Defeasible Reasoning in Islamic Legal Theory

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Abstract: Logicians commonly understand nonmonotonic types of reasoning can warrant rational acceptance of conclusions. The significance and legitimacy of these forms of arguments, which were long considered fallacious, has been contentious among logicians in the Aristotelian logical tradition. In contrast, Islamic jurisprudence (*fiqh*), has long recognised the importance of non-deductive forms of reasoning, and demonstrated how conventionally understood fallacies are not essentially fallacies. *Qiyās* – generally representing analogical reasoning – is such a case of defeasible reasoning in Islamic legal theories. I show through works of two emblematic medieval Muslim jurist-logicians, al-Juwainī and al-Ghazzālī, that understanding the legitimacy of non-deductive forms of arguments is core to Islamic legal theories (*usūl al-fiqh*), which proposed a dialectical method (*jadal*) of approach.

Résumé: Les logiciens comprennent généralement que les types de raisonnement non monotones peuvent justifier l'acceptation rationnelle des conclusions. L'importance et la légitimité de ces formes d'arguments, qui ont longtemps été considérées comme fallacieuses, ont été controversées parmi les logiciens de la tradition logique aristotélicienne. En revanche, la jurisprudence islamique (fiqh) a depuis longtemps reconnu l'importance des formes de raisonnement non déductives et a démontré que les sophismes conventionnellement compris ne sont pas essentiellement des sophismes. Le qiyās – qui représente généralement le raisonnement analogique – est un exemple de raisonnement réfutable dans l'argumentation islamique. Je montre à travers les travaux de deux juristes-logiciens musulmans médiévaux emblématiques, al-Juwainī et al-Ghazzālī, que la compréhension de la légitimité des formes d'arguments non déductives est au cœur des théories juridiques islamiques (usūl al-fiqh), qui ont proposé une méthode d'approche dialectique (jadal).

Keywords: fallacies, Islamic argumentation, Islamic legal theories, non-deductive argument

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There is a common understanding among logicians today that nonmonotonic types of reasoning, such as defeasible or presumptive, can clearly warrant a rational acceptance of its conclusion. Recognition of the significance and legitimacy of these forms of arguments, which were considered for long as fallacious, is believed to be very recent and many logicians tended to reject any discussions around it within the tradition of logic after Aristotle. In contrast, Islamic legal theories (*usūl al-fiqh*), since medieval age, has recognised the validity and importance of non-deductive forms of reasoning, analysed the structures of such arguments and demonstrated how the conventionally understood fallacies are not essentially fallacies. *Qiyās* – generally represents analogical reasoning – is taken here as a case of defeasible reasoning in Islamic argumentation. This paper will show through works of two emblematic medieval Muslim jurist-logicians, al-Juwainī and al-Ghazzālī, that understanding the legitimacy and the structure of non-deductive forms of arguments is at the core of Islamic legal theories and that they recognised its legitimacy and proposed a dialectical method (*jadal*) of approaching it.

Introduction

Can we claim validity for an argument that is fallacious according to the standards of traditional logic? There are forms of argument which were categorised for long as fallacies in logic textbooks, recently being recognised and developed within the discipline of informal logic, such as abductive, presumptive or defeasible reasoning. Recognition of the importance and legitimacy of these "forms of argument that are neither deductive nor inductive, but fall into a third category, sometimes called defeasible, presumptive, or abductive" has been considered to be "a paradigm shift in logic, artificial intelligence and cognitive science" (Walton et al. 2008, p. 2).

Consider the case of defeasible reasoning: rather than understanding the relationship between premises and conclusion as deductively valid, we assume it to be true, accepting the possibility of it being false or defeated when new information or exceptions arise. For example, "Tweety is a bird. Birds can fly. Therefore,

Tweety can fly" is an acceptable argument according to our common logic. Nevertheless, a counter-argument such as "Tweety is a penguin. Penguins cannot fly. Therefore 'Tweety can fly' is erroneous" might oblige us to retract the claim. As these types of arguments are strong enough to warrant logical conclusions, it is no more categorised as a fallacy. "It is clear that for practical purposes in everyday reasoning, and in many of our social and intellectual institutions" such arguments warrant reasonable conclusions, although it might be defeated in an exceptional case (Walton et al. 2008). Since the argument is generally accepted and reasonable, it is a form of defeasible reasoning which can warrant a rational conclusion, but prone to defeasibility when new information arises. Contrary to what was assumed in traditional logic, an argument without deductive validity is no longer rejected as fallacious, but rather is recognised as new forms of arguments: defeasible, presumptive or abductive (Walton 1996). In the example of Tweety, the argument is false only when a piece of information contradicts the conclusion and the proponent is forced to retract it (Johnson 2013). An argument is defeasible, "holding generally as a reasonable argument, but is subject to attack and even defeat by reasonable counter-arguments or critical questioning of the right kind" (Walton et al. 2008, p. 135). Such an argument may not be solid by itself but can be strong enough to warrant rational acceptance of its conclusion (Toulmin 1958). Contrary to what was long assumed, good reasoning does not need to be deductively valid, there are reasonings – defeasible or abductive reasoning – that justify their conclusions (Pollock 1987).

The historical narratives about the recognition of such reasoning tend to assert that "investigations in logic after Aristotle (from later antiquity through the twentieth century) seem to have focused exclusively on deductive logic" (Koons 2022). Although the 'logic' referred to is the Western tradition of logic, logicians usually mention logic as general. For Pollock (2007), the "long tradition in philosophy" assumed that "good reasoning had to be deductively valid" and for Walton et al. "the importance and legitimacy of defeasible reasoning is only recently recognised within logic" (2008, p. 2). They and many others assumed the absence of such notions in Western tradition of logic to mean that such notions are equally

absent in other traditions of logic. Such remarks misinform us about logic as exclusively a Western enterprise, while there are traditions of logic, like Islamic, where the ideas of non-deductive logic have been extensively discussed, debated and developed. This paper seeks to demonstrate that the notion of non-deductive and non-monotonic reasoning has been at the core of the Islamic scholarly tradition of logic and argumentation.

Moreover, Islamic scholarship has long engaged with two problems that scholars today identify to be the central concern of the study of these arguments. It revolves around the question that if these types of argumentations are not always fallacious, how we may tell the difference between the fallacious and the non-fallacious cases and by what standard we can measure or test their correctness (or incorrectness) in a given case (Walton 1996). Concerning this central issue, Islamic legal theories laid out three foundational aspects of discussion: the legitimacy of *ẓanniyy* (plausible) reasoning in religious reasoning, explanation of its logical patterns how it can reasonably warrant the conclusion, and evaluation methods of these arguments through a procedurally guided dialectic.

This paper, thus, emerges from the belief that looking at past logicians and their scholarly endeavours is extremely helpful to construct our understanding of the field just as many scholars have looked back at Aristotle and drawn from his work. Here, we are exploring the potential for a dialogue between two traditions, Islamic and contemporary Western. The motivations and contexts for both traditions of logic are distinct, deeply rooted in their respective contexts and scholarly orientations. As I have already emphasised, this paper only aims to demonstrate that discussions about plausible arguments have been active within the Islamic tradition, unique to its own context and address its specific needs.

