Jadal and *Qiyās* in the Fifth/Eleventh Century: Two Debates between al-Juwaynī and al-Shīrāzī

Sohaira Siddiqui
Georgetown University

In an exchange preserved in al-Subkī's (d. 771/1370) *Ṭabaqāt al-shāfiʿiyya*, the jurists al-Juwaynī (d. 478/1085) and al-Shīrāzī (d. 476/1083) debate equating prayer time to prayer direction in regard to the validity of prayer, and the adult virgin to the adult nonvirgin in regard to consent. While the dispute between the two scholars is on seemingly innocuous legal issues, it reveals that despite adherence to the same Shāfiʿī legal school, the two hold contrasting positions on the specifics of analogical reasoning (*qiyās*). By examining the differences in their doctrines on *qiyās* and their approaches to dialectics (*jadal*), this article demonstrates that al-Juwaynī is more willing to use *qiyās*, especially its weaker forms, and make nontextual legal arguments, while al-Shīrāzī is more wary in his use of *qiyās*, leading him to reject its weaker forms and nontextual arguments. By tracing the differences in their *qiyās* doctrines through their works on *jadal* and exploring the differing dialectics used in the two debates, this article examines the connection between *qiyās* and *jadal*, intra-school *jadal*, and the various approaches to *qiyās* in the fifth/eleventh century.

INTRODUCTION

In addition to biographical sketches of seminal figures within the Shāfiʿī school, Tāj al-Dīn al-Subkī's (d. 771/1370) *Ṭabaqāt al-shāfiʿiyya* preserves important correspondences and exchanges that occurred between them. In the entry on Abū Maʿālī al-Juwaynī (d. 478/1085), two debates between him and Abū Isḥāq al-Shīrāzī (d. 476/1083) during the latter's visit to Nishapur are found.[1] In the fifth/eleventh century, al-Juwaynī and al-Shīrāzī were considered to be the foremost Shāfiʿī jurists and dialecticians of the time and were acknowledged as such by their appointments as heads of the Niẓāmiyya madrasa in Nishapur and Baghdad respectively.[2] The debates, albeit not exhaustive in length, exemplify certain mechanisms

Author's note: I would like to thank Mariam Sheibani and the three anonymous reviewers for their feedback, and Peri Bearman for her invaluable edits, especially of the translation. Some liberties with the translation have been taken so that it is more accessible to readers unfamiliar with Arabic grammatical structures. Additionally, to accurately reflect the text, it is noninclusive of genders.

1. Tāj al-Dīn al-Subkī, *Ṭabaqāt al-shāfiʿiyya al-kubrā*, ed. M. M. al-Ṭaḥānī and ʿA. M. al-Ḥilw, 10 vols. (Cairo: ʿĪsā al-Bābī al-Ḥalabī, 1964–1976), 5: 209–18. Al-Shīrāzī was the preeminent student of the famed judge Abū l-Ṭayyib al-Ṭabarī (d. 450/1058). For full biographies of both, see M. Ḥ. Ḥītū, *al-Imām al-Shīrāzī: Ḥayātuhu wa-ārāʾuhu l-uṣūliyya* (Damascus: Dār al-Fikr, 1980); F. Ḥ. Maḥmūd, *al-Juwaynī: Imām al-Ḥaramayn* (Cairo: al-Dār al-Miṣriyya, 1964); ʿA. al-Dīb, *Imām al-Ḥaramayn* (Kuwait: Dār al-Qalam, 1981). Youcef Soufi discusses these two debates in "Pious Critique: Abū Isḥāq al-Shīrāzī and the 11th Century Practice of Juristic Disputation (*Munāẓara*)" (PhD diss., Univ. of Toronto, 2017). He dates the debates to 475/1083, the final year of al-Shīrāzī's life. Unfortunately, I became aware of the dissertation only after this article was typeset, too late to engage with it.

2. The Nishapur Niẓāmiyya was the first to be built, followed two years later, in 459/1067, with the building of another in Baghdad. For the development of these madrasas, see A. K. S. Lambton, "The Internal Structure of the Saljuq Empire," in *The Cambridge History of Iran*, vol. 5: *The Seljuk and Mongol Periods*, ed. J. A. Boyle (Cambridge: Cambridge Univ. Press, 1968), 203–82.

of dialectic disputation (*jadal*) in action and reveal their distinct scholarly approaches to the doctrine of analogical reasoning (*qiyās*) despite their shared intellectual heritage and commitments. This article will assess the importance of these debates in the development of *jadal* as a genre of legal writing. After the first section, which addresses the genre, the second and third look at al-Shīrāzī's and al-Juwaynī's theories of *qiyās* and *jadal*, the fourth provides a translation of the debates, and the fifth analyzes the debates in light of the preceding sections.

I. *JADAL* AS A GENRE OF LEGAL WRITING

Jadal texts have long been recognized as constituting a unique genre within Islamic law, but it is only recently that more comprehensive analyses of these writings have been undertaken. One of the first modern-day scholars to recognize their importance was Wael Hallaq, who argues that Abū Ḥusayn al-Baṣrī's (d. 436/1044) *Kitāb al-Qiyās al-sharʿī* was one of the earliest comprehensive texts within this genre and aptly uncovers the legal and theological issues at stake in these treatises.[3] Hallaq traces the development of works in juristic dialectical disputation back to the translation into Arabic of Greek texts in the first half of the third/mid-ninth century.[4] According to him, the methodology and form of Greek dialectical treatises were incorporated into Islamic works, eventually constituting distinctly Islamic juridical treatises on dialectic that shed their Greek overtones.[5] The function of these dialectical treatises was to provide jurists with mechanisms to critique probable (*ẓannī*) legal rulings, refine them, and ultimately provide justification for selected opinions.[6] While the general function of *jadal* is not a matter of dispute in secondary scholarship, disagreement over its origins exist. Larry Miller argues that the first dialectical treatises to emerge in the fourth/tenth century were theological.[7] Though Miller acknowledges the role of Greek dialectical disputation treatises in the realm of theology, he ultimately sees the rise of juridical *jadal* treatises as an appropriation from Islamic speculative theology (*kalām*), not directly from Greek philosophy. Despite their differences, both Miller and Hallaq agree on the adoption of a foreign source for the burgeoning of juridical disputation treatises. This narrative has

3. W. Hallaq, "A Tenth-Eleventh Century Treatise on Juridical Dialectic," *The Muslim World* 77 (1987): 197–206. Others to recognize the importance of *jadal* in the development of Islamic intellectual thought include G. Makdisi, "Dialectic and Disputation: The Relation between the Texts of Qirqisānī and Ibn ʿAqīl," in *Mélanges d'islamologie: Volume dédié à la mémoire de Armand Abel par ses collègues, ses élèves et ses amis*, ed. P. Salmon (Leiden: Brill, 1974), 201–6, and "The Scholastic Method in Medieval Education: An Inquiry into Its Origins in Law and Theology," *Speculum* 49 (1974): 640–61; J. van Ess, "Logical Structure of Islamic Theology," in *Logic in Classical Islamic Culture*, ed. G. E. von Grunebaum (Wiesbaden: Harrassowitz, 1970), 21–50; A. Belhaj, "*Ādāb al-Baḥth wa-al-Munāẓara*: The Neglected Art of Disputation in Later Medieval Islam," *Arabic Sciences and Philosophy* 26.2 (2016): 291–307, and "Disputation is a Fighting Sport: *Munāẓarah* According to Ibn Qayyim al-Jawzīyah," *Mamluk Studies Review* 19 (2016): 79–89; L. B. Miller, "Islamic Disputation Theory: A Study of the Development of Dialectic in Islam from the Tenth through Fourteenth Centuries" (PhD diss., Princeton Univ., 1984); W. E. Young, *The Dialectical Forge: Juridical Disputation and the Evolution of Islamic Law* (Cham, Switzerland: Springer, 2017). These studies primarily focus on *jadal* during the classical period; as a genre, however, it evolved a great deal. On the later dialectical genre of *ādāb al-baḥth*, see Kh. El-Rouayheb, *Islamic Intellectual History in the Seventeenth Century: Scholarly Currents in the Ottoman Empire and the Maghreb* (New York: Cambridge Univ. Press, 2015), chap. 2; M. K. Karabela, "The Development of Dialectic and Argumentation Theory in Post-Classical Islamic Intellectual History" (PhD diss., McGill Univ., 2011).

4. For more on the translation of Greek texts into Arabic at this time, see D. Gutas, *Greek Thought, Arabic Culture: The Graeco-Arabic Translation Movement in Baghdad and Early ʿAbbāsid Society (2nd–4th/8th–10th Centuries)* (London: Routledge, 1998).

5. Hallaq, "Tenth-Eleventh Century Treatise," 197–98.

6. Hallaq (ibid., 198) states that juridical dialectic was viewed as a way to achieve the truth. Later scholars agree with him: Miller, "Islamic Disputation Theory," 9; Young, *Dialectical Forge*, 1.

7. Miller, "Islamic Disputation Theory," 1–51. Miller notes (p. 7) that despite the nonuniform nature of early theological treatises, they overlap in terms of themes they address.

recently been challenged by Walter Young, who argues that juristic *jadal* treatises were not foreign appropriations but developed from prior juridical dialectical teachings and practices.

Young argues that "a tradition—or traditions—of dialectical disputation preceded this infusion of Aristotelian dialectical method resulting from the Translation Movement."[8] Young calls these traditions of dialectical disputation "proto-system *jadal*," averring that, as opposed to being articulated in systematic treatises of dialectical theory, they constituted the actual practice and teaching of *jadal* in a more inchoate form. He traces these protosystems to works of juristic disagreement from the latter half of the second/eighth century, particularly al-Shāfiʿī's (d. 204/820) *Ikhtilāf al-ʿirāqiyyayn*.[9] Notwithstanding the differing narratives proposed by Hallaq, Miller, and Young regarding the rise of *jadal* as a distinct genre, they concur that the entire enterprise can be denoted as one of "truth-seeking"[10]—while dialecticians sought to have their opinion prevail over that of their opponents, they were also willing to concede to a superior argument. This openness to concession is what ultimately differentiated proper disputation from improper disputation, i.e., mere legal sophistry. In addition to their agreement as to *jadal*'s nature, all three hold that the fifth/eleventh century and the treatises of al-Juwaynī and al-Shīrāzī mark a pivotal moment in *jadal*'s development into its fully systematized form.[11]

Although there are other dialectical moves outside of analogy-oriented arguments that are frequently employed by jurists in *jadal*,[12] and Hallaq notes their centrality,[13] in the following debates between al-Juwaynī and al-Shīrāzī analogy-oriented arguments dominate. For a better understanding, I will first discuss al-Shīrāzī's recourse to *qiyās* in *jadal* and then that of al-Juwaynī.

