged—or at the very least, become prominent—within the fertile legal environment of eighth century Iraq.[23] The method was by no means uncontroversial. Iraqi pietists associated with the *ahl al-ḥadīth* movement resisted the deployment of rational faculties in legal reasoning and favoured diligently following transmitted statements from the Prophet and the early Muslims even when their historical authenticity was dubious.[24] Al-Shāfi'ī is typically credited with redeeming *qiyās* as a legitimate source of law among the hard textualists of the *ahl al-ḥadīth*.[25] Al-Shāfi'ī tried to show that rational interpretation was a necessary means of fulfilling God's commands by positing an example which might compel jurists across the ninth century legal spectrum. He imagined a Muslim worshipper too distant to see the Meccan temple to which the faithful must face to correctly perform their prayer.[26] How might such an individual fulfil the ordained ritual prayer without the empirical certainty of his sight? Al-Shāfi'ī's answer was that he needed to examine the natural signs surrounding him: the sun, the moon, stars, the direction of the wind, etc. were interpretable signs that might help him orient himself towards the right direction. The natural signs leading to the prayer direction mirrored the textual signs that God had provided through scripture (the Qur'an and *ḥadīth*). These textual signs also sometimes needed interpretation so that the worshipper

[20] Al-Subkī (1964, p. 216).

[21] Al-Shīrāzī (1988, p.788).

[22] See debate transcripts in al-Subkī (1967, pp. 4:237–256).

[23] J. Schacht (1959) effectuated the early research on *qiyās*, see chap. 9.

[24] For instance, Aḥmad ibn Ḥanbal had no compunction about including dubiously transmitted *ḥadīth* within his collection *Al-Musnad*. For more on the *ahl al-ḥadīth* methodology, see Lucas (2010) and Spectorsky (1982).

[25] El Shamsy (2007).

[26] Shāfi'ī (2005 p. 24); for secondary literature on the topic, see Lowry (2007).

might fulfil his religious obligations. Both were a process of *ijtihād*, meaning a rational interpretative effort, in seeking to fulfil divine law.[27] *Qiyās* was the foremost interpretive method that al-Shāfi'ī championed because it was grounded in authentic signs God provided through scripture.

In the next centuries, *qiyās* gained wide assent among the juristic community.[28] Still, Shāfi'ī jurists continued to argue against its detractors. Al-Shīrāzī identified two historical groups of opponents to *qiyās*. The first were those who denied the rational plausibility of *qiyās* as a legal proof. They decried *qiyās* by invoking its incompatibility with the rational apprehension of God's divine nature. Among this camp were some of the Baghdad Mu'tazila.[29] The Baghdad Mu'tazila argued that God was compelled to command laws that ensured humans' individual and social benefit. They worried that the subjective dimension at play in finding similarities between cases would inevitably lead to injunctions at odds with human benefit. The Shāfi'ī response reflected a trust in humans' ability to judiciously analogize differing cases. Al-Shīrāzī noted that human benefit was not in jeopardy because the same benefit discernible in the first case would be extended to the second.[30] We might better grasp al-Shīrāzī's argument if we think of the classic example of *qiyās*, namely the analogy of *khamr* (wine) to *nabīdh* (an alcoholic beverage made of dates, barley, honey, or spelt). Whilst the Qur'an affirms the prohibition of wine, it leaves unmentioned other alcoholic beverages. A pure textualist would therefore be compelled to accept *nabīdh* as a lawful beverage. Shafi'īs, however, extended the ruling of wine to *nabīdh* by arguing that the true legal cause prohibiting wine-drinking was intoxication (literally, euphoric intensity, "*shidda muṭriba*"). The analogy here guaranteed human benefit by preserving clear-headedness of one's rational faculties.

Al-Shīrāzī posited another argument of this camp associated with the eighth century Baghdad thinker al-Naẓẓām which revealed much about al-Shīrāzī's own thinking about legitimate *qiyās* use. Al-Naẓẓām cast doubt on the whole enterprise of comparing cases by pointing out examples of counterintuitive rulings in the existing Islamic legal system. He contended that the jurists often accepted different rulings for similar cases and the same ruling for widely divergent cases. For instance, Muslim law prohibited a woman from revealing herself with the exception of her face and hands. The same ruling for both the face and the hands appeared odd to al-Naẓẓām who pointed out that the face was incomparably more beautiful than hands.[31] Another example was the obligation of a menstruating woman to make up her fasts but not her prayers. Al-Naẓẓām saw the two cases as analogous because it was menstruation that hindered their ritual performance. And yet, the rulings applicable to one case diverged from those applicable to the other. The Shāfi'īs had

[27] El Shamsy has shown the prayer direction to be an enduring metaphor for *ijtihād* within Shāfi'ī juristic thought (2008). See also Soufi (2017).

[28] For instance, al-Jaṣṣāṣ (2000), al-Bāqillānī (2012), Qāḍī Abū Ya'lā (1990), al-Juwaynī (1997).

[29] Al-Shīrāzī also mentions some Shi'ī groups, al-Shīrāzī (1988, p. 760) and (1980, p. 419).

[30] Al-Shīrāzī (1988, pp. 762–763).

[31] Al-Shīrāzī (1988, p. 767).

developed rebuttals to al-Naẓẓām's objections, just as they had done to the case of the first objection. Al-Shīrāzī believed that all legal distinctions were explainable. The face and the hands were exceptions to female modesty out of practical necessity: their exposure helped women in their daily interactions. Likewise, obliging women to make up prayers missed during menstruation imposed an undue burden upon them because it is difficult to keep track of an accruing number of missed prayers. In contrast, counting missed days of fasting during the month of Ramadan was a more manageable task.[32] A staple of Al-Shīrāzī's thought was that any analogical argumentation needed to countenance the potential lack of parity between cases.