In recent studies on Islamic logic, some remarkable developments have been carried out by a few scholars. Conventionally, Islamic logic was exclusively explored within the discipline of '*Ilm al-Manṭiq* (which can be roughly translated as formal logic) which is the developments of and the innovations based on Aristotle's syllogistic logic made possible by luminary scholars of the Islamic past spanning from al-Farābī's time until today (for more, see: el-Rouayheb 2010 and 2019; Ahmed 2022). Departing from this

conventional repository of Islamic logic, scholars like Young (2017) and Rahman et al. (2019) have proposed the Islamic legal theories (*usūl al-fiqh*) and its sub-discipline dialectics (*jadal*) as alternative reference for studying Islamic logic. If *usūl al-fiqh* is an alternative source of Islamic logic, it must be admitted that there are forms of reasoning recognised within Islamic logic that do not strictly fall into the category of deductive logic, but taken to be incorrect (*mukhtall*) forms of syllogism, even though it is considered legitimate for practical reasons.

Non-Deductive Forms of Argument in Islamic Logic

When approaching religion, scholars conventionally divide religious opinions into orthodox or authentic interpretations of that religion and deviant interpretations. This dichotomy presumes that religious societies agree upon a single interpretation of the religion while dismissing the alternative views as misleading and fallacious. This is not always the case. According to medieval Muslim scholars, there are interpretations of revelation that cannot claim deductive validity or absolute certainty and hence a monotonic interpretation is impossible (al-Rāzī 1997). The difference between interpretations that are deductive, indefeasible or monotonic, and those that are probable or defeasible is at the core of Islamic hermeneutics and determines the way to approach competing opinions within the religion.

An event in the life of Prophet Muhammed and his companions provides the perfect example of plausible reasoning (*ẓanniyy)*. During an expedition to the *Quraiẓa* tribe, the Prophet instructed his companions to perform their afternoon prayer (*'aṣr*) only after reaching the tribe. As the prayer time neared its end while they were still far from their destination, the companions were divided in their opinions. Some argued they should postpone the prayer per the Prophet's instruction, while others believed the intention was to encourage them to hasten their pace, not to miss the prayer. Each group acted according to their respective interpretation. Upon arrival, they explained the situation to the Prophet, who, upon hearing, smiled and affirmed that *both parties were correct* in their understanding (al-Bukhārī 1993).

This incident is foundational to Islamic legal reasoning. Interpretations of the revelation need not always arrive at certainty, since plausible arguments are accepted within Islamic jurisprudence (*fiqh*). According to al-Juwainī, an influential 11th century jurist-logician, individuals differ in their ways of reasoning, hence, the interpretation of a verse from the scripture could only claim different levels of plausibility unless it relies upon certainty-warranting evidence (1997). As Islamic jurisprudence evolves through interpretive interactions with revelational sources, and given the inevitable variation in reasoning among individuals, scholars had to define the epistemic nature of each argument. For such a process, they classified arguments into *qaṭ'iyyāt* (certainty-warranting arguments) and *ẓanniyyāt* (plausible arguments) which defined both the limits and opportunities of scholarly enterprises.

Ẓanniyy, a recurrent term in Islamic legal theories, denotes an argument that does not provide certainty but is held to be acceptable. A *ẓanniyy* argument could be defeated or evaluated by employing different strategies of objection (*i'tirāḍ*) or critical questions (*su'āl qādiḥ*). Thus, the concept of *ẓanniyy*, or plausibility, invites objections and is defeasible in nature. According to al-Ghazzālī (12th c.), the discipline of *jadal* (dialectics) is employed to analyse different forms of *ẓanniyy* arguments (1993).[1] A central point that *jadal* emphasises is that objections do not necessarily render the argument fallacious, rather, there are schemas of *answers* (*jawāb*) that can reconstruct the argument. Thus, a charge of fallacy does not necessarily lead to the conclusion that the argument is fallacious, but rather that the argument is a plausible one. For example, as we will see in the case of analogical reasoning (*qiyās*), traditional charges of fallacy against analogy are elaborated in *jadal* textbooks along with its potential limitations and subsequent schemas of answers,

[1] *Jadal* as a discipline complements the discipline of legal theories (*uṣūl al-fiqh*). The latter discusses two fundamental questions in regard to *ẓanniyyat*: legitimacy of a plausible argument and whether it has a logical structure that can warrant a rational conclusion. This paper is exclusively around the former, *jadal*, which investigates the evaluative procedures of a plausible argument.

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showing that a plausible argument is not fallacious, but a legitimate kind of argument, valid within legal argumentation.

To illustrate *qaṭ'iyy* or indefeasible kinds of argument, al-Maḥallī (13th c.) advances the famous argument for the contingency of the universe in Islamic theology. According to him, the argument that 'The universe is contingent. All contingents need a creator. Therefore, the universe needs a creator' is indefeasible (2011) since it is supported by pure reasoning and syllogistic formula. Indefeasibility conveys the idea of a conclusion that is certain and warranted, given all of one's evidence, if it is supported by an ultimately undefeated argument with premises drawn from that evidence (Pollock 1995). For Muslim theologians, the contingency of the world and its dependency on a necessary being is an indefeasible argument since it is supported by certainty-warranting premises.

On the other hand, *ẓanniyyat* is exemplified in a statement of a man making a fire, 'Since I am making fire, it will produce smoke'. It is *ẓanniyy* because the conclusion may fail if the fire does not mix with any particle of dust (al-Attār 2011). For Muslim jurist-logicians, the argumentation form 'fire is something that burns, and things that burn produce smoke, therefore fire produces smoke' is only plausible, because it could be proven wrong if an exception is offered. Although only a plausible conclusion is warranted, the argument is strong enough to be admissible. Similarly, concerning the Qur'anic verse ordering Muslims to establish the prayer (Qur'an 2:43), although the interpretation of the verse only warrants a plausible conclusion that prayer is an obligation, it is strong enough[2] to be a rule (al-Maḥallī 2011). When we consider cases warranting only a plausibility and there is no consensus over the implication of the text, like the case of the companions disagreeing over when to

[2] Islamic legal theories also recognise the validity of argumentation based on consensus (*ijmā'*). If there is a consensus among scholars about interpretation of any particular text, that interpretation is indefeasible even if it is *ẓanniyy* by itself. Although the argument from the revelation for obligation of five times prayer is defeasible, according to jurists, the consensus of scholars on it makes the conclusion indefeasible.

pray the afternoon prayer *(ʿaṣr)*, the argument will be subjected to dialectic evaluation, first from the perspective of the proponent and then from that of the opponent to arrive at preponderance (*tarjīḥ*) of one argument over the other, without rejecting the possibility of the other being valid.

Here we arrive at the essential difference between the admissibility of a plausible argument in Islamic argumentation theories and the contemporary Western tradition. If an Islamic argumentation concerns the interpretation of revelation (Qur'an or Prophetic traditions), the plausibility of an interpretation alludes to the inverse probability of the contrary interpretation. That is to say, for instance, if the argument that 'Qur'anic verse *A* implies *X* as *Y'* is a *ẓanniyy* argument, it also implies that there are grounds to argue that 'verse *A* does not imply *X* as *Y*'. As the strength of that plausibility decreases, the opposite position gains more legitimacy. This brings us to the most important aspect of the legitimacy of *ẓanniyy* arguments within Islamic hermeneutics. If the interpretation of a verse or Prophetic tradition is *ẓanniyy,* the legitimacy of two or more competing interpretations must be recognised and accommodated. The objective of *jadal* is, fundamentally, to demonstrate the legitimacy of two or more conflicting sides of an argument, as the proponents and opponents can continue their engagements through objections and answers. Even if a party could silence the adversary, it does not necessarily entail the failure of the argument itself, rather there could be information the arguer was not able to attend to (al-Ghazzālī 2004). Through dialectic, instead of claiming a monotonic interpretation, we arrive at conclusions that are equally valid and admissible within the epistemological framework of Islamic hermeneutics.