II. AL-SHĪRĀZĪ: *QIYĀS* AND *JADAL*

Éric Chaumont divides al-Shīrāzī's intellectual production into two periods: a "youthful" period focused on juristic disputation and disagreement (*ikhtilāf*) and a "mature" period focused on legal theory (*uṣūl al-fiqh*) and legal interpretations (*fiqh*). The "brilliant conversationalist" evolves into a "genuine *mujtahid*" who is concerned with law beyond the form and substance it takes in the realm of juristic disagreement.[14] I will rely here on one of al-Shīrāzī's early works, *Kitāb al-Maʿūna fī l-jadal*, which is seen as a summary of the earlier ones and was composed closer to the end of the youthful period in 450/1058.[15] The text I used to understand his doctrine of *qiyās* is *al-Lumaʿ fī uṣūl al-fiqh*, which was penned, according to Chaumont, in al-Shīrāzī's mature period.[16]

8. Young, *Dialectical Forge*, 24.

9. Young also explores *Taʾsīs al-Naẓāʾir* of Abū l-Layth al-Samarqandī (d. ca. 373/983), *Taʾsīs al-Naẓar* of Abū Zayd al-Dabūsī (d. 430/1038), and *al-Uṣūl* of Abū l-Ḥasan al-Karkhī (d. 340/952). For his distinction between *jadal* and *khilāf* works, see ibid., 66–72.

10. Supra, n. 6.

11. Hallaq, "Tenth-Eleventh Century Treatise," 197–99; Miller, "Islamic Disputation Theory," 87–90; Young, *Dialectical Forge*, 67–70.

12. Young, *Dialectical Forge*, 10.

13. Hallaq, "Tenth-Eleventh Century Treatise," 200.

14. É. Chaumont, "al-Shīrāzī," *EI*2, 9: 482a (consulted online, March 5, 2018).

15. Chaumont's list of al-Shīrāzī's youthful works (ibid.) comprises *Kitāb fī masāʾil al-khilāf fī l-furūʿ*, *al-Mulakhkhaṣ fī l-jadal*, *Kitāb al-Maʿūna fī l-jadal*, *Kitāb al-Qiyās*, and *al-Tabṣira fī l-khilāf*. Al-Shīrāzī's *al-Mulakhkhaṣ*, his more exhaustive work on *jadal*, has not been published, but was edited by Muḥammad Niyāzī as part of his MA thesis (1986) at Umm al-Qura University. In my survey of al-Shīrāzī's theory of *jadal* in his *al-Maʿūna*, additions will be made on the basis of Young's reading (*Dialectical Forge*, 85 n. 2) of Niyāzī's edition.

16. Al-Shīrāzī, *al-Lumaʿ fī uṣūl al-fiqh*, ed. M. D. Mustū and Y. ʿA. Badawī (Beirut: Dār Ibn Kathīr, 1995); ed. É. Chaumont, in *Mélanges de l'Université Saint-Joseph* 53 (1993–1994): 1–249; trans. É. Chaumont, *Kitāb*

In *al-Lumaʿ* al-Shīrāzī defines *qiyās* as "the correlating of a branch case (*farʿ*) to a source case, in some of its legal consequences (*aḥkām*), with a reason (*maʿnā*) that joins the two of them."[17] He notes that there are three types*: qiyās al-ʿilla*, *qiyās al-dalāla*, and *qiyās al-shabah*. Al-Shīrāzī defines the first, and strongest, type as "the returning of a branch case to a source case by virtue of a point (*nukta*)[18] by which the ruling is attached to in the divine law (*sharʿ*)."[19] It is then further subdivided into evident (*jalī*) and latent (*khafī*).[20] These two forms of *qiyās al-ʿilla* are differentiated on the basis of the degree to which interpretation is deemed permitted. Al-Shīrāzī divides the first category of "evident" into four types. The first is evident due to an explicit linguistic indicant pointing to the rationale in the ruling itself. The scriptural text conveying the ruling is unambiguous (*naṣṣ*) and thus the linguistic clarity of the ruling precludes more than one interpretation. As an example he cites Q 59:7: "Whatever gains God has turned over to His Messenger from the inhabitants of the villages belong to God, the Messenger, kinsfolk, orphans, the needy, the traveler in need—this so that (*kay*) they do not just circulate among those of you who are rich."[21] After explaining the distribution of wealth in the first part of the verse, the second part starts with the subjunctive particle *kay*, linguistically indicating that the reasoning for the distribution will be given. According to al-Shīrāzī, these obvious linguistic indicators are a decisive proof (*dalīl qaṭʿī*) that what follows them is in fact the reasoning of the ruling; additional interpretations are therefore unacceptable.[22] The second type of "evident" is due to a fortiori signification, exemplified by Q 17:23: "Say no word that shows impatience with them [i.e., parents], and do not be harsh with them, but speak to them respectfully." According to al-Shīrāzī, the quranic injunction to not show "impatience" to one's parents (lit. to not say "Uff" to them) signifies that any-

al-Lumaʿ fī uṣūl al-fiqh: Le livre des rais illuminant les fondements de la compréhension de la Loi. Traité de théorie légale musulmane (Berkeley: Robbins Collection, 1999). Al-Shīrāzī also wrote a commentary, *Sharḥ al-Lumaʿ*, ed. ʿA. Turkī (Beirut: Dār al-Gharb al-Islāmī, 1988). I have relied on the Mustū and Badawī edition of *al-Lumaʿ*.

17. Al-Shīrāzī, *al-Lumaʿ*, 198. Al-Shīrāzī uses the term *maʿnā* here, but in other texts, such as his *al-Mulakhkhaṣ* and *al-Maʿūna*, he uses *ʿilla* ("cause"). This could be because he is explicitly differentiating between the two terms or because early on they were used interchangeably, as Hallaq has argued (W. Hallaq, "The Development of Logical Structure in Sunni Legal Theory," *Der Islam* 64 [1987]: 42-67, at 45; see also N. Shehaby, "*Illa* and *qiyās* in Early Islamic Legal Theory," *JAOS* 102 [1982]: 27–46). Personally, I do not think the choice of which to use is as unremarkable as Hallaq's argument would lead us to believe. In al-Shīrāzī's discussion of *qiyās* he argues that the jurist looks for and arrives at the *ʿilla* only in one mode of analogy with the other mode being constructed on the basis of other than explicit rationales. The term *maʿnā* allows al-Shīrāzī to subsume under this definition both modes, which would not have been possible had he used *ʿilla*. See al-Shīrāzī, *al-Maʿūna fī l-jadal* (Kuwait: Markaz al-Makhṭūṭāt wa-l-Turāth, 1987), 36–37; Young, *Dialectical Forge*, 110. According to Young, the distinction between *ʿilla* and *maʿnā* is actually rather significant. He argues that in the original usage of *maʿnā* by al-Shāfiʿī, he intended "a potentially-shared and potentially-efficient 'property' or 'quality' or 'intension'." Thus, *maʿnā* indicates a property that is potentially effective in occasioning the ruling (*ḥukm*), whereas the *ʿilla* is the occasioning factor, or rationale, giving rise to the rule. *Maʿnā* is thus a broader category, such that every *ʿilla* is considered a *maʿnā* but not every *maʿnā* is considered an *ʿilla*. See Young, *Dialectical Forge*, 161 n. 247, 175–76.

18. One of the *JAOS* reviewers indicated that in another edition of *al-Lumaʿ*, the editor notes that what is intended by *nukta* is actually the rationale. See ed. ʿA. al-Khaṭīb al-Ḥasanī (Bahrain: Maktaba Niẓām Yaʿqūbī al-Khāṣī, 2013), 248 n. 1.

19. Al-Shīrāzī, *al-Lumaʿ*, 204. A similar definition for *qiyās al-ʿilla* is provided in *al-Mulakhkhaṣ*. Young, *Dialectical Forge*, 110.

20. In *al-Mulakhkhaṣ*, al-Shīrāzī notes a third category between evident and latent—"clear" (*wāḍiḥ*)—but there does not seem to be a contradiction between the typology of *qiyās* in al-Shīrāzī's *Lumaʿ* versus that in *al-Mulakhkhaṣ*. Young (*Dialectical Forge*, 110–14) comments upon the various systems of classification.

21. All translations are taken from M. A. S. Abdel Haleem, trans., *The Qur'an* (Oxford: Oxford Univ. Press, 2004).

22. Al-Shīrāzī, *al-Lumaʿ*, 204–5.

thing worse than that is similarly prohibited.[23] The third type is by way of another type of linguistic indicant that does not fall into the aforementioned two categories,[24] and the fourth type is by consensus (*ijmāʿ*). Despite not providing any examples of this, he concludes his discussion on *qiyās al-ʿilla jalī* by noting that the identified rationale cannot conflict with consensus or any unambiguous text.[25]

Al-Shīrāzī divides latent cases of *qiyās al-ʿilla* into two categories. In the first, the rationale of the ruling is apparent (*ẓāhir*), but it is not established decisively so as to exclude multiple interpretations. Given that the rationale is apparent but not definitive, al-Shīrāzī only cites cases in which there are two possible rationales and the jurist must let one prevail over the other. The second form of *qiyās al-ʿilla khafī* is by way of rational inference (*istinbāṭ*).[26]

Turning to *qiyās al-dalāla*, al-Shīrāzī defines it as "returning the branch case to the source case by virtue of a reason (*maʿnā*) other than the reason on which the ruling depends in the divine law, except that it indicates the presence of the rationale (*ʿilla*) of the divine law."[27] He then notes that this type of *qiyās* overlaps somewhat with *qiyās al-ʿilla khafī* in the sense that both allow for interpretation, but *qiyās al-dalāla* accommodates more. His discussion of *qiyās al-dalāla* in *al-Lumaʿ* is rather truncated, and a fuller account can be found in *al-Mulakhkhaṣ*. Following Young's interpretation, *qiyās al-dalāla* is divided into two main types. In the first the jurist cannot ascertain the rationale so examines other rulings associated with the branch case until a relevant ruling is found. This relevant ruling, with a rationale the jurist can ascertain, is then connected with a source case. There are thus two rulings from the same branch case in this form of *qiyās al-dalāla*—one whose rationale is known and another whose rationale is not—and both are connected to a single source case. In the second form of *qiyās al-dalāla*, the rationale can similarly not be ascertained, but instead of other rulings of the same branch case, a parallel (*naẓīr*) case that correlates to the branch case is found.[28] Young describes this type as effectively a double *qiyās* between the "*farʿ* and the *naẓīr*-parallel of the *farʿ*," and between the "*naẓīr*-pairs."[29]