The second camp of *qiyās*-deniers was represented by the Ẓāhirī legal school.[33] In contrast to the first camp, the Ẓāhirīs saw no rational reason that could prevent God from imposing *qiyās* as a valid proof in the Islamic legal system. Nonetheless, the Ẓāhirīs insisted that God, through the Qur'an, had explicitly condemned the use of *qiyās* in juristic thought. Their evidences were copious. God had insisted in his holy book "Do not follow blindly what you do not know to be true" [Quran 17: 36] and "assumptions can be of no value at all against the Truth [Quran 10: 36]."[34] Another verse warned not to "say things about God that you do not really know." [Quran 2: 169]. The Ẓāhirīs claimed that all these verses imposed upon Muslims the duty to rely upon proofs guaranteeing them the highest level of epistemological certainty. Ẓāhirīs argued that such epistemological certainty could not be guaranteed by *qiyās*. Inference by parallel reasoning was fundamentally guess-work, and jurists across the Muslim schools agreed that it could only produce a presumptive belief on the ruling in question. Still another verse stated, "We have not omitted anything from the book" [Quran 6:38], giving the impression that only direct textual sources were valid proofs of legal derivation.

The Ẓāhirī objection was a harder one for the Shāfi'īs to reject because their school agreed on the presumptive nature of *qiyās*.[35] They nonetheless found a clever rebuttal by stating that scripture itself allowed them to accept epistemologically uncertain legal proofs. One evidence was the *ḥadīth* of Mu'ādh ibn Jabal.[36] The *ḥadīth* sees the Prophet questioning Mu'ādh before sending him as his emissary to rule over newly conquered Yemeni lands. Mu'ādh asserts that he will base his decision-making upon the Qur'an and the Prophetic example. When asked what he will do if he cannot find the answer in these sources, Mu'ādh asserts that he will "strive to find the answer using my rational opinion" (*ajtahid ra'yī*) and receives Prophetic blessings and prayers for his commendable answer.[37] This argument had its limitations, however, since the report itself was part of that category of *ḥadīth*

[32] Al-Shīrāzī (p. 768).

[33] For more on the Ẓāhirīs, see Osman (2014).

[34] Al-Shīrāzī (p. 779). The translation of Qur'anic verses is taken from Abdel Haleem (Oxford: Oxford World Classics).

[35] See e.g., (1997, p. 8).

[36] Al-Shīrāzī (1988, p.869) and (1980, p. 425).

[37] Al-Shīrāzī (1988, p.869).

whose chain of transmission was epistemologically uncertain. Moreover, the Ẓāhirīs invoked a variant narration where Mu'ādh and the Prophet affirm they will correspond with each other through letter writing to ensure Mu'ādh's correct judgement. Another Shāfi'ī argument against the Ẓāhirīs invoked the consensual practice of Muḥammad's companions. Invoking the agreement or consensus of Muḥammad's companions allowed the Shāfi'īs to stand on more solid ground, as consensus was widely considered within the juristic community to produce epistemological certainty. In turn, al-Shīrāzī listed copious reports of Muḥammad's companions engaging in analogical reasoning to support the Shāfi'ī claim. This normative precedent was a weighty argument for Shāfi'īs against their Ẓāhirī detractors.

By Al-Shīrāzī's time, the Shāfi'īs, alongside jurists of the Ḥanafī, Ḥanbalī, and Mālikī schools, had all but won the debate in favour of *qiyās*.[38] The great Mu'tazila legal scholars of the time accepted analogy as rationally defensible.[39] As for the Ẓāhirīs, they had receded from the Baghdad landscape, and Ibn Hazm's emergence in the Western lands of the Muslim world would mark the school's last notable contributor to Muslim legal history. Practically speaking, the Eastern Muslim juristic world depended upon *qiyās* argumentation as a staple tool of their legal practice. Wael Hallaq has contended that the Ẓāhirīs died out specifically because of their refusal to embrace analogical reasoning.[40] Certainly, as we shall see, it is difficult to imagine a jurist participating in the thriving eleventh century culture of debate in the Muslim East who rejected rather than heavily drew on *qiyās*.

## 1.3 The Evolution of *Qiyās* Argumentation: Al-Shīrāzī as Inheritor to the Surayjī-Shāfi'ī Line of Legal Theory

The progression of *qiyās* was first and foremost "forged", as Young would say, through practical legal debates.[41] It was through the testing out of arguments on contentious legal topics of substantive law that jurists developed an understanding and appreciation of the potential uses of *qiyās* to their legal system.[42] The practical deployment of *qiyās* in legal cases eventually gave rise to theoretical debates about *qiyās*. In particular, jurists started to ask themselves "What is *qiyās* exactly?" "Are there different types of *qiyās*? And which ones are valid?" Two bodies of theoretical literature delved into these questions in great detail; both emerged around the same time in the tenth century. The first were *jadal* (dialectic) books which were produced with the intent of refining the jurists' argumentative strategies in their disputations

[38] Al-Bājī (2004), Al-Jaṣṣāṣ (2000), Ibn al-Farrā' (1990).

[39] E.g. Al-Baṣrī (1995, p. 2:215).

[40] Hallaq (1997, p. 127).

[41] Young (2017, pp. 491–492).

[42] As al-Shīrāzī would explain, a jurist learnt the craft of legal argumentation through his exposure to legal debates (1988, 161–162).