An important concept in this regard is the procedures and methods of *tarjīḥ* or preponderation. Rather than dismissing the opposite argument as fallacious, scholars evaluate both positions and determine one to be more acceptable than the other. This does not necessarily mean the other is mistaken or rejected, but it could be authenticated if new information is found. In Islamic jurisprudence textbooks, a single case is analysed from different legal perspectives and their underlying argumentation structure. As such, Islamic law is pluralistic in nature, where the ruling on a single legal case will

vary according to the methodology of the jurist. Ignorance about this fundamental epistemology of Islamic law led scholars like Weber to misunderstand the formulation of Islamic law as an arbitrary exercise lacking structured principles, policies or formal rational procedures (Weber 1968). Instead, the Islamic law tradition demonstrates a rigorous and principled engagement (Rabb 2015).
Most arguments within Islamic jurisprudence fall under the category of *ẓanniyyat* as they rely upon *qiyās*-based reasoning (al-Ghazzālī 1993). *Qiyās* arguments (which includes analogical arguments) are only plausible in their conclusions because they could be defeated through a couple of appropriate critical questions. This encouraged Muslim jurists to evaluate or critique any analogical argument through certain objection moves that evolved into the tradition of *jadal*. *Jadal* is an integral part of Islamic legal reasoning, sometimes considered as a distinct sub-disciplinary practice. Al-Ghazzālī, for example, considered it a part of legal reasoning in his early work, *al-Muntakhal* (1998), while arguing in his later work, *al-Mustaṣfa* (1993), that it should be discussed as a separate discipline by itself. *Jadal* as a discipline represents the collection of objection patterns or critical questions (*su'āl qādiḥ/i'tirāḍ*) that could be raised against each form of argumentation recognised within Islamic jurisprudence as *ẓanniyy*. Its relevance emerges only in the context of a *ẓanniyy* argument. According to al-Ghazzālī, *jadal* is employed "to assess whether the *ẓanniyy* argument can withstand the objections" and to move towards the procedure of preponderance (*tarjīḥ*) (1993).

As mentioned earlier, *jadal* is the third of three different aspects of approaching the legitimacy of a *ẓanniyy* argument. Conventionally, mainstream Muslim jurists claimed that plausible arguments must be admitted in legal interpretation because 1) it is pragmatically unavoidable, 2) its premises logically warrant the conclusion, and 3) it can stand against critical questions when they are employed. I will briefly comment on the first and second aspects while the third is the core of this paper. The first argument can be summarised in an example given by al-Ghazzālī. According to him, the validity of many plausible reasoning is taken for granted in our everyday reasoning and it must be admissible in the divine law. Without such common forms of argument, the law will be inapplicable in most contexts. For instance, when a person gives the

obligatory alms (*zakāt*), he acts based on circumstantial indications that the recipient is poor and entitled to receive alms. This type of reasoning is practically inevitable in law as it is impossible to arrive at certainty about the economic status of a person. The legal agent needs to take his assumption as valid, though recognising the possibility of it being false (al-Ghazzālī 1993). For the second aspect, jurists will discuss the form of a particular argument and explain the logical patterns that warrant the conclusion. For example, in analogical reasoning, there are methods of extracting the factor or ground that occasioned the rule (*'illa*) such as relevance, concomitance or enumeration and elimination which can clearly warrant the conclusion. Though these two aspects are crucial to understanding *ẓanniyy* argument's legitimacy, we are limiting the scope of our discussion to the third aspect.

To explain the idea of *jadal* and its significant consequences in Islamic jurisprudence, we will take *qiyās*-oriented argumentations as an example. *Qiyās* is often translated as the counterpart of "analogical reasoning" (Hallaq 1997) or "parallel inference" (Young 2017; Rahman et al. 2019). In general, *qiyās* in Islamic law is an umbrella term to denote arguments from analogy, classification and precedents. It is a foundational inference tool in Islamic law, through which jurisprudence is advanced and applied. Although some Muslim jurists widened the scope of *qiyās* by incorporating *argumentum a fortiori* and *argumentum a contrario* (Zysow 2013), *qiyās* as used in this paper refers only to the argumentation from analogy, precedent and classification, generally referred to as "analogical argument" for the sake of brevity.

Analogical reasoning in law always poses intricacies as the reasoning could later prove to be defeasible. Macanzo and Walton (2009) have shown that a defeasible approach to analogy in legal arguments is stronger than a deductive or inductive one. Walton et al., as we will discuss in more detail, following Hasting (1969) proposed defeaters of arguments from classification (2008b) and analogy (2008, p. 62) structured in the form of critical questions.

Qiyās Argumentation in Islamic Legal Theories

In analogical reasoning, one attempts to derive a conclusion for new cases by establishing their similarity with previously resolved cases. Some modern logicians dismiss analogical reasoning as fallacious. For them, if an analogy is extending quality *X* of case *A* to case *B* through establishing similarities between them, one could also find "any number of other ways in which they are different" (Beardsley 1950, p. 108). The recent developments within the studies on analogy could be seen as a series of attempts to overcome this rejection (Walton et al. 2008, p. 49).

A similar debate can also be found in the Islamic tradition. Medieval Muslim jurists like Naẓẓām (c.775-845) and Ibn Ḥazm (c.994-1064) rejected analogical reasoning as a valid method of legal interpretation. The development of analogical reasoning or *qiyās* within Islamic jurisprudence is often seen as an attempt to overcome the challenge posited by anti-analogists like Naẓẓām and Ibn Ḥazm (Zysow 2013; Hallaq 1997). Ibn Ḥazm argued that analogical reasoning does not always demonstrate deductive validity and the argument will only be legitimate if the analogy has a valid syllogistic form. This follows simply from the common recognition among jurists that analogy provides only probable results (Zysow 2013, p. 3). However, most mainstream Muslim jurists did not reject analogy as an invalid or fallacious form of reasoning due to its probable nature. Rather, they emphasised the legitimacy of plausible arguments and some even equated learning its probabilistic nature as the most crucial task of a jurist (al-Ghazzālī 1993).

In Islamic legal theories, *qiyās* is defined as the process of establishing or negating a legal ruling for a case based on an original ruling derived from revelation, and the two cases share the same occasioning factor (*'illa*) (al-Rāzī 1997). This consists of two acts: (1) the comprehension of the 'target case' (*far'*) based on the original/precedent case (*aṣl*) through the identification of the factor that occasioned the ruling, and (2) the application of the juristic qualification of the original case to the target case (al-Shīrāzī 1987; Young 2017). In other words, the important functions of *qiyās* are to identify which factor(s) are relevant for the rule in the precedent

case, check whether this factor(s) are present in the target case, and apply or deny the ruling of the precedent case accordingly.
The archetypal example of legal analogy is the case of wine. Suppose we have some date wine for which we need to establish a legal norm (prohibition, permission, recommendation, etc.). We find that the revealed texts prohibit grape wine for its intoxicating nature; since this attribute is also found in date wine, we transfer the legal norm of prohibition from the case of grape wine to that of date wine (Hallaq 1997, p. 83). A general argumentation scheme for analogy can be illustrated as follows:

> Case 1 (Original Case): *A* is the ruling due to the presence of property *N*
>
> Case 2 (Target Case): *N* is found; therefore, ruling *A* applies

Such arguments are not indefeasible. According to al-Ghazzālī, one could question the justifiableness of the proposed occasioning factor, it being the exclusive ground for the ruling, and whether the commonality is delusory since the presence of dissimilarity can disqualify the target case from being analogous to the original case for the ruling, etc. (al-Ghazzālī 2004). As most *qiyās* inferences in Islamic law are only *ẓanniyy* in their conclusions, they could be defeated or evaluated. One can raise procedure-guided critical questions or objections. The proponent of the argument is obliged to answer the critical question in a convincing way to behold his proposition. Then the argument could be defended by providing an answer (*jawāb*). The whole argumentation cycle of the *qiyās*-oriented *jadal* is '*qiyās* argument-objections-answers'.