Al-Shīrāzī defines the final form—*qiyās al-shabah*—as occurring when "one links the branch case to the source case by way of a [shared] resemblance."[30] This form is not only unlike *qiyās al-ʿilla* in that the jurist is unable to ascertain the rationale of the ruling by virtue of which the two cases can be connected; it is also unlike *qiyās al-dalāla* in that the two cases neither share other rulings, as in the first type, nor are they exact parallels (*naẓīr*), as in the second type; rather, they merely resemble each other in certain elements. The stronger the resemblance, the more confident the jurist can be that the ruling applied to the source case can be transferred to the branch case. After weighing the opinions of both proponents and objectors, al-Shīrāzī states, "for me, *qiyās al-shabah* is invalid because it is not the rationale of the ruling (*ʿillat al-ḥukm*) according to God most high or an indicant (*dalīl*) for the rationale, so it is not permitted to make the ruling depend on it."[31] Al-Shīrāzī's rejection of *qiyās al-shabah* is not altogether surprising since he emphasizes in *qiyās al-dalāla* the

23. Ibid., 205.
24. Ibid., 206.
25. Ibid., 207.
26. Ibid., 207–8.
27. Ibid., 208.
28. Young, *Dialectical Forge*, 117.
29. Ibid.
30. Al-Shīrāzī, *al-Lumaʿ*, 209.
31. Ibid., 210. Al-Shīrāzī also rejects *qiyās al-shabah* in *al-Maʿūna* and *al-Mulakhkhaṣ*. See al-Shīrāzī, *al-Maʿūna*, 38; Young, *Dialectical Forge*, 119.

need for other shared rulings or parallel cases and in *qiyās al-ʿilla* the need for the rationale to be clear. By negating the validity of *qiyās al-shabah*, al-Shīrāzī significantly narrows the scope for analogical reasoning. Importantly for the purposes of this article, in the realm of dialectical disputation one can expect al-Shīrāzī to be a vociferous opponent against anyone invoking this form of *qiyās*.

Shifting to al-Shīrāzī's theory of dialectical disputation, he begins in *al-Maʿūna* with an exposition on legal proofs, broadly dividing them into three categories: (1) source cases from scripture (*aṣl*), (2) what is rationally deduced from source cases in scripture (*maʿqūl al-aṣl*), and (3) the presumption of continuity (*istiṣḥāb ḥāl*). Since legal arguments are constructed on scriptural and rational proofs, the starting point in any *jadal* exchange is identifying the proofs utilized by one's opponent, placing them within the broader hierarchy of proofs, and evincing the strongest proofs for one's own argument. By providing an exhaustive gradation of proofs, dialecticians create a shared discourse for their arguments and counter-arguments. In expounding upon legal proofs, I will limit myself to the first two categories since the last does not pertain to the two debates that will be analyzed below.[32]

The first two categories contain further subdivisions for either the source or the form the source takes. Starting with source cases from scripture (1), the three sources are the Quran, hadith, and consensus, with each source being further subdivided on the basis of its form. For example, al-Shīrāzī notes that cases extracted from the Quran are either unambiguous, apparent, or general (*ʿumūm*)—the first is the strongest in terms of linguistic indication. As for hadith, al-Shīrāzī subdivides it into what the Prophet states, what he does, and what he acknowledges. Though al-Shīrāzī provides extensive details of the subhierarchies within the hadith, for the purposes of the debate with al-Juwaynī, only understanding the first category is necessary.[33] Prophetic speech is divided by al-Shīrāzī into self-initiated speech and speech with a cause. Both forms have the same subclassification as the Quran into what is unambiguous, apparent, or general. The strongest form of Prophetic speech is unambiguous, self-initiated speech, then apparent self-initiated speech, and so on until the weakest form of Prophetic speech, which is general speech without a cause. The last source of divinely sanctioned cases is through consensus, and al-Shīrāzī distinguishes between consensus established by the agreement of all the scholars and consensus established by the agreement of some of them with others remaining silent.[34]

Al-Shīrāzī divides cases that are rationally deduced from source cases in scripture into three: (1) the a fortiori understanding from the instruction (*faḥwa l-khiṭāb*), (2) the indicant of the instruction (*dalīl al-khiṭāb*), and (3) the reason of the address (*maʿnā l-khiṭāb*). The first is defined as when God or the Prophet "clearly stipulates what is greater (*aʿlā*) to draw attention to the lesser (*adnā*), or clearly stipulates what is lesser to draw attention to the greater."[35] According to al-Shīrāzī, cases deduced in this manner are of equivalent status to scripturally derived cases from unambiguous texts.[36] The second category, the indicant of the instruction, is when God or the Prophet "attaches the ruling to one of the properties of a thing"[37] such that whatever does not have that property is judged by its opposite. As an example al-Shīrāzī cites Q 65:6: "If they are pregnant, then give maintenance to them," to

32. For more on al-Shīrāzī's discussion on the presumption of continuity, see al-Shīrāzī, *al-Maʿūna*, 39.

33. For more on the subcategories of hadith, see ibid., 29–33; al-Shīrāzī, *al-Lumaʿ*, 151–73; Young, *Dialectical Forge*, 90–91.

34. Al-Shīrāzī, *al-Maʿūna*, 33–34.

35. Ibid., 35.

36. Ibid.

37. Ibid.

show that it is understood from the verse that a woman who is not pregnant is not a recipient of maintenance. Of the last category al-Shīrāzī states, "It is *qiyās*, which is the attaching of a branch case to a source case with a rationale that connects both and the applying of the ruling of the source case to the branch case."[38] He subsumes all three forms of *qiyās* in this one subcategory, but notes that *qiyās al-ʿilla* is the strongest, followed by *qiyās al-dalāla* and *qiyās al-shabah*.

After expanding on the legal proofs, al-Shīrāzī turns to the formal elements of dialectical disputation with a discussion of demand (*muṭālaba*), objection (*iʿtirāḍ*), counter-objection (*muʿāraḍa*), and preponderance (*tarjīḥ*). In terms of structure, the questioner first seeks the respondent's ruling (*ḥukm*) for a question under investigation (*masʾala*). Second, the questioner asks for the legal evidence in the form of proofs justifying the ruling. Third, the questioner casts doubt on the arguments provided by the respondent that are proof-specific. And, fourth, the questioner furnishes counter-arguments and forwards his own opinion.[39] The third and fourth elements of the exchange, in which the questioner criticizes the respondent's arguments, are the heart of objection and counter-objection.

In order to be successful, each objection and counter-objection must be source-specific and in accordance with the hierarchy of legal proofs that al-Shīrāzī provides in *al-Maʿūna*. Because the exchange's success is contingent almost entirely on the nature of proofs, al-Shīrāzī turns to the various objections against them. For example, one could object to a quranic proof on grounds that the verse was abrogated, but this argument cannot be used in a *qiyās*-based argument. Another example would be for the questioner to provide a stronger proof than that forwarded by his opponent, such as an unambiguous scriptural text that serves to negate or contradict the respondent's proof. Fashioning the strongest proof from the hierarchy of sources gives opposing dialecticians the best chance of success.

Since proofs can be scriptural or rational and take various linguistic forms, each proof has specific objections and counter-objections outlined by al-Shīrāzī. Discussion of al-Shīrāzī's theory of objections and counter-objections will be reserved for later and analyzed in light of the specifics of the debate. However, it is important to note that in both al-Shīrāzī's discussion of *qiyās* and his discussion of *jadal*, he is keen to maintain a hierarchy between sources of law and within each source of law.[40] The hierarchy within each source of law most often returns to a matter of linguistic clarity or epistemic strength. We will see the implications of these hierarchies in the debate, but I first turn to al-Juwaynī's theory of *qiyās* and *jadal*.

III. AL-JUWAYNĪ: *QIYĀS* AND *JADAL*

Al-Juwaynī provides a discussion of *qiyās* in a short treatise on legal theory, *al-Waraqāt fī uṣūl al-fiqh*,[41] in his magnum opus *al-Burhān fī uṣūl al-fiqh*,[42] and in his text on dialectical disputation, *al-Kāfiya fī l-jadal*.[43] The most exhaustive exposition is put forward in *Burhān*, which I will rely on.

38. Ibid., 36.

39. These contours of the *jadal* exchange between the two dialecticians are distilled by Hallaq ("Tenth-Eleventh Century Treatise," 199–201) through his reading of al-Baṣrī's *Kitāb al-Qiyās*, but as will be noted later, al-Juwaynī makes these questions explicit. Hallaq's four basic exchanges are summarized in Young, *Dialectical Forge*, 135–36.

40. Al-Shīrāzī's hierarchy in relation to the sources of law is outlined by Young, *Dialectical Forge*, 108–10 n. 98, 146.

41. J. al-Maḥallī, *Sharḥ al-Waraqāt fī ʿilm uṣūl al-fiqh* (Mecca: Maktabat Nizār Muṣṭafā l-Baz, 1996).

42. Ed. ʿA. Dīb (Cairo: Dār al-Anṣār, 1979, repr. Doha, 1997).

43. There is some debate regarding the attribution of *al-Kāfiya* to al-Juwaynī. Daniel Gimaret, who does not believe it to be al-Juwaynī's, provides three reasons: (1) its absence in biographical entries on al-Juwaynī, (2) the

Borrowing his definition from Abū Bakr al-Bāqillānī (d. 403/1013),[44] al-Juwaynī states that *qiyās* is "the linking of a known (*maʿlūm*) [situation] with a known [situation], as regards the confirmation or negation of a *ḥukm* (ruling) for both of them, by way of something that unites them, whether it is the confirmation or negation of a [shared] ruling or property (*ṣifa*)."[45] Al-Juwaynī divides *qiyās* into *qiyās al-ʿilla* (or *qiyās al-maʿnā*[46]) and *qiyās al-shabah*.[47] Al-Juwaynī's argument for excluding *qiyās al-dalāla* (al-Shīrāzī's preferred division) as a stand-alone category is that it can be subsumed under *qiyās al-shabah*, as we will see shortly.[48] In providing a definition for *qiyās al-ʿilla*, al-Juwaynī is less succinct than al-Shīrāzī. The clearest definition he gives is "the inference (*istinbāṭ*) of suitable (*munāsib*) indicative (*mukhīl*) reasons (*maʿānī*) from established rulings, where they occur in [divinely sanctioned] unambiguous texts (*manṣūṣ*) or [cases of] consensus."[49] With this definition al-Juwaynī delimits the extraction of the reason for the ruling to three primary sources: unambiguous texts from the Quran, hadith, and consensus. As for a gradation within *qiyās al-ʿilla*, al-Juwaynī distinguishes between evident and latent. Unlike al-Shīrāzī, who assigns this differentiation to textual and linguistic clarity in the sources, al-Juwaynī argues that it is not possible to neatly differentiate between the two forms of *qiyās al-ʿilla*, since they can only be defined in contradistinction to each other during the evaluation of discrete cases.[50] For example, if a jurist extracts two indicative and suitable rationales but lets one prevail over the other, the prevailing one would be evident and the other latent.[51] Thus, while both are valid forms of *qiyās al-ʿilla*, the jurist will only be able to distinguish the latent from the evident retrospectively.

