

**INITIAL REMARKS TO THE DIALECTICAL STRUCTURE OF THE QIY S  
AND THE HEURISTIC ROLE OF CO-RELATIONAL MOVES AND EPISTEMIC**

**ASSUMPTIONS**

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*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: this is what is meant when the term *ijtihād* (اجتهاد), endeavour of the intellect; is attached to *fiqh*.

Let us stress that very nature of *ijtihād* is dynamic.<sup>1</sup> Indeed, such kind of rational endeavour is applied to achieve decisions for new circumstances or cases not already established. This dynamic feature animates Walter Edward Young's (2016) main thesis as developed in his work *The Dialectical Forge: Juridical Disputation and the Evolution of Islamic Law*. In fact the main claim underlying the work of Young is that one of the salient features of Islamic jurisprudence is the dialectical deployment of legal reasoning. According to this perspective, juridical knowledge as grasped by rational endeavour and more generally the conceptual approach to legality results from the intertwining of giving and asking for reasons. The dialectical constitution of legal reasoning is particularly crucial to those inferential processes known as *qiyās* (قياس), aptly translated by Young as *co-relational inference*, as made apparent by the systematic compilation and thorough typology of these forms of inference provided by the author of the *Dialectical Forge*.<sup>2</sup>

The main claim of our paper is that the dialectical structure of the *qiyās* displays the logical and epistemic features of this form of inference within the context of Islamic jurisprudence. More precisely, according to our view, the dialectical conception of co-relational inference – provides a natural understanding of.

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<sup>1</sup>Cf. Hallaq (1987, 1997, 2009).

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

- 1) The heuristic processes by the means of which the conclusion is inferred by relating it to a reason or operative cause 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 legality 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 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, 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: (a) it's heuristic nature and (b) the dynamics underlying the meaning-explanation of the terms involved in inferential process. Both deploy what we take to be the main epistemological idea behind the *qiyās*, namely: the open texture of the meaning of normative statements.

Let us point out that, though our modelisation is grounded on the textual sources as thoroughly worked out by scholars such as Wael Hallaq (1997) and Young (2016) – in fact all of our textual references stem from Young's text – 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 dialectical model provides, so we claim, a *meaning explanation* of the notion of correlative inference.

However, we think that our modelization 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*.

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.

One of the main epistemological results emerging from this initial study, is that the different kinds of *qiyās* as developed in the context of *fiqh* represent an original and sophisticated form of inferences that not only provide original epistemological insights of legal reasoning in general but they also furnish a fine-grained pattern of *parallel reasoning*<sup>4</sup> deployed in a wide range of problem-solving contexts that does not seem to reduce to the standard forms of analogical argumentation studied in contemporary philosophy of science.

<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* (ἔνδοξα). In our translation, we made the choice to link *ra'y* with its linguistic root, namely the verb *seeing*.

<sup>4</sup>We borrowed the term *parallel reasoning* from Bartha (2010).