Jadal (Dialectics) as a Frame to Approach Defeasibility

Dialectics has been much appreciated in studies on defeasible reasoning, particularly in law. Inspired by Toulmin's theories, scholars argued that an argument is valid if it can withstand criticism in a properly conducted dispute, and logicians strive to establish criteria for determining when a dispute has been conducted properly (Kloosterhuis 2005). Scholars have also constructed procedural structures for dialectical disputes (Prakken 1995), and this development of procedural, particularly dialectical, models of argumentation has become a focal point in the field of AI and law

(Gordon 1995). In legal reasoning, there seem to be two major grounds for the popularity of dialectics and dialogues – their applicability to both the form and content of legal arguments. Legal reasoning often involves the application of rules and principles, making it inherently defeasible. Dialectics serves as an effective tool to analyse and model this inherent defeasibility (Hage 2000).

Scholars of argumentation schemes considered Arthur Hasting's method of studying defeasible argumentation through the use of a set of corresponding critical questions (1963) to be a prototype in the field. Critical questions are questions (or assumptions) by which a schematic defeasible argument can be judged or presented to be good or fallacious (Walton 2009). Following Hasting, Walton (1996) and Walton with Reed and Macango (2008) analysed the defeasibility of various types of arguments through sets of appropriate critical questions. For example, the defeasibility of an analogical argument in a legal context could be evaluated through the following critical questions (Walton et al. 2008):

> CQ1: Is *A* true (false) in Case 1 (original case)?
> CQ2: Are Case 1 and Case 2 similar in the respect cited?
> CQ3: Are there important differences (dissimilarities) between C1 and C2?
> CQ4: Is there some other case C3 that is also similar to C1 except that *A* is false (true) in C3?

According to them, the critical questions, are:

> One of the features of argumentation schemes, that is key to evaluating whether an argument fits a scheme… The critical questions form a vital part of the definition of a scheme and are one of the benefits of adopting a scheme-based approach… They are important to keep in mind to provide a device to help students, who are learning critical thinking, when confronted by an argument from analogy, to scan quickly to look for key points of weakness in the argument in order to challenge its applicability and strength in a given case. (Walton et al. 2008)

Likewise, *jadal* or dialectics emerges as an evaluative tool to *ẓanniyy* arguments. It is a comprehensive framework governing the validity, hierarchy and acceptance of *ẓanniyy* arguments within Islamic law. Since most legal arguments are *ẓanniyy* and thus cannot claim absolute trueness, scholars strive to show that their interpretation is valid in terms of its ability to withstand critical questions. As soon

as a legal opinion fails to withstand challenge, it is rejected by the scholarly community, sometimes leading to the end of the whole legal school itself. When two or more opposing legal positions can sustain a rigorous dialogue, all of them are admissible in the legal court. Because of this paramount significance of dialectics in law, "disciplines such as *jadal*, *khilāf, naẓar* and *munāẓara* (all represent theories or praxis of dialectics) were methods taught in the colleges of law, drummed into the students, rehearsed over and over again and was part and parcel of teaching the legal sciences" (Maqdisi 1981). Recently, scholars have brought to light the abundant texts of *munāẓara* (dialectics) that have been studied and developed within Ottoman madrasas and among Ottoman scholarly circles (el-Rouayheb 2015) and analysed many sessions of legal debates where scholars exercised independent reasoning (*ijtihād*) (Soufi 2023).

In Islamic jurisprudence, 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 dialectic (Rahman 2019). Hallaq notes that "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 (model) of argumentation *to establish the truthfulness of one of them*" (1997, p. 136, emphasis mine). Since the absolute truth of law is only known to God and the scholar is only expected to exert his intellectual capacity to interpret the revelation, the italicised statement of Hallaq seems to be flawed. In a defeasible argumentation, the goal of employing dialectic is not to arrive at a single truth but to establish a procedure that can accommodate competing viewpoints within the frame of jurisprudence.

In the disciplinary practice of *jadal*, jurist-logicians like al-Juwainī and al-Ghazzālī discuss the possible critical questions against an argument and patterns of possible answers to these critical questions in great detail (al-Juwainī 1979; al-Ghazzālī 2004). Their discussion is interesting in two aspects. Objection patterns or critical questions against analogical reasoning amount to nine higher categories with each expanding into sub-categories, totalling more than fifty-five or so schemas of objection (Young 2017). Moreover, al-Juwainī (1979) and al-Ghazzālī (2004) offer various schemas of answers to each of these objections. By practising such a structured

analysis of arguments, they anticipated that a scholar would not be misled to reject an argument as a fallacy and that all truly *ẓanniyy* arguments would not be invalidated just because a critical question was raised against them.

Qiyās Argument and *Jadal* Methods

In this section, I will provide an overview of objections and responses as discussed by al-Juwainī and al-Ghazzālī. The nine main categories of critical questions, drawn from the chapter headings in *jadal* texts, are as follows,

1. *Mumāna':* Is the ruling in the original case admissible?

2. *Muṭālaba bi al-'illa***:** Are the factor of comparison between original and target cases legitimate?

3. *Fasād al-waḍ'***:** Is the cause too general to be accepted as occasioning factor?

4. *Al-qawl bi mūjab al-'illa***:** Does the confirmed occasioning factor establish the specific point under discussion or an entirely different point?

5. *Al-naqḍ*: Is there a third case where the proposed occasioning factor is present while the ruling does not apply?

6. *Al-qalb*: Would reversing the understanding of the proposed ground validate the opposite ruling?

7. *'Adam al-ta'thīr*: Can the effectiveness of the original case, proposed occasioning factor, the ruling, and the target case be demonstrated?
8. *Al-farq*: Are the original and target cases the same or different in every relevant aspect?
9. *Al-mu'āraḍa*: Can the advanced conclusion be countered by a different proof derived from other legal sources or through counter analogies?

In the following, we will demonstrate how these higher categories expand into more sub-questions and that critical questions have limitations and defeasible aspects that lead to the answering schemes. Nevertheless, I will focus only on important objections like *naqḍ* and *farq*, without going into details regarding the rest. (Readers who are keen to better understand the *jadal* system may refer to the section on *naqḍ* objection and peruse the case of inheritance).

Mumāna' (Premise Objection)

According to the Islamic *munāẓara/jadal* system, the first stage of the evaluation process is critically approaching the premises of an argument. The opponent must look into the premises, whether they are explicitly stated or not, and assess whether the premises are admissible to the dialectical process. In an analogical argument, there are a total of four premises, including the premises of the presence of *'illa* (occasioning factor) in the target and the original cases, the premise of the factor that occasioned the ruling in the original case, and the presence of prescribed ruling in the original case. The opponent can reject any of the premises other than that of the target case (since it is the matter of discussion) as inadmissible. This yields four sub-types of premise rejections (al-Ghazzālī 2004, p. 394).