With regard to *qiyās al-shabah*, al-Juwaynī maintains that it is onerous to provide a particular definition for it,[52] so instead he relies on his definition of *qiyās al-ʿilla* and the

absence of any mention of al-Bāqillānī, and (3) definitional inconsistencies between it and two other works of his. Starting with the last argument, the differences are not surprising given that the first two are theological works and *al-Kāfiya* is a work on dialectical disputation. As al-Juwaynī's opinion on certain things evolved, there are even definitional differences between the first two. While Gimaret is correct to point out that al-Juwaynī often relies upon al-Bāqillānī in his other texts, he does so mostly to provide specific definitions or legal opinions. Given that al-Bāqillānī did not write a text on *jadal*, one does not expect him to be referred to. Finally, the list of texts in biographical entries are not always exhaustive and cannot be used to provide a definitive measure of authorship. For more, see D. Gimaret, *La doctrine d'al-Ashʿarī* (Paris: Éditions du Cerf, 1990), 183; Young, *Dialectical Forge*, 86 n. 3.

44. The text simply has *al-qāḍī*, but I am assuming al-Bāqillānī is meant since al-Juwaynī's first work on *uṣūl al-fiqh*, entitled *al-Talkhīs fī uṣūl al-fiqh*, is a commentary on al-Bāqillānī's *al-Taqrīb wa-l-irshād*. It is also a valid assumption since al-Bāqillānī provides the same definition of *qiyās* with only slightly different wording. See al-Juwaynī, *Kitāb al-Talkhīs*, 3 vols. (Beirut: Dār al-Nashāʾir al-Islāmiyya, 1996), 3: 145.

45. Al-Juwaynī, *al-Burhān*, 2: 745. I would like to thank the anonymous reviewer of this article for suggestions regarding the translation.

46. Al-Juwaynī uses the terms *maʿnā* and *ʿilla* interchangeably, while al-Shīrāzī uses *maʿnā* to refer more broadly to that upon which a relationship is constructed between the source case and the branch case. Similarly, al-Juwaynī uses the terms *qiyās al-ʿilla* and *qiyās al-maʿnā* interchangeably. I have chosen to use *qiyās al-ʿilla* throughout. See n. 17 above.

47. While in *al-Burhān* al-Juwaynī subsumes *qiyās al-dalāla* under *qiyās al-shabah*, in *al-Waraqāt* he recognizes all three types of *qiyās*. He defines *qiyās al-dalāla* (*Waraqāt*, 45) as "the drawing of an indication (*istidlāl*) by way of one of two parallels (*aḥad al-naẓrayn*) for the other, the rationale [contained in *qiyās al-ʿilla*] indicating (*mūjiba*) the ruling but not necessitating (*dālla*) it [as the rationale in *qiyās al-dalāla* does]."

48. Al-Juwaynī, *al-Burhān*, 2: 880.

49. Ibid., 2: 787.

50. Ibid., 2: 882.

51. Ibid., 2: 884–85.

52. Ibid., 2: 859–60.

requirements that the derived rationale be indicative and suitable. Al-Juwaynī states that the suitability and indicativeness of the rationale of *qiyās al-shabah* will not rise to the same degree as in *qiyās al-ʿilla* and, most importantly, the source case is not univocal in its signification (*qaṭʿī*). Given this, the jurist cannot be confident in his extraction of the rationale and its application to a branch case, or in the resemblance constructed between two cases. To further clarify how *qiyās al-shabah* is used, al-Juwaynī divides it into two forms—in the first, the jurist is able to identify an indicative reason; in the second, the jurist relies purely on resemblance between the two cases.[53] The first form overlaps somewhat with *qiyās al-ʿilla khafī*. Clarifying its distinguishing features, al-Juwaynī states,

> Just as *qiyās al-maʿnā* uses evidentness and latentness with regard to indicativeness, so does resemblance [i.e., *qiyās al-shabah*] depend on two things. The first is its occurrence as a trait particular to the sought-after ruling [. . .] and the second is its support via a multiplicity of resemblances.[54]

Based on this statement it seems as if the primary mechanism of distinguishing *qiyās al-ʿilla* from *qiyās al-shabah* is the strength of the indicativeness of the suitable reason in the former and its absence or weakened form in the latter. This is, of course, in addition to the juristic dependence on resemblance between the two cases, which only arises in cases of *qiyās al-shabah*.[55] Thus, the hierarchy between these forms of *qiyās* starts with *qiyās al-ʿilla jalī*, the strongest, at the top, followed by *qiyās al-ʿilla khafī*, followed by the textually grounded form of *qiyās al-shabah*, whose signification is circumspect, not affording the jurist the same degree of confidence through indicativeness, followed by the weakest form of *qiyās al-shabah*, which is solely dependent on resemblances between the original and branch cases.

Al-Juwaynī frames his entire discussion on the theory of *jadal* as part of a larger conversation on rational investigation (*naẓar*), which he defines as "the contemplation (*fikr*) of the heart and reflection as to the condition (*ḥāl*) of the matter under investigation (*manẓūr*) in order to know its ruling [. . .] and the essential conception (*ḥaqīqa*) of this rational investigation is reflection (*taʾammul*), contemplation *(tafakkur*), deliberation (*tadabbur*), consideration (*iʿtibār*), or drawing indication (*istidlāl*)."[56] As the objective of rational investigation is to arrive at a ruling, and *jadal* is a mechanism whereby multiple conflicting rulings are reduced to a single one, *jadal* can be seen as a form of rational investigation. And, indeed, al-Juwaynī says as much: "Every *munāẓara* (rational debate) is *naẓar*, but every *naẓar* is not *munāẓara*."[57] He then provides a definition of rational debate: "It is when two contestants

53. Ibid., 2: 866–67.

54. Ibid., 2: 885.

55. The stronger form of *qiyās al-shabah* that al-Juwaynī describes here, which has a textually extracted reason, seems to overlap with al-Shīrāzī's discussion of *qiyās al-dalāla*. Al-Juwaynī (*al-Burhān*, 2: 867) acknowledged that he subsumed the one into the other: "Some latter-day scholars called this division *qiyās al-dalāla*, insofar as it subsumes a resemblance (*shabah*) indicating the reason." When *qiyās al-dalāla* is made its own category, he provides the following tripartite division: "*Qiyās al-maʿnā* is that in which the ruling is linked by way of a reason that is suitable for the ruling and indicative, providing justification of it; *qiyās al-dalāla* is what encompasses what is not in itself suitable [to occasion the ruling] but which provides indication of a uniting reason; and pure *qiyās al-shabah* is what never provides notification by way of a suitable reason in the first place, or is in itself suitable."

56. Al-Juwaynī, *al-Kāfiya*, 17. Al-Juwaynī's definition of rational investigation is part of a longer discussion in the first section of *al-Kāfiya* in which he provides technical definitions for terms used in *jadal* exchanges. For the complete discussion, see ibid., 1–77. The editor of *al-Kāfiya* also has a useful appendix (pp. 602–6) with all the terms that al-Juwaynī defines throughout the book.

57. Ibid., 19. Later in this passage al-Juwaynī notes that the terms *munāẓara*, *jidāl*, *mujādala*, and *jadal* are all synonymous according to legal scholars and can be used interchangeably.

make apparent what their investigations require of mutual defense (*tadāfuʿ*) and mutual contradiction (*tanāfī*), through [verbal] expressions (*ʿibāra*) or what takes their place in terms of signification (*ishāra*) and indication (*dalāla*)."[58] On this basis there are three technical elements to a *jadal* exchange: (1) the presence of legal opinions, (2) reciprocal exchange between the parties, and (3) technical arguments on the basis of textual indications. These three elements are mirrored later in the text when al-Juwaynī outlines the five questions that precede a *jadal* exchange:

> There are four dialectical debate questions. Some say there are five. The first is on the existence (*halliyya*) of an opinion (*madhhab*), meaning, do you have an opinion or not? The second is on that selfsame opinion. The third is on the proof (*burhān*).[59] The fourth is on the validation (*taṣḥīḥ*) of the proof. The fifth is on dissent and escape from necessary concession (*ilzām*).[60]

The heart of a *jadal* exchange is to forward an opinion with a proof text, with one's opponent attempting to deconstruct that proof and provide another in its place. This back-and-forth proceeds until one opinion prevails over the other. Given that the dialectical exchange is contingent upon proofs and counter-proofs, al-Juwaynī, like al-Shīrāzī, next turns to the nature of legal proofs.

He begins with his methods for knowing legal rulings by affirming two sources: reports (*khabar*) or the essence of revelatory instruction (*qalb al-khiṭāb*) and rational investigation or reason (*maʿnā*).[61] He divides the first category into three modes: the Quran, the sunna, and consensus. These are further subdivided and ranked in relation to their linguistic clarity and the confidence that the jurist has with regards to the derived legal ruling. Al-Juwaynī creates a hierarchy of six: (1) unambiguous quranic texts,[62] (2) unambiguous concurrent hadith (*mutawātir*), (3) consensus, (4) unambiguous lone hadith (*āḥād*), (5) apparent quranic texts,[63] and (6) apparent hadith. As for the second category of legal rulings, al-Juwaynī states that it subsumes "the types of *qiyās* and reasons that are understood from the types of instruction (*khiṭāb*)."[64] Not unlike his discussion in *al-Burhān*, he creates a hierarchy between the types of *qiyās* based on their relative strength.[65]

Al-Juwaynī then turns to the ways in which the assertions of one's opponent can be rebutted. He remarks that if scriptural proof texts are offered, they should be challenged with stronger scriptural proofs or, in the case of hadith and consensus, the reliability of the transmission of the sources should be challenged.[66] He also notes that scriptural rulings can be challenged on the basis of interpretation if the proof text accepts multiple interpretations—this is why he is keen to distinguish between texts that are unambiguous and texts that

58. Ibid., 21.

59. Elsewhere (ibid., 46–48), al-Juwaynī notes that *burhān*, *ḥujja*, *ʿallāma*, *dalāla*, *dalīl*, *dāl*, *bayyina*, *bayān*, and *ayā* are near synonyms.