Al-Ghazzālī explains that these four distinct sub-schemas emerge from the higher category of *mumāna':* the opponent can reject (1) the presence of the prescribed ruling in the original case, (2) the existence of *'illa* in the original case, (3) the proposed ground as the occasioning factor of the ruling, or (4) the presence of the occasioning factor in the target case. The first objection concerns the admissibility of the argument which requires the premises to be valid. The second and fourth objections concern the presence of the occasioning factor in the original and target cases while the third objection – the most important according to al-Ghazzālī – seeks to challenge why the ruling is warranted. Occasioning factors are not arbitrarily determined by a jurist, but are instead identified through rational methods. Through premise objection, the opponent rejects the validity of the proponent's argument. These four objections are rephrased into critical questions as follows:

1. Is the ruling in the original case unanimously agreed upon?
2. Is the proposed occasioning factor true or false in the original case?
3. Even if the factor is true in the original case, is it what occasioned the ruling?
4. Is the occasioning factor true or false in the target case?

According to al-Juwainī (1979), these categories are elaborated into new patterns. He illustrates new schemas through which the opponent can show the argument as inadmissible because one of the premises or a factor in the premises is not true for the involved parties. Among his eight or more schemas, all corroborated with instances from legal disputes, al-Juwainī proposes a thorough look into the intricate structure of this objection. For example, al-Juwainī expands the second question of whether the occasioning factor is true or false in the original case into three scenarios: (1) the premise is not accepted by the proponent himself, (2) the premise is not accepted by the opponent's parameters, or (3) it is not admissible according to both parties (al-Juwainī 1979). The following is an example of the third scenario.

In a legal case of analogising daily prayer (TC) from *Ramaḍān* fasting (OC), the proponent argues that the two cases should be considered similar because both are 'worships involving the human body alone'. The critical question is whether this factor is true in the original case, i.e. fasting. The opponent can show the argument to be invalid by raising a commonly held legal verdict that an elderly person incapable of fasting can give a certain amount of money to the poor instead. This case shows that fasting is not exclusively an act of the human body, but wealth may also be involved. Since the occasioning factor is not true in the original case, the premise is inadmissible.

Since the opponent has raised his critical question, the proponent is obliged to defend his position. Al-Ghazzālī proposes a number of other ways one can fend off each of these objections. For example, he can produce a corroboration (*sanad*) against the opponent's claim and compel him to approve the premise (al-Shīrāzī 1987, p. 54). Consider the following example.

In the case of a transaction contracted with a time-limited return policy, the buyer dies before the time limit expires. Is the buyer's right to return the product inheritable? The Shāfi'ī school of jurisprudence argues that it must be, considering the inheritability of other transactions is established by revelation that if someone leaves any rights or wealth, it will be inherited (al-Sam'ānī 1992). Just as a mortgage will retain its status after the death of the mortgagee, the return policy will remain effective as well after the death of the buyer or seller since both are rights of the deceased and rights must be inherited (al-Sam'ānī 1992).

In contrast, the *Ḥanafī* school of jurisprudence argues that the occasioning factor is not true in the target case. The condition of return is not a right but rather associated with the buyer's intention, such that if he intends to return the product, he can. An intention cannot be inherited because there is no such thing as an intention of the deceased existing to be inherited. On the contrary in the original case, inheriting existing and transferable objects is a right. *Shāfi'ites* would argue that the condition establishes a right, not an intention. The intention is a means that will help the buyer reclaim his rights. However, both arguments hold *ẓanniyy* validity in the legal court. The law seeker only has to approach a jurist of the school of jurisprudence he follows. The following is a diagram representing the above case:

Qiyās Inference	
Original Case	Inheritance of mortgage
Ruling in OC	Heirs have the right to inherit mortgages (established by revelation)
Target Case	Inheritance of right of return
'Illa	Both are rights of the deceased

Ruling in TC	Heirs will inherit the right of return
Man'	*Ḥanafī* objection: The condition of return is not a right, but a choice in regard to the buyer's intention. As an intention has no existence after one's death, it is not possible to be inherited.
Answer	*Shāfi'ites:* The intention is not what is established through such a condition, but rather a right that could be claimed.

Al-Qawl bi Mūjab al-'illa / Approving the Compelling Agency of the Factor

After evaluating the premises, the opponent challenges whether the argument in fact establishes the mentioned ruling. Although the premises are approvable and the relevance of the ruling to the original case is admissible, the opponent will ask whether the argument helps establish the disputed point or it proves a conclusion that is beyond the scope of the question. The opponent may agree with the proponent's argument regarding the juristic quality of the occasioning factor while excluding its application to the point of dispute by saying something along the lines of "I agree with the stated juristic quality, but that does not prove the case under discussion" (al-Juwainī 1979, p. 161; al-Ghazzālī 2004, p. 439; al-Shīrāzī 1987, p. 57).

The underlying argument here is that even if the occasioning factor is effective, it does not establish the ruling under consideration but rather establishes a different point. By offering such a question, the opponent has posed a formidable challenge against the proponent, who is confronted with a rejoinder that he is compelled to acknowledge (al-Juwainī 1979). In his further discussions, al-Juwainī provides a dozen examples to illustrate the different argumentative functions of this objection method.

To respond to this challenge, jurist-logicians have identified two or more patterns of answers. Either the original ruling stands while the new point that the opponent claims to be established is merely

entailed (al-Shīrāzī 1987, p. 109) or the question defeats a different claim that is not under consideration (al-Ghazzālī 2004, p. 444). By the first answer, the proponent is claiming that if a factor is true in a case, its necessary entailment must be true as well. Since the questioner agrees that his point is a necessary entailment of the original ruling, he must also agree that the original ruling is true. The answering schemas are represented as follows:
Answer 1: The point, which is established by the analogy according to the opponent, is a necessary entailment to the ruling under consideration, hence the analogy is correct.
Answer 2: The critical question defeats a point not argued.
I will illustrate these two patterns with two examples from Ḥanafī-Shāfiʿī legal debates, one in dialogical format and the other in diagrammatic form.

Case - 1:

Shāfiʿite Jurist**:** the validity of rental payment is not annulled if the renter passes away, because the physical integrity of the rented property is not affected. In the original case of a renter affected with lunacy, the rent remains valid as the property is not affected.

Ḥanafite Jurist: I agree with your analogy, but it does not defeat my point of contention. Death does not annul the rental, but rather the fact that the ownership of the property has been transferred to the heirs of the deceased annuls the rental.

Shāfiʿite Jurist: Transfer of ownership to the heirs is a consequence of death. Since inheritance is a consequence of death, you have admitted my argument. As it is established in logic that if *a* always occurs after *b*, and *b* will never be accompanied by *c*, then there should not be any case where *a* and *c* come together.

In the dialogue, Ḥanafite's objection has been refuted by the Shāfiʿites using the first pattern of answering. However, this debate continues and no unanimous agreement has been reached. As mentioned earlier, since both arguments can withstand the critical question-and-answer cycle, both are binding in the legal courts of each school.

Case - 2:

In the case of *i'tikāf*, i.e. retreat in a mosque, should the retreater fast or not? The Ḥanafī school argues for it, while the Shāfi'ites oppose it. The precedent case is staying at *'Arafa,* a complementary ritual of the *ḥajj* pilgrimage. Both staying in *'Arafa* and retreating in the mosque are space-oriented rituals in which the only requirement is the worshipper staying in a designated space. Staying at *'Arafa* is accompanied by another ritual *iḥrām*. Analogically, all space-oriented worships that involve mere stay should be accompanied by another form of worship. This is illustrated in the following diagram.

Qiyās Inference	
Original Case	Ritual standing in *'Arafa* as part of *ḥajj*.
Ruling in OC	Standing on '*Arafa* is valid only with the complementary ritual of being in *ihrām*.
Target Case	*I'tikāf* (ritual retreat) in a mosque
'Illa	Both are acts of worship where only staying in a space is involved.
Ruling in TC	Retreat in a mosque is valid only with a complementary ritual, thus fasting is complementary to *i'tikāf*.

Al-qawl bi mūjab al-ʻilla	An opponent from the Shāfiʻite school: I also approve of your occasioning factor. Like *ihrām* in the case of *ʻArafa*, *iʻtikāf* also requires a complementary worship. But I disagree with you regarding the assertion of it being fasting. I say *iʻtikāf* is complemented by *niyya* (a conscious intention before performing a specific act) and not fasting. Your *qiyās* does not resolve the debate.
Answer	*Niyya* is a part of the *iʻtikāf*, not a distinct or complementary ritual. The objection is not defeating the point of argument.

The question raised by the Shāfiʻite opponent is intended to expose the attempt of the Ḥanafite to prove his argument with premises that do not give the expected conclusion. However, the Ḥanafites reaffirm their argument by showing that the objection does not refute the argument under consideration. Rather, it exposes an argument that is not the point of disputation, that is whether *iʻtikāf* needs a *niyya* or not.

Al-Naqḍ / Inconsistency

Naqḍ is defined as "the absence of ruling in a case where the assumed occasioning factor is present" (al-Subkī 2003). In a question format, it stands similar to the CQ4 of Walton et al. (2009): Is there some other case C3 that is also similar to C1 except that *A* is false (true) in C3? Elaborating on this definition, al-Juwainī sketches three different structures of *naqḍ*: (1) "absence (*intifāʼ*) of the ruling (*ḥukm*) when the occasioning factor is claimed to be true"; (2) " presence of the *ʿilla* despite the absence (*faqd*) of *ḥukm* where it is claimed to be true"; and (3) " application (*ijrāʼ*) of the factor where the ruling is false" (Miller 1984).

The scheme of this objection regarding analogical argument is illustrated as follows:

> Original case premise: Ruling *A* is true for case *X*, which contains *Y,* the relevant ground for occasioning *A*.
>
> Conclusion: *A* should be true in case *Z* as well because it also has *Y*.
>
> *Naqḍ* premise: *A* is not established in case *S* despite the presence of *Y*. Hence, *Y* does not consistently occasion *A*.

However, *naqḍ* is not a definitive fallacy as we see in *'ilm al-jadal*. These forms of arguments traditionally perceived in logic to be fallacious are not essentially false as one can show the limitations of this objection/critical question and validate the original claim. Exploring the limits of *naqḍ* objection, scholars like al-Juwainī proposed a number of answering schemes. For a brief understanding, let us turn to the three following schemes:
1) showing the validity of the ruling in the third case;
2) negating the presence of *'illa* in the third case; and
3) explaining a new complementary element of the proposed occasioning factor (al-Shīrāzī 1988).

The answers seek to either show that the ruling is also present in the third case or that the occasioning factor is not present in the third case. If these two objections cannot be raised, one can also cast doubt on the soundness of the proposed occasioning factor as there are elements which the claimant has not yet considered (al-Juwainī 1979, p. 202). That is to say that, when the proponent argues that ruling *X* is true for cases *A* and *B* because both have *F* factor and the opponent shows that case *C* also has *F*, but the ruling *X* does not apply. This inconsistency might have arisen because the arguer has missed a factor *G* in addition to *F* that complements the occasioning factor in *A* and *B* which is not present in *C*. Consider the following example of inheritance where the deceased has only a brother and a grandfather as heirs.

Case	What will the brother of the deceased inherit if the only other inheritor is the grandfather?
Proponent	Abū Hanīfa (7th c.)

Claim	Grandfather disentitles (*ḥajb*) the brother from any portion and inherits all the property.
Qiyās inference	The grandfather is like the father
Original case	The father disentitles the brother (agreed upon unanimously)
Occasioning factors	1) The grandfather disentitles maternal half-brother as the father does 2) Both are entitled to 1/6 of the inheritance in some situations. 3) Both are referred to as *aṣl* or the origin in inheritance law.
Ruling	The grandfather will disentitle the brother like the father does.

Now the opponent will try to expose the inconsistency of the argument using *naqḍ* objection. (For a detailed appreciation of the example, see Young 2021):

Questioner	Muhammad al-Shāfi'ī (8th c.)
Charges of *Naqḍ*	The three properties that allow for the grandfather to be analogised from the father are also present in other kinds of inheritors, who do not hold the status of a "father". 1) The granddaughter of the son can disentitle the maternal half-brother like the father, but she does not hold the status of a "father". 2) The grandmother is entitled to 1/6 of the inheritance, while she is also not a "father". 3) A father who murders his own son will not receive any inheritance from the son's wealth as unanimously agreed on. Hence, the

	title of fatherhood alone is not enough to claim inheritance.

In this case of inheritance, which is the only occasion where legal schools differ over inheritance shares, Ḥanafites classify the grandfather as the father. They raised three relevant features where the grandfather is considered to be the father when the father of the deceased is also deceased. If three precedent instances establish that the grandfather assumes the status of the father, then in the newly raised case where the grandfather and the brother of the deceased are the only inheritors, should he be considered as a "father", thereby disentitling the brother? Shāfi'ites would offer *naqḍ* objection against all three factors and show that in three other cases, the properties are true while the ruling is false. But this challenge does not necessarily invalidate the original claim. Ḥanafites will argue that the Shāfi'ites have not considered a crucial element which is that the ground of comparison is not the three factors of resemblance functioning separately but rather collectively as a whole. And there is no single case where all three factors are true at the same time but the ruling is false.

Answer	

Third Scheme	The ground of comparison is the three elements altogether. If there is no inheritor except the grandfather, he is given the share the same as the father.

Al-Juwainī's discussion on the answering patterns and the validity of each pattern calls for closer examination. These discussions occasionally attempt to further the dialectical conversation into manifold schemes by providing examples of possible rebuttals to rejoinders and so on. Continuing the discourse, al-Juwainī looks into the strength of these new schemes of arguments to check whether they hold to be strong rejoinders or not. For instance, the third rejoinder to *naqḍ* objection is explained by al-Juwainī as follows: to demonstrate that the occasioning factor in the third case is not as strong as that in the original case which impacts the occasioning of the ruling. Following this, he elaborates these answers into two sub-schemes: a) the factor that leads to different rulings in both cases even if the occasioning factor is true and the same in both; and b) the occasioning factor and the ruling are present in both the target and the third cases, but the verdict in the third case is because of a different factor.

Building on the schemas of al-Juwainī, al-Ghazzālī framed five fundamental schemas to answer a *naqḍ* objection:
1) defend by explaining the implication of the occasioning factor in the new case is not as the opponent argues;
2) reject the admissibility of the new case (*man'* objection);
3) demonstrate the absence of *'illa* in some aspects of the third case;
4) reveal an aspect of the occasioning factor that was not mentioned before; and
5) argue that the focus is not on the occasioning factor, rather on asserting that the original and target cases are equal in every instance of the ruling (*taswiya*).