60. Ibid., 77. Miller ("Islamic Disputation Theory," 90–109) provides an in-depth analysis of these five questions and their appearance in the *jadal* treatises of other jurists, as well as their advocated methodologies for triumphing over their opponent.

61. Al-Juwaynī, *al-Kāfiya*, 88.

62. For al-Juwaynī (ibid., 48), as for al-Shīrāzī, unambiguous texts do not permit multiple interpretations.

63. Al-Juwaynī (ibid., 49) defines "apparent" as that for which interpretation is valid (as opposed to unambiguous texts). This means that while one can glean meaning from an apparent text, it does not preclude the potentiality of other interpretations.

64. Ibid., 88.

65. Al-Juwaynī, *al-Burhān*, 2: 867.

66. Al-Juwaynī, *al-Kāfiya*, 90–129.

Table 1. Doctrinal differences of *qiyās* between al-Shīrāzī and al-Juwaynī

al-Shīrāzī	al-Juwaynī
Qiyās al-ʿilla jalī	*Qiyās al-ʿilla/maʿnā jalī*
Due to a linguistic indicant for the rationale	Strongly suitable (*munāsib*) and indicative (*mukhīl*) rationale
Due to a fortiori signification	
Due to another linguistic indicant	
Qiyās al-ʿilla khafī	*Qiyās al-ʿilla / maʿnā khafī*
Due to an apparent rationale	Moderately suitable (*munāsib*) and indicative (*mukhīl*) rationale
Due to rational inference	
Qiyās al-dalāla	
Due to another ruling of the branch case	
Due to a ruling of a parallel analogous case	
Qiyās al-shabah (rejected)	*Qiyās al-shabah*
	Due to another ruling of the branch case
	Pure resemblance

are merely apparent. When the respondent forwards a rational proof on the basis of *qiyās*, al-Juwaynī outlines refutations (*iʿtiraḍāt*) that focus on either the relationship the jurist constructs between the source case and the branch case or the efficacy of the rationale.[67] Due to the sheer number of modes of refutation, the focus in the discussion of the debates will be on those that al-Juwaynī employs in his debates with al-Shīrāzī.

IV. THE DEBATES

Overall, there are some important distinctions between the jurists: al-Shīrāzī is more systematic in his exposition of the various forms of *qiyās* and their differentiation—this is especially clear in their respective discussions on *qiyās al-maʿnā*. Al-Shīrāzī is also more reluctant to use the weaker forms of *qiyās*, as shown by his rejection of *qiyās al-shabah* and his emphasis within *qiyās al-dalāla* that cases be parallel (*naẓīr*). On the other hand, al-Juwaynī is willing to accept *qiyās* based on resemblance alone and does not require that the cases be parallel. As for their *jadal* theories, both construct a hierarchy of sources on the basis of epistemic strength and linguistic clarity and both view *jadal* as a reciprocal exchange between parties in order to have a solution to a legal ruling that is disagreed on prevail. Notwithstanding some minor tactical differences in their discussion of counter-arguments, the primary differences between the two scholars are in the realm of *qiyās* (see Table 1). I follow with a translation of the two debates, where their differences can be seen in action.

67. Ibid., 130–490. Al-Juwaynī's discussion on counter-arguments against *qiyās*-based arguments is the lengthiest section in *al-Kāfiya*, occupying almost half of the text. It is followed by a discussion on *tarjīḥ* (preponderance), which also primarily focuses on *qiyās*.

Debate One

Al-Subkī: I have transmitted both debates from the script (*khaṭṭ*) of Taqī l-Dīn Abū ʿAmr b. al-Ṣalāḥ in one of his composite volumes (*majmūʿ*).[68]

Abū l-Maʿālī al-Juwaynī was asked about someone who decides the prayer direction to the best of his ability *(ijtahada*), prays, and then becomes certain of his mistake. Al-Juwaynī pronounced that when the person knows for certain (*yaqīn*) that a mistake occurred in one of the prayer conditions,[69] he is required to repeat it, just as if he was certain of having mistaken the prayer time.

Al-Shīrāzī, *first rebuttal*: It is not permissible to consider (*iʿtibār*) the prayer direction legally equivalent to time, for prayer direction is less weighty (*akhaff*)[70] than prayer time. The proof for this consists of two things. The first is the permissibility when traveling of abandoning prayer direction in supererogatory (*nāfila*) prayers, whereas it is not permissible when traveling to abandon time in such time-bound supererogatory prayers as the *ʿīd* prayer and the optional (*sunna*) *fajr*, even though both [prayer time and direction] are conditions.[71] The second is the permissibility during war of abandoning prayer direction for obligatory prayers, but not prayer time.[72]

Al-Juwaynī, *first retort*: Theoretical dialecticians (*ahl al-naẓar*) agree that it is not a condition of *qiyās* that the branch case resemble the source case in all aspects; rather, they must be equivalent in the rationale of the ruling (*ʿilla al-ḥukm*). If they are equivalent in the rationale of the ruling, there is no harm if they diverge (*iftirāq*) on other matters.[73] If one considers equivalency between the two in all matters [a prerequisite], *qiyās* would not be possible, for nothing resembles something else in one aspect without differing in another. Furthermore, the fact that one is lighter and the other weightier (*ākad*) does not preclude considering [the two as equivalent]. We equate the obligatory to the supererogatory and the supererogatory to the obligatory, even though one of them is lighter and the other weightier. And we equate matters of worship (*ʿibādāt*) to one another despite their diverging in terms of strength and weakness,[74] and rights to one another even though some are lighter and others weightier.

68. I indicate the speaker for ease of navigation and I have translated for meaning rather than literalness for the sake of readability. See al-Subkī, *Ṭabaqāt*, 5: 209–18.

69. In *Nihāyat al-maṭlab fī dirāyat al-madhhab* (21 vols., ed. ʿA. al-Dīb [Jedda: Dār al-Minhāj, 2007]), before discussing the cases in which prayer direction can be abandoned (ibid., 2: 70–80), al-Juwaynī provides the conditions for prayer: (1) purification from minor (*ḥadath*) and major (*janāba*) ritual impurity; (2) that a person, clothing, and the place of prayer be free of filth (*najāsa*); (3) that one's nakedness (*ʿawra*) be sufficiently covered; (4) that one be facing the direction of prayer; (5) that one avoid prohibited actions during prayer; (6) that one has knowledge that the prayer time has begun; and (7) that one knows the prayer is obligatory and knows how to perform the prayer.

70. Throughout the first debate al-Juwaynī and al-Shīrāzī use "less weighty" and "more weighty" (*ākad*) to discuss the matter of prayer direction and prayer time. Though they do not specify exactly what they intend with them, they are likely meant as indications of which conditions—correct prayer time and prayer direction—are more accommodating of legal exemptions.

71. Here al-Shīrāzī is distinguishing between prayers, such as the prayer at the breaking of the fast of Ramadan or the prayer at sunrise, *ṣalāt al-ishrāq*, which must be performed at certain times, and, e.g., the prayer of guidance, *ṣalāt al-istikhāra*, which can be made at any time.

72. Al-Shīrāzī's rebuttal is a charge of *fasād al-iʿtibār* (invalid consideration) on the basis that prayer direction and prayer time are not parallel cases (*naẓīr*). See al-Shīrāzī, *al-Maʿūna*, 113–18. This is the main basis of al-Shīrāzī's argument against al-Juwaynī.

73. Disunion (*farq*) is specifically used in *jadal* exchanges when the two dialecticians are discussing a matter of *qiyās*. For a full discussion of al-Juwaynī's notion of disunion, see *al-Kāfiya*, 298–305; for al-Shīrāzī, *al-Lumaʿ*, 208–9 and *al-Maʿūna*, 116–17; cf. Miller, "Islamic Disputation Theory," 130–34; Young, *Dialectical Forge*, 176–82.

74. While al-Shīrāzī argues that prayer time is a "weightier" condition than prayer direction, al-Juwaynī distinguishes between obligatory and nonobligatory ritual matters. See n. 70 above.

The same applies here: it is permissible to consider the prayer direction as [legally equivalent with] prayer time despite the fact that one is weightier than the other.

Another response: Just as it is permissible to abandon the prayer direction knowingly in supererogatory prayers during travel and war, it is also permissible to abandon time when combining two [obligatory] prayers during travel.[75] There is no difference between time and direction; if anything, prayer direction is weightier than time! If one knowingly performs an obligatory prayer before its time, his prayer turns into a supererogatory prayer, whereas if one performs an obligatory prayer in an incorrect direction, it is not accepted even as a supererogatory prayer.[76] This indicates that prayer direction is weightier than time.

Al-Shīrāzī, *second rebuttal*: Your statement, "It is not a condition of *qiyās* that the branch case be equivalent to the source case in all aspects; rather, it is a condition that they be equivalent in the rationale of the ruling. If they are equivalent in the rationale of the ruling, there is no harm if there is divergence in other matters," is contradicted by the fact that a condition of *qiyās* is that the branch case refers to its parallel (*naẓīr*). In this scenario, the source case, that is, prayer time, is not a parallel to the branch case of prayer direction, according to the proof you offered, so *qiyās* is not valid. Moreover, the two cases also differ as to the permissibility of abandoning the prayer direction in supererogatory prayers in cases of travel and war. The fact that [abandoning prayer time in these situations] is not permissible is proof that the two do not have the same rationale. If their rationales were equivalent, then the cases would be parallels. And when they are not equivalent in their rationale, *qiyās* is not valid.

As for your statement, "Why is it that if one [case] is lighter and the other weightier, *qiyās* is not permitted?," it is because if one is weightier and the other lighter, it indicates that they are not parallel and it is not permissible to equate cases that are not parallels.

Your statement, "We equate the supererogatory with the obligatory, though one of them is weightier; and we equate matters of worship, one to another, and rights, one to another, despite their divergence," is wrong. If the same circumstances apply in those cases as they do in this case, then I would consider *qiyās* prohibited. I only permit *qiyās* in general, but [when looking at] matters in detail, if one thing is equated to something other than its parallel, I do not permit that. This is in accordance with our saying, "*Qiyās* is permissible in general, but if it contradicts unambiguous texts, it is not permitted." We do not say, "*Qiyās* is permissible in general, so it is permissible even when it contradicts unambiguous texts."