The fifth answer, *taswiya* (equalisation), is rejected by al-Shīrāzī while upheld as valid by al-Juwainī. For al-Shīrāzī, any analogy must prove the occasioning factor of the ruling and if it fails to do that, the analogy is considered a fallacy that cannot be reconstructed. Al-Juwainī argued that the argument is valid in a different aspect, although the proposed ground does not occasion the ruling, it can

prove that both the original and target cases must be considered similar in all instances of the ruling. If the opponent argues that the *'illa* does not establish the ruling because of its absence in the third case, the proponent can answer that the analogy must be considered from another perspective, which is not to prove the ruling, but rather to show that both the original and the target cases must be considered similar in a third aspect, not to show that this is the *'illa* of the ruling.

Consider the following example: The case concerns whether the property of a minor is subject to *zakāt* (obligatory alms). The proponent holds that the property of a minor is similar to that of an adult on the grounds of both being Muslim and enjoying absolute ownership of the property. However, enjoying the absolute ownership of a property does not warrant the ruling of the obligation of *zakāt*. Instead, the *'illa* that warrants the ruling is owning property that exceeds the legal threshold (*niṣāb*) for a whole lunar year. Thus, the analogy could be questioned with a third instance of an adult's property that did not reach the threshold or it reached the threshold but a whole lunar year has not yet transpired. In this new case, *zakāt* is not an obligation (the ruling does not apply) although the proposed occasioning factor, a Muslim enjoying the absolute ownership of the property, is true. According to the *taswiya* method of rejoinder, the proponent can answer the objection by emphasising the merit of the argument by equalising between adults and minors in all instances of *zakāt,* being or not being an obligation, payable amount, etc. Hence, the merit of the argument is *taswiya* between the both, not to establish the ruling of obligatory religious alms.

Al-Shīrāzī and al-Isfārayīnī reject such an answer to be strong enough to undermine the question (al-Ghazzālī 2004). To them, the point of discussion here is to explain the occasioning factor of *zakāt* being an obligation on the minor and the *taswiya* does not explain the reasons for which *zakāt* is an obligation. The objection exposes that the mentioned factor cannot occasion the ruling. In response to al-Shīrāzī, al-Ghazzālī agreed with his teacher and argued that such an answer is sound and reconstructed the original analogy. The point of discussion here is not about the *'illa* of *zakāt* being an obligation, but about whether this obligation should be applied to the property of minors as well. To that end, *taswiya* fulfils the purpose and the answer adequately shows how the critical question is invalid.

The subcategory of the fifth and the sixth higher category of critical questions, *kasr* (CQ5) and *qalb al-ʻilla* (CQ6), emerge from the *naqḍ* itself. Arguably, they are species of *naqḍ* but differ in the procedure of their application. The first, *qalb* is to reverse the argument to prove the opposite ruling using the same occasioning factor. It illustrates how the proposed occasioning factor will lead to the opposite rule, rather than the proposed one. The underlying critical question of a *qalb* is: CQ6: Is the advanced occasioning factor a reversed reading of the proposed ground to validate the opposite ruling?

An example is provided by al-Ghazzālī. In this case, Ḥanafites argue that the maternal uncle will inherit from the deceased if there is no legal heir alive (the maternal uncle is not a legal heir). The evidence is a prophetic statement that "maternal uncle is the heir of one who does not have an heir" (Abū Dāwūd 2009). Al-Ghazzālī (2004) argues that the statement negates the right of the uncle to inherit rather than establish it. It is similar to the saying "starving is the food for one who does not have any food" which means starving is not food at all. This method is sometimes applied to dialectical analogical reasoning by reversing the occasioning factor and proposing it as evidence for the counter-position.

As we discussed earlier, *naqḍ* is used to demonstrate that the proposed occasioning factor is true in a third case where the ruling does not apply. Slightly changing this technique, by using *qalb*, the opponent showcases the advanced occasioning factor as the ground for the opposite ruling. The reason for the proponent's inability to understand this contrary effect is that he ignored a necessary (*lāzim*) consequence of the occasioning factor. This consequence is crucial to the ruling. Consider the following example: whether a sale contract can be analogised to a marriage contract. In the original case, a marriage is legally binding even if the involved parties have not seen each other before. Likewise Ḥanafites argued that a contract of sale in which the buyer has not seen the merchandise previously should be legally binding as well. Against this Ḥanafite position, Shāfiʻite jurists would argue that if that were the case, the non-application of the right of cancellation within three days or for any defects in a marriage contract should be extended to a sale contract, but this is well-established to not be the case. Now, Ḥanafite will

come to recognise this consequence (that cancellation right does not apply) of his analogy and will be compelled to retract his argument or answer it. The attempt here is not to negate the conclusion offered by the proponent. Rather, it is to show that a necessary consequence of the opponent's conclusion will lead to the opposite ruling.

The second schema stemming out of *naqḍ* is *kasr*. Al-Subkī defined the term as removing a misattributed element from the occasioning factor and then demonstrating its inconsistency in a third case (al-Subkī 2003). In other words, *kasr* is a form of *naqḍ* objection but in a situation where an attribute of the proposed occasioning factor is not relevant to the ruling, it either is an unnecessary addition or a misplacement of a particular in the place of a universal. In the first situation, the opponent removes that unnecessary element and in the second situation, he will substitute it with a more relevant attribute. For example, to substantiate the obligatory status of *ṣalāt al-khawf* (to perform the usual obligatory prayers without any rule or form in a state of fear like war or earthquake), the proponent argues that it should be considered like a prayer in times of peace, reasoning both are prayers that should be made up if it is not performed at its prescribed time. Hence, the ruling is that prayer in the state of fear must be performed at its scheduled times. But the attribute of prayer in the occasioning factor is problematic because making up a missed act of worship is associated with all time-bound ritual, rather than being exclusively associated with prayer. The occasioning factor advanced here could not be rejected in a *naqḍ* objection because there is no third case where a prayer is prescribed to be made up and not to be performed at its designated time. In that case, the proponent will reject the attribute of prayer in the offered occasioning factor and rephrase it as any ritual worship, proceeding to advance a third case where the ruling is false. The third case of inconsistency is exemplified by the case of women not being required to fast during their menses in the month of Ramaḍān but are required to make up the missed fasts outside of Ramaḍān. In this case, ritual worship is obliged to be made up if it is not performed on time. This demonstrates that the advanced cause, a missed act of worship should be made up, is not the occasioning factor to the ruling that acts of worship must be performed on time.

Farq Objection

In *farq* objection, the opponent ventures to differentiate between the original and target cases by citing an element as false or true in the original case and its opposite in the target case (al-Shīrāzī 1987, p. 68). In al-Juwainī's definition, it is to differentiate two instances that warrant the same ruling with an element that invalidates the ruling in the target case (al-Juwainī 1979, p. 298). The underlying question is about any difference between the cases and whether it is relevant to the proposed ruling. The third critical question raised by Walton regarding whether there are important differences (dissimilarities) between C1 and C2 informs us of the same objection.

An example from Islamic law is the case of retaliation. If a Muslim intentionally murders another Muslim, retaliation becomes binding because the taking of the victim's life makes taking the life of the murderer a right to the relatives of the victim. By *qiyās,* retaliation should become permissible when a Muslim unintentionally kills another Muslim or a non-Muslim. In the first case, the target case must be separated from the original case because it introduces a new disrupting element: the absence of intention. Here, the focus is to analyse whether the identified difference is relevant to the ruling. In the second case, the victim being a non-Muslim is not deemed to be relevant if he is a non-combatant citizen (*dhimmiyy*), but is relevant if he is a combatant.