Your statement, "It suffices that the two cases are equivalent in the rationale of the ruling and there is no harm if they diverge in other matters," is wrong. This is because being equivalent [only] in the rationale of the ruling does not suffice. Moreover, I do not concede that the two [prayer time and prayer direction] have equivalent rationales because of the differences you mentioned [in those other matters]—which [in fact] indicates that they do not have equivalent rationales for their rulings.

Your statement, "It is not a condition of *qiyās* that the source case be equivalent to the branch case in all aspects, for if that was a condition, the door of *qiyās* would be sealed shut," is contradicted by the fact that it is not a condition of difference (*sharṭ al-farq*) that the branch case differ from the source case in all aspects. If that was a condition, the door of difference [i.e., the charge of *farq* in *jadal*] would be sealed shut, and difference disjoins (*māniʿ*), just as *qiyās* conjoins (*jāmiʿ*).

75. Al-Juwaynī, *Nihāya*, 2: 423–76.

76. Al-Juwaynī is alluding to people deciding on the direction of prayer by their own reasoning and then in the middle of prayer discovering that they were wrong. According to the Shāfiʿī school, the prayer is invalidated and must be repeated. Ibid., 2: 96–107.

Your statement, "Just as it is permissible to abandon prayer direction in supererogatory prayers during travel and war, it is permissible to abandon prayer time when combining two [obligatory] prayers," is wrong because the abandoning of time when combining prayers is not for the sake of making things easier due to an excuse (*li-mawāḍiʿ al-ʿudhr*), but is a custom of pilgrimage (*sunan al-nusuk*).[77] As such, this does not indicate that abandoning time is to make things easier, just as shortening the morning prayer to two cycles does not indicate that it is less weighty (*aḍʿaf*) than the noon and afternoon prayers. Neither is this the case regarding abandoning the prayer direction in supererogatory prayers during travel or the obligatory prayer during war, because these were made permissible on account of an exemption (*ʿudhr*), therefore they are more like shortening the noon and afternoon prayers when traveling.

Regarding your statement, "If one performs an obligatory prayer before its time, it becomes a supererogatory prayer, whereas if one prays not facing the prayer direction, the prayer is invalid, even as a supererogatory prayer," this is because what comes before the [designated prayer] time is the time for supererogatory prayers, whereas other directions than the correct one are not grounds for supererogatory prayers without an exemption.

Al-Juwaynī, *second retort*: Your statement, "I do not concede that this is the rationale of the source case," is among the most important and best questions [which is, what is the rationale of the source case?], but you should have asked me [in the beginning] and stated it explicitly, rather than alluding to it.[78] Thus, I do not now accept it.

Your statement, "If it is as you say that the door of *qiyās* is sealed shut because no branch case resembles a source case without differing in some regard, then what you mentioned also precludes difference,[79] because there is no branch case that differs from the source case without being similar to it in other ways," is correct, but if you intend to level a charge of difference, then you must clarify the difference, indicate your proof for it, and [demonstrate its applicability] it to the source case. But you did not do that. Instead, you abandoned your claim [of an invalid consideration (*fasād al-iʿtibār*)] and took up a claim of an invalidating distinction that I myself had spoken of.

Your statement, "These cases are parallel because it concerns abandoning prayer direction in supererogatory prayers during travel and obligatory prayers during war," is wrong. This is because you said that the prayer direction is abandoned due to an excuse from the perspective of incapacity (*ʿajz*). [With this excuse] the obligation [of prayer] falls away. But in this case prayer direction is abandoned due to doubt (*ishtibāh*), and abandoning it due to incapacity is not the same as abandoning it due to doubt. The woman with irregular bleeding and the incontinent man both pray despite the presence of impurity—but if they think they are in a state of purity and they pray and then impurity is discovered, the prayer must be repeated.

Your statement, "The abandoning of time when combining prayers in pilgrimage is a matter of worship," is incorrect. This is because if it was intended as a matter of worship, then it would follow that it would be invalid to delay the afternoon prayer, as an act of worship would be performed improperly. Thus, permission [to combine prayers] is a matter of making things easier due to an excuse. From the jurisprudential (*fiqh*) perspective: We differentiate between prayer time and direction because need (*ḥāja*) calls for the abandoning of prayer direction in supererogatory prayers due to the exemption of travel. If we said, "It is not per-

77. The reference here is to the custom of combining the *ẓuhr* and *ʿaṣr* prayers at ʿArafāt and the *maghrib* and *ʿishāʾ* prayers at Muzdalifa.

78. This dialectical move in *jadal* is known as *muṭālaba bi-taṣḥīḥ al-ʿilla* (requesting clarification for the occasioning factor). See al-Juwaynī, *al-Kāfiya*, 68; al-Shīrāzī, *al-Maʿūna*, 84.

79. See n. 73 above.

missible to abandon the prayer direction," it would result in hardship, whether one performed the prayer or did not perform it, whereas there is no hardship in abandoning time. This is because the acts of worship (*rawātib*) that accompany the obligatory prayers are attached to the obligatory prayers, so one should perform them at their designated times.[80] Likewise during war, need calls for the abandoning of the prayer direction, since if we were to require individuals to face the prayer direction, it would lead to their defeat or being killed. There is no need for them to abandon the time, however—they can pray at the right time while fighting.

Al-Shīrāzī, *third rebuttal*: Your statement, "It was obligatory that you ask me to prove the rationale first, stating it explicitly rather than alluding to it," is wrong because I had a choice of asking you to either prove the rationale or name something that indicates its invalidity (*fasād*). Just as whoever performs *qiyās* has the choice between mentioning either the rationale for the issue (*masʾala*) or whatever indicates the rationale: both are permissible, likewise in this case.

Your statement, "If combining obligatory prayers was [permissible as a matter of] worship, then delaying them would not be permitted," is incorrect because it is not permissible to delay—one should perform them at their designated time (at the earliest allotted time is best), because the time allotted to prayer leads one to proximity to God and righteousness.

Your statement, "Abandoning the prayer direction in supererogatory prayers and in war is for reasons of incapacity or hardship," is wrong because this incapacity obligates one to abandon time [not direction]—the prayer may be delayed for reasons of extreme fear and then be performed correctly when one is safe from combat. Seeing that abandoning prayer time is not permissible, but abandoning the prayer direction is, the obligation of the prayer direction is less weighty than the obligation of time. Thus, [in the case posed to you originally] doubt can be an excuse to drop the obligation for prayer direction, but it is not an excuse for time to be abandoned. And that is the last of the matter.

Ibn al-Ṣalāḥ: I transmitted this from what Abū ʿAlī b. ʿAmmār wrote, who said that he transmitted it from what one of the disciples of Abū Isḥāq wrote down, who mentions at the end of the copy that he had copied it from Abū Isḥāq. His statement, "I told him that this is the narration of the saying of Abū Isḥāq," is proof that this was copied from his writing.

Al-Subkī: Abū Isḥāq's response, "Abandoning prayer time when combining obligatory prayers is not to alleviate harm, but rather is from the sunnas [optional prayers] of pilgrimage," indicates that he understood al-Juwaynī to mean that the combining of prayers was only a pilgrimage matter, not for travel in the general sense (*muṭlaq*), as the latter is unequivocally in order to make things easier. This is correct, as al-Juwaynī did not intend anything else [than the sunna of combining during pilgrimage], as attested to by his responses. But the reason for restricting it to combining the obligatory prayers during the pilgrimage is not clear to me, or why no inference took place regarding combining in general because of the excuse of travel. This should be contemplated (*taʾammul*), for the two shaykhs refrained from extending it because of a particular sense (*maʿnā*) that we do not understand.

Debate Two

Al-Subkī: Abū Isḥāq, may God have mercy on him, inquired in Nishapur about the adult virgin woman (*al-bikr al-bāligha*).

80. *Rawātib* (*al-sunan al-rātiba maʿa al-farāʾid*) are prayers that either precede or follow the obligatory prayers. They are subdivided into emphasized (*rawātib muʾakkada*) and nonemphasized (*rawātib ghayr muʾakkada*). Al-Juwaynī, *Nihāya*, 2: 119–20.

Al-Shīrāzī: The original ruling of a virgin applies [to this case], so it is permissible for her father to give her in marriage without her consent, as if she were a minor.

The Questioner: You have made the form [rather than the essence] of the case at hand the rationale of the source case, and that is not permissible.

Al-Shīrāzī: That is incorrect for three reasons: First, I did not make the form of the case the rationale for the source case because the form of the case is the giving in marriage of an adult virgin without consent and the rationale is that she remains in her original virgin state. This is not the form of the case in question because this rationale of virginity is not restricted to the case of an adult virgin; rather, it is general for all virgins, and on this basis I equated the adult virgin to the minor virgin. Second, your saying, "It is not permissible to make the form of the case the rationale," is an allegation (*daʿwā*) for which there is no proof. What prevents that? Third, rationales are based on the divine law, just as rulings are based on the divine law, and it is a fact that God applies a ruling to all the elements of the particular case. Nothing prevents that. So if you allege that there is no proof for the validity of this, then ask me for the proof of its validity from the perspective of the divine law.

The Questioner: Give me the proof from the divine law for its validity.

Al-Shīrāzī, *first rebuttal*: The proof for the validity of this rationale of virginity is a report (*khabar*) and the use of reason (*naẓar*). The report narrated that the Prophet, God's blessings and peace be upon him, said, "The unmarried woman (*ayyim*) has more right of say over herself than her guardian does."[81] And by "unmarried," the nonvirgin (*thayyib*) is meant because the Prophet used it as the opposite of the virgin.[82] He also said, "The virgin should be asked for permission," which indicates that the nonvirgin does have more right of say over herself. The strongest method by which to establish the rationale is by what the Prophet (*ṣāḥib al-sharʿ*) says. Reason tells us that all agree that it is permitted to give the virgin in marriage without her verbal consent, due to her virginity, but if she is not a virgin, it is not permitted to give her in marriage without her verbal consent, or that which takes the place of verbal consent, namely, a marriage contract (*kitāba*). So if the guardian was not allowed to give the virgin in marriage against her will, then he would also not be permitted to do so without her verbal consent.

Al-Juwaynī, *first retort*: Your proof relies on a report and on reason. The report also allows for a less evident interpretation (*taʾwīl*): It is possible that the Prophet intended that the nonvirgin has more right of say over herself because the guardian has no authority to give her in marriage without her verbal consent, whereas the virgin is the opposite of that. If we accept that the text allows for hidden interpretations, we prefer to interpret that the adult

81. For this hadith's many narrations, see *Sunan al-Nisāʾī*, 3260–61; *al-Muwaṭṭaʾ*, 1097; *Saḥīḥ Muslim* 1421; *Sunan Abī Dāwūd*, 2098; *Jāmiʿ al-Tirmidhī*, 1107.

82. According to Susan Spectorsky (*Women in Classical Islamic Law: A Survey of the Sources* [Leiden: Brill, 2009], 63–64), *ayyim* and *thayyib* were often used interchangeably for a woman who has been married, as opposed to *bikr* ("virgin"). Thus, "The distinction depends on the marriage contract itself, since *ayyim* or *thayyib* can also be used of a woman for whom a previous marriage contract has been concluded, but who has never lived with a husband, or who has lived with him but not had sexual intercourse." In addition to the hadith cited in the debate the story of Khansāʾ bt. Khudhām, a widow who is wed against her will by her father, is widely cited in support of the *thayyib*'s right to verbal consent. When Khansāʾ relayed this to the Prophet, he revoked the marriage and permitted her to marry whomever she desired (ibid., 66, 148). See also Susan Spectorsky, "Aḥmad b. Ḥanbal," in *Islamic Legal Thought: A Compendium of Muslim Jurists*, ed. eadem, O. Arabi, and D. S. Powers (Leiden: Brill, 2013), 85–105, at 100–101. For the opinion of the legal schools on the coercion of the virgin, see K. Ali, "Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines," in *The Islamic Marriage Contract: Case Studies in Islamic Family law*, ed. A. Quraishi and F. E. Vogel (Cambridge: Islamic Legal Studies Program, Harvard Univ., 2008), 11–45, at 17–18.

nonvirgin has met the conditions to do without a guardian, which makes her independent in dealing with matters that are her right. A woman is in need of a guardian when she is in her minority or because of insanity (*junūn*), but if she meets the conditions whereby she can dispense with a guardian, then it is not permitted to establish guardianship over her in marriage without her consent. Interpretating the report like this is valid from two perspectives.

First, the Prophet mentioned the guardian in the absolute sense, not differentiating between father or grandfather and other guardians than these two. If he meant the guardianship of one who can coerce, he would not have referred to guardianship in general, because other than the father and the grandfather, scholarly consensus does not give other guardians coercion rights. So this is proof that he meant verbal consent for the nonvirgin but not for the virgin. Second, because the Prophet said, "The virgin should be asked permission, and her permission is her silence," he intended the opposite in the case of the nonvirgin, namely, the need for verbal consent.

Al-Shīrāzī, *second rebuttal*: Your interpretation regarding verbal consent for the nonvirgin is not acceptable because the Prophet, may God's peace and blessings be upon him, said, "The nonvirgin has more right of say over herself," meaning that she has more right over herself in contractual (*ʿaqd*) matters and in dealing with matters (*taṣarruf*), not verbal consent.

Your statement, "He mentioned the guardian in the absolute sense," is indeed a generality (*ʿumūm*), but I assume it refers to the father and the grandfather on the basis of the hadith that justifies the rationale (*taʿlīl*) [of guardianship], namely, the Prophet saying in relation to the nonvirgin: "The nonvirgin has more right of say over herself than her guardian does." The attribute (*ṣiffa*) [of virginity] in the ruling indicates that it is the rationale, and justifying the rationale explicitly has the standing of an unambiguous text. Therefore, the general is made specific by it, just as it is through *qiyās*.

Your statement, "He mentioned silence with respect to the virgin, which indicates his intention to require verbal consent for the nonvirgin," is wrong. Rather, it is a proof text (*ḥujja*) contradicting you, because when he mentioned the virgin, he mentioned the attribute of her consent, which is silence. So if he intended verbal consent for the nonvirgin, then he would not have needed to repeat his reference to silence in his statement, "The virgin should be asked for her permission, [her permission being her silence]."[83]

Your statement, "There is proof here that leads to certainty," is wrong. Rather, it is *qiyās* on the forms of guardianship, and *qiyās* is to be abandoned in the presence of an unambiguous text.

Al-Juwaynī, *second retort*: It can only be one of two options: Either you assert that it is an unambiguous text, which would be wrong because an unambiguous text does not accept more than one interpretation [and I have just given an alternative interpretation], or it is not an unambiguous text, in which case another interpretation is permitted in accordance with the proof I gave.

Your statement, "I assume that the guardian refers to the father and grandfather, on the basis of the hadith justifying the rationale," is wrong because the mention of the attribute in the ruling only indicates the rationale if it is applicable (*munāsib*) to the ruling to which it is connected, like theft obligating amputation of the hand. And nonvirginity is not applicable

83. The full hadith is, "The nonvirgin has more right of say over herself than her guardian does, and the virgin should be asked permission, her consent being her silence." *Ṣaḥīḥ Muslim*, 1421. There are also other narrations indicating that a virgin's consent is her silence. See *Sunan Ibn Māja*, bk. 9, nos. 1943, 1870; *Ṣaḥīḥ al-Bukhārī*, 6946; *Sunan al-Nasāʾī*, 3260, 3264–69; *Jāmiʿ al-Tirmidhī*, 1107; *Sunan Abī Dāwūd*, 2094.

to the ruling it is connected to, which is that she has more right of say over herself. Thus, it cannot be the rationale. What you claimed is not *qiyās*, but another method, so discarding the justification of the rationale [ignoring the explicit attribute] is allowed.

Al-Shīrāzī, *third rebuttal*: As for the not obvious interpretation, your argument is wrong because a not obvious interpretation changes its obvious meaning (*ẓāhir*) to a meaning (*wajh*) that it can carry. Like a man saying, "I saw a donkey," by which he means a dull-witted (*balīd*) man—this is commonly employed, so it is permitted to change the obvious wording to this interpretation. As for wording that is not commonly employed, a not obvious interpretation of the wording is not valid. So if one said, "I saw a mule (*baghl*)," and then said, "I mean by that a dull-witted man," that would not be acceptable, because "mule" is not used for a man under any circumstance. And the same applies in the case of the Prophet's statement, "The nonvirgin has more right of say over herself than her guardian does."

Your statement, "It is not a valid justification of the rationale because it is not applicable to the ruling," is wrong because a mention of the attribute in the ruling is the definition of justification in Arabic. When one says, "Cut off the thief's hand," this is because of his thievery. And when it is said, "Accompany the scholars," this is on account of their knowledge.

Your statement that "justification of the rationale is only permissible when the [suggested] rationale is applicable to the ruling it is connected to, like thievery as regards the obligation of amputation," is wrong because the path to justify the rationale of the ruling is the divine law, and it is conceivable in the divine law that nonvirginity be made the rationale for dropping guardianship, just as it is conceivable that thievery is made the rationale for amputation, and fornication outside of marriage the rationale for lashing.

Your statement, "What you claimed is not *qiyās*," is wrong. Rather, you made it such that her not having these attributes [i.e., youth or virginity] relieves her of the need for guardianship. This claim is invalid since it ignores the [categories of] guardianship firmly established in the divine law; and the [categories of] guardianship firmly established in the divine law continue to exist with these attributes in principle. Thus, guardianship in respect of marriage applies when these attributes are present, and that is arrived at through *qiyās*. If this were not the case, then your claim that a woman does not have these attributes would have no effect. It is not reason that established guardianship over the insane and the minor, but the divine law, and guardianship in the divine law is only concerned with wealth. Thus, we assume that guardianship in respect of marriage applies on the basis of *qiyās*, and [this] *qiyās* contradicts the text. [Returning to the hadith in question] it is established that [this] report is a text that does not bear nonapparent interpretation, thus it is not permissible to abandon it for *qiyās*. For the principle is that verbal consent is not to be considered except when guardianship is not established [i.e., in the case of the non-virgin], and it is established that [the requirement of] verbal consent is dropped in the case of the virgin, thus it is obligatory that guardianship be established over her.

Al-Juwaynī, *concession*: Verbal consent has been dropped on the basis of an unambiguous text.

Al-Shīrāzī, *confirmation of concession*: Agreed (*taʾkīd*), because verbal consent being dropped on the basis of an unambiguous text is the proof for my claim.

Al-Subkī: This is the end of what took place between them.

V. ANALYSIS OF THE DEBATES

I will treat each debate separately in my analysis and focus on the larger theoretical differences that are working themselves out through the contested legal issues at hand.

In the first debate, al-Juwaynī and al-Shīrāzī take on the much disputed issue of the incorrectly determined prayer direction and whether prayer direction can be correlated with prayer time.[84] Al-Juwaynī argues that if a person incorrectly determines the prayer direction and is then certain of the error, the prayer must be repeated because prayer time and direction can be correlated.[85] Al-Shīrāzī argues that prayer direction and prayer time cannot be correlated, leveling a charge against al-Juwaynī of *fasād al-iʿtibār* (invalid consideration). In *al-Maʿūna*, al-Shīrāzī contends that there are two ways of creating an invalid consideration between the source and branch cases. In the first, the cases are correlated to one another despite the existence of an unambiguous text that distinguishes them; the second is broader and is based on authoritative source cases (*uṣūl*), which al-Shīrāzī divides into two. Young notes that this second category involves the correlating of two cases whose rulings "each exhibit a non-compatible general quality."[86] One of the examples al-Shīrāzī gives is a case in which one ruling has a restricting (*taḍyīq*) effect while the other has an expanding (*tawsīʿa*) effect. Given that the two rulings have a dissimilar base quality, correlation between them is invalid.

Al-Shīrāzī's charge against al-Juwaynī is that despite both prayer time and prayer direction being conditions for the validity of prayer, prayer direction is less weighty—less consequential—than prayer time. Its less weighty nature results therefore in an invalid correlation. In response, al-Juwaynī enters into a discussion of distinction (*farq*), another form of counter-objection (*muʿāraḍa*) in *jadal* exchanges, and argues that there are inevitably some distinctions between two cases that do not preclude correlation. According to him, there are two forms of distinction—one that pertains to the rationale and broader forms that recognize differences between cases.[87] He asserts that the first category is invalidating but the distinction that al-Shīrāzī is drawing, based on weightiness, falls into the second category and is therefore not invalidating.

Al-Shīrāzī retorts that it is a condition of *qiyās* that the two cases are parallel. This ushers in the second disagreement between the two—given that prayer direction is less weighty than prayer time, al-Shīrāzī argues that the two cases do not share the same rationale, which makes *qiyās* invalid even by al-Juwaynī's standards. Al-Juwaynī responds that the case of combining prayers during pilgrimage is also to alleviate hardship, and thus the rationale behind abandoning prayer time and prayer direction is in fact the same, whereby the two are valid analogues for *qiyās*. Moreover, he argues that the requirement of parallelism precludes the possibility of *qiyās* altogether, since truly similar cases simply do not exist. However, al-Shīrāzī requires both parallelism and the absence of invalidating distinctions in order for

84. Al-Juwaynī notes (*Nihāya*, 2: 97–99) that the issue of the incorrectly determined prayer direction has resulted in "statement after statement" without arriving at any consensus within the *madhhab.* From his discussion, the rulings regarding the incorrect prayer direction are contigent upon the certainty with which one determines the error and whether this determination is made during or after the prayer. An exemplary case (2: 99–102) concerns one who determines the prayer direction through *ijtihād* but some time after concluding the prayer is unsure and thinks that the direction may have been in error; the prayer need not be repeated.