Farq is the most substantial argumentation pattern in the development of Islamic legal bodies. Muslim jurists authored legal textbooks to understand the legal status of any possible issues emerging from a general legal theme, regardless of its actual occurrence in their living context. After extracting a foundational ruling from revelational sources in a legal case such as murder, the jurists continue to develop the law into various sub-cases. Looking into other potentially analogous instances of murder, scholars will evaluate the difference between the original ruling found in revelation and the new case and continue to stipulate the legal status of each possible consequent legal event. The important task is to determine whether the differences between the original and the new cases are relevant to the ruling. In order to achieve that, the

differences are analysed on the grounds of effectiveness or ability to change the rule.

A particularly complicated and most used example of *qiyās* – usury in barter transactions – makes such a case. According to a Prophetic tradition, barter transactions of gold, silver, dates, wheat, barley or salt without quantitative parity, delayed exchange and within the same genus are considered usurious. As the *'illa* is not mentioned explicitly in the revelational source, scholars differ over the question of how to classify subsequent commodities. Does it include only gold, silver and the mentioned edibles or should any other commodities be also classified as usurious? If gold and silver transactions are usurious, what about modern paper currencies or other metals and precious jewels? Even if the ruling is limited to the six named genuses, what about the transaction of bread that is produced out of wheat? On the other hand, is quantitative parity measured by weight or count? Scholars extensively disputed these and subsequent questions based on the point of difference (*farq*). Regarding this far-reaching importance of the idea of difference to the development of Islamic law, al-Shīrāzī stated that "it is the most crucial element of critical thinking and through it, jurists come to understand jurisprudence" (al-Shīrāzī 1987). Al-Qarāfī (c.1228-1285), an influential jurist-logician, eloquently expressed the extensive importance of *farq* in jurisprudence as such:

> These principles are crucial in jurisprudence, immensely beneficial, and the extent of a jurist's understanding of them elevates his stature. The knowledge of it reflects the scholarship of jurisprudence, reveals the methodologies of issuing religious edicts, triggers debates among scholars, brings out the illustrious and those who excel in this field (al-Qarāfī 2003).

Qarāfī authored two different textbooks explaining the application of *farq* in both Islamic legal bodies and legal theory. Moreover, a number of works, exclusively written to develop the theory and praxis of *farq* within the framework of jurisprudence, have made it an independent sub-disciplinary practice within Islamic law (al-Dimishqī 2007, p. 55). Remarkably, Badr al-Dīn Zarkashī, a 12th-century Muslim polymath, while enumerating ten sub-disciplines of Islamic law, considered the understanding of similarities (*jam'*) and differences (*farq*) as a foundational field of study. According to him,

"Jurisprudence is all about differentiating and conjoining. Every distinction between two issues is influential unless it is overwhelmingly apparent that the proposed occasioning factor is more evident" (al-Zarkashī 2000, p. 69). He substantiates his argument citing al-Juwainī that merely relying on assumptions about distinctions is insufficient. Instead, when two issues seem similar but differ upon closer inspection, addressing their convergence is necessary (al-Zarkashī 2000, p. 69).

Al-Maḥallī's comments on al-Subkī give a clear demonstration of its different schemas. According to him, an opponent can raise an objection saying that a relevant attribute in the original case is absent in the target case, or a relevant attribute in the target case is absent in the original or the attributes are different in both (al-Maḥallī 2011). For him, this new attribute has to be a condition to invoke the ruling. Thus, the objection is valid only if that difference is proved to be consequential to the change of ruling. In the above-mentioned example of homicide, the original case has an attribute of intentionality which should be considered a condition of retaliation even if it is not the occasioning factor of the rule. As we will see in detail in the following discussion, the question is whether the attribute is consequential to the ruling or not.

Developing the murder case, another example is advanced by al-Maḥallī to demonstrate his second pattern of differentiation. Ḥanafites argued that if a Muslim intentionally murders a non-Muslim while both reside in a land under Islamic governance, the ruling of retaliation is binding just as if it were a case of a non-Muslim murdering another. Crucial to note here is that even though the occasioning factor of the rule is intentional murder, the factor that conjoined (*jam'*) the two cases is the status of being citizens of the state. Here, two factors are in action, the occasioning factor and the conjoining factor (*jam'*). In this case, if the opponent could demonstrate that the attribute of the victim being non-Muslim in the target case cancels the extension of the same ruling, it is a *farq* objection to the target case (Maḥallī 2011).

Hence, the evaluation revolves around two factors: the property that occasions the ruling, i.e. the *'illa,* and the properties that indicate convergence or divergence, i.e. *jam'* and *farq*. One may also ask about the murder of a Muslim or a non-Muslim by a minor Muslim.

The persisting question here is whether the newly added attributes will affect the ruling or not. *Farq* is to expose this differentiation between the two cases, but as mentioned by Maḥallī, the ruling has to be proved to be conditional (*sharṭ*) or entailment (*lāzim*) to the differentiating elements.

According to al-Ghazzālī, deploying *farq* objection should fulfil four conditions: both the attributes in the original or target cases should be backed by another case, the raised distinction (*farq*) should be more particular than the conjoining factor (*jam'*), the target case should not be in need of an additional condition other than the divergence factor and the differentiation should comprise all the possible cases with the same rule (al-Ghazzālī 2004, p. 488-494).

The first condition suggests that the new attribute that differentiates between the original and the target cases should be substantiated by new evidence that considers this difference as effective in changing the ruling. The jurist should explain why he took the differentiating elements to be effective in the ruling. It should be demonstrated somewhere else where it is efficient being a condition or consequence. The second and third conditions are that the differentiating element should be more particular than the element that conjoins them and it should not require any additional clause in the target case in order to establish the *farq*.

Fourth is a contested condition. The *farq* element should be effective if it is true in all the original cases. The difference in opinion emerges from the contestation over the legitimacy of bringing multiple original cases. Considering that to bring multiple original cases is valid, the condition is that the *farq* has to be effective in every case or at least should show similar differences in other original cases too. Unless one cannot differentiate the original case from all of its precedents, the *farq* is not a defeater. Al-Juwainī's answering schemas revolve around conformity to these conditions. The proponent can refute the objection by showing that one of these conditions is not fulfilled.

Conclusion

Contrary to the narrative that the legitimacy of defeasible reasoning is only recently recognised within logic, this paper demonstrated that the recognition of its importance and legitimacy was the defining force of Islamic jurisprudence. The recognition of nonmonotonic reasoning within Islamic argumentative theories shaped Islamic law as pluralistic and accommodative to competing legal positions. A *ẓanniyy* or plausible kind of argument in Islamic legal theories does not provide a definitive conclusion, rather, through a process of critical questions and answers, one of the competing positions will be preponderated over the other for the time being, while admitting a possibility that the approved position could be defeated if new information arises.

This encourages us to approach Islamic legal theories and the sub-discipline of *jadal* as a rich source of argumentation theories which can help us understand the intricacies of the dialectical process involving defeasible reasoning. Moreover, argumentation practices and their importance are not exclusively a Western enterprise, there are different traditions, past and present, that scholars must investigate to appreciate diverse human conceptions of argumentation and its larger implications for logic in general.

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