85. While on the surface this seems contrary to the position al-Juwaynī takes in *Nihāya* (n. 84 above), the debate involves one who is certain of the directional error, not one who questions it.

86. Young, *Dialectical Forge,* 160; al-Shīrāzī, *al-Maʿūna,* 114–15. Al-Juwaynī (*al-Kāfiya,* 132) does not consider "invalid correlation" an independent mode of criticism within a *jadal* dispute. See Miller, *Islamic Disputation Theory,* 118–19.

87. Al-Juwaynī, *al-Kāfiya*, 298.

qiyās to be valid,[88] while for al-Juwaynī, only the rationales need be parallel and incongruity in this regard is the only form of invalidating distinction.

Given that their disagreements revolve around the requirements for *qiyās*, the debate demonstrates how their differences have a tangible impact on how they apply legal logic in discrete instances. Moreover, their doctrines of *qiyās* also affect how they conceptualize invalidating distinctions within the realm of *jadal*. In *jadal* exchanges revolving around matters of *qiyās*, invalidating distinctions is one of the primary tools used to nullify an argument, but because al-Juwaynī and al-Shīrāzī disagree on the specifics of certain forms of *qiyās*, they consequently disagree on what an invalidating distinction is. Al-Juwaynī is more receptive to accepting certain distinctions between cases because of his opinion that cases need not be parallel, while al-Shīrāzī is more wary of accepting any distinctions between cases. The ramifications of their divergence on *qiyās* continue in the second debate, which introduces hadith into the equation.

The second debate is particularly interesting since unlike the ruling on the incorrectly determined prayer direction, which is disagreed upon, it revolves around the question of the coerced marriage of a virgin—a well-established opinion from al-Shāfiʿī himself that enjoyed near consensus in the school. This raises the question of why the two scholars would debate an established doctrine within the school and whether al-Juwaynī truly adopted an opinion contrary to school consensus. To answer this question, we first must understand the contours of the debate. It commences with al-Shīrāzī's noting that consent is not required in the marriage of a virgin woman in her majority since she can be compared to the virgin in her minority on the basis of her virginity, and he provides a hadith as support: "The virgin is asked permission, and her permission is silence." Using the same hadith, al-Juwaynī argues the opposite: that consent is required for the adult virgin and moreover her consent should be verbal, since the adult virgin is more analogous to the adult nonvirgin than to the minor virgin. Unlike the previous debate with its contrasting positions on the requirements of *qiyās* and its applicability, this debate concerns a case of scriptural interpretation.

Al-Juwaynī and al-Shīrāzī start from a shared theoretical foundation that unambiguous revealed texts accommodate only a singular interpretation, but al-Shīrāzī pushes al-Juwaynī on the rationale he gives for requiring verbal consent for both adult nonvirgin and virgin, which is that it lies in the independence that comes with maturity of age, not virginity. Al-Shīrāzī retorts that in the hadith, "The nonvirgin has more right of say over herself than her guardian does," the state of not being a virgin is highlighted as the attribute of the woman whose consent is sought; if al-Juwaynī insists that consent is due to independence, he must furnish a hadith to support his claim. Al-Shīrāzī then forwards another argument that nonapparent interpretation is only permitted if some aspect of the statement indicates that it is necessary, and al-Juwaynī has not demonstrated this. The onus at this point falls on al-Juwaynī to either provide a hadith that supports his interpretation or to clarify how the hadith permits nonapparent interpretation.

When a hadith is the grounds for a *jadal* debate, al-Juwaynī states in *al-Kāfiya* that the questioner should ask whether it is a lone narration or one handed down by a large number of

88. Al-Shīrāzī's requirement for parallelism is somewhat peculiar given that al-Juwaynī provided what he regards as the rationale for the ruling, making this a case of *qiyās al-maʿnā*, and in al-Shīrāzī's discussion of *qiyās*, parallelism only emerges as a requirement in the second form of *qiyās*, *qiyās al-dalāla*. Thus, al-Shīrāzī is either adding a condition to the validity of *qiyās al-ʿilla*—the existence of parallelism—or making the case one of *qiyās al-dalāla*.

continuous transmitters and he should request the full chain of transmission.[89] If the hadith is a singly transmitted one, or there are deficiencies in the chain, then the questioner should make these apparent to his opponent and proceed to offer a stronger proof in support of their assertion. If neither, then the questioner should see whether there are revealed sources of the same strength that contradict the proof given, or if any consensus exists in contrast to the opponent's position. If this second series of counter-arguments fails, then al-Juwaynī states that the questioner should try to invalidate the interpretation of the hadith by showing the linguistic impossibility of the opponent's interpretation.[90] He notes that all hadith-based arguments have a shared focus on disavowing the strength of the proof provided by one's opponent by providing contradictory proofs of similar or greater strength; it comes then as a surprise that al-Juwaynī does not follow his own recommendation—he neither asks about the type of hadith nor requests from al-Shīrāzī an *isnād*. Perhaps most importantly, however, he does not provide textual justification for his opinion.

By failing at his own standards of *jadal*, al-Juwaynī acquiesces to al-Shīrāzī. Nevertheless, al-Juwaynī's insistence on his opinion is worthy of note. Beyond simply advancing an alternative explanation for the hadith, al-Juwaynī is arguing that the case of the adult virgin woman is more analogous to the case of the adult nonvirgin, with the rationale being maturity. In presenting this argument, al-Juwaynī deviates from the unambiguous text to make an argument on the basis of *qiyās*. Al-Shīrāzī picks up on this *qiyās*-based argument and retorts by asking al-Juwaynī for textual proof, given that what he is saying contravenes textually established legal doctrines.[91] Al-Juwaynī's willingness to make a *qiyās*-based argument without textual proof in the face of a textual source contradicting his opinion demonstrates his willingness to use *qiyās* to make an argument he feels is rationally superior. However, in both the debate and in *Nihāya*, which he authored late in life, al-Juwaynī agrees with the dominant school opinion that the virgin, regardless of age, can be coerced, using the same hadith al-Shīrāzī cites, "The nonvirgin has more right of say over herself than her guardian does," and then asserting "it is understood from this that the guardian has more right over the virgin than herself, irrespective of whether she is a minor or an adult."[92] Based on this statement, either al-Juwaynī held the opinion he championed in the debate, against the dominant opinion of the school, or the debate was a pedagogical tool used to ensure that the doctrine of the school stood on the soundest textual and jurisprudential grounds. Either way, al-Juwaynī's mode of argumentation remains reflective of his conceptualization of both *jadal* and *qiyās.*

89. Al-Juwaynī, *al-Kāfiya*, 92. After noting that the questioner should inquire about the chain of transmission, al-Juwaynī lists four types of hadith on the basis of the chain: *mursal* (a hadith related by a Successor without mention of the Companion), *munqatiʿ* (a hadith in which a transmitter cites a source whom the transmitter has not met), *mawqūf* (a hadith that is traced to a Companion and is not ascribed to the Prophet), and *majhūl* (a hadith in which one or more of the narrators is unknown). These are not the only types of hadith that can be critiqued from the perspective of their chains of transmission so al-Juwaynī is likely not trying to be comprehensive, but is rather indicating how one might structure an argument against a hadith.

90. Ibid., 92–95. I have not commented on how al-Shīrāzī explains the structure of rebuttals against hadith as he assumed the position of respondent and not questioner in the debate. Similarly to al-Juwaynī, al-Shīrāzī states in *al-Maʿūna* (pp. 48–78) that the questioner should inquire about the transmission chain and the text (*matn*) of the hadith.

91. Al-Subkī, *Ṭabaqāt*, 5: 217–18.

92. Al-Juwaynī, *Nihāya*, 12: 42.

CONCLUDING REMARKS

In canvassing these two dialectical exchanges between al-Shīrāzī and al-Juwaynī, a series of important observations can be made. To start, it is clear that *qiyās* is at the heart of *jadal* exchanges. This is exemplified by al-Shīrāzī's *al-Maʿūna* and al-Juwaynī's *al-Kāfiya*, where the lengthiest sections are devoted to counter-arguments for cases involving *qiyās*. These counter-arguments predominantly hinged on the structure of the correlation, the rationale and its efficacy, and the presence of invalidating distinctions. On the other hand, counter-arguments for a textual proof usually focused on either furnishing a stronger proof or providing a more convincing interpretation for a proof given by an opponent. Given the complexity of the discussion of *qiyās* arguments in *jadal* treatises, to truly understand them *uṣūl al-fiqh* texts must be read concurrently alongside *jadal* treatises. What this has revealed in the case of al-Shīrāzī and al-Juwaynī is that despite inhabiting the same intellectual genealogy within the Shāfiʿī school and championing *qiyās*, their different *qiyās* doctrines had ramifications in the realm of *jadal*. Al-Shīrāzī represents a more conservative textualist approach that limits *qiyās* boundaries and continuously seeks a textual basis, as exemplified by his rejection of *qiyās al-shabah*, his emphasis on parallelism in cases of *qiyās al-ʿilla* and *qiyās al-dalāla*, and his rigid hierarchy between various forms of *qiyās*. Though al-Juwaynī constructs a similar hierarchy between the forms of *qiyās*, he is more liberal in its use, which is demonstrated by his willingness to accept *qiyās al-shabah* and distinctions between source and branch cases that al-Shīrāzī deems disqualifying. Finally, beyond revealing the tangible ramifications of scholarly differences in *qiyās*, the debates demonstrate that dialectical debate and exchange were not just an inter-school phenomenon, but an intra-school one as well that potentially served to bolster school doctrine; this is especially obvious in the second debate, which involves a legal issue that enjoyed school consensus. The meeting of these two scholars, both chairs of Niẓāmiyya madrasas, and the preservation of the debate by al-Subkī are testament to the importance that *jadal* was given. *Jadal* treatises provide valuable insights into the development of Islamic legal thought and the theoretical maneuverings of jurists, but preserved debates provide a unique glimpse into how *jadal* functioned historically and how jurists from within the same school navigated the differences of their shared world.