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**IMĀM AL-ḤARAMAYN AL-JUWAYNĪ AND JADAL
THEORY IN THE ELEVENTH CENTURY
(A critical analysis of Imām al-Ḥaramayn's *al-Kāfiya fi al-jadal*)**

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Abstract

*This study presents a critical navigation and interpretation of the book *al-Kāfiya fi al-jadal* by Imām al-Ḥaramayn al-Juwaynī (d. 478/1085). In this book, he elucidates foundational thoughts of *jadal* (dialectic) theory and its application. Despite its importance in the development of *jadal* in Islamic scholarship and dialectical art, Imām al-Ḥaramayn's *al-Kāfiya* unfortunately has never been studied. Existing studies on the art of Islamic disputation theory discuss *al-Kāfiya*'s position and contribution, but the discussion of its content is not comprehensive. In this respect, this article not only provides a more comprehensive understanding of Imām al-Ḥaramayn's theory of *jadal* but more importantly demonstrates how Imām al-Ḥaramayn formulates *jadal* as a scholastic method. He shows that *jadal* is essentially scholastic for its orientation of finding truth in the forms of epistemological and psychological certainty (*al-yaqīn*) in juridical and theological knowledge.*

Keywords: *jadal, refutation, certainty, yaqīn, Imām al-Ḥaramayn al-Juwaynī.*

A. Introduction

Jadal is an art of disputation in Islamic scholarship that resembles the art of dialectic in Greek philosophical tradition. However, unlike Greek dialectic that is believed to be able to unfold one's reasoning fallacy, to have examinational capacity, or to lead practitioners of dialectic to "the first principle of a given science (Aristotle, 1997, pp. 2-3)," *jadal* is generally perceived as a form of sophistical reasoning whose value is only polemical or apologetic (Horten, 1973; van Ess, 1970, 1976). By presenting a concise and critical summary on the work of Imām al-Ḥaramayn al-Juwaynī (d. 478/1085) entitled "*al-Kāfīya fī al-jadal* (1979)," this article challenges such general perception and provides a closer analysis on how *jadal* is formulated by Imām al-Ḥaramayn to render a level of certainty in juridical and theological knowledge. This introductory presentation of Imām al-Ḥaramayn's *jadal* work will help us to understand the rigor and complexity of *jadal* theory and to apprehend that *jadal* is more than polemical in nature and value.

It is unfortunate that Imām al-Ḥaramayn's *al-Kāfīya* has never been extensively studied. According to Walter Edward Young, the reason for this lack of study is the difficulty of the text itself "to navigate and interpret (Young, 2012, p. 90)." Larry B. Miller (1984) used to provide a brief discussion of *al-Kāfīya* when he explains the early stage of juridical *jadal* literature in his work, *Islamic Disputation Theory*. However, this brief discussion is insufficient to engender a comprehensive understanding of Imām al-Ḥaramayn's theory of *jadal*. In this regard, this article steps further to study, navigate, and interpret *al-Kāfīya* of Imām al-Ḥaramayn and aims to provide a more comprehensive understanding of it.

B. Discussion

1. Imām al-Ḥaramayn's *al-Kāfiya fī al-jadal*

Imām al-Ḥaramayn al-Juwaynī (d. 478/1085) studied the art of disputation with intensity in the *madrasa* of al-Bayhaqī under the guidance of Abū al-Qāsim al-Iskāf al-Isfarā'īnī (d. 452/1060). At that time, the tension between Shāfi'īs and Ḥanafīs escalated in Nīshāpūr (al-Subkī, 1386/1967, pp. 169-170 and 175-176). He ought to be aware of such sectarian environment and tension during his study so that he equipped himself with knowledge and skill in the art of disputation in addition theology and law in the *madrasa*. Along with deep knowledge and credential in law and theology, his mastery of *jadal* or *munazāra* gave him an adequate tool and confidence to be able to withstand challenges and threats in Nīshāpūr and beyond.

In addition to studying and practicing *jadal* or *munazāra* in a scholarly setting that played an important role in his scholarly life, Imām al-Ḥaramayn also formulated a systemized theory of dialectic (*jadal*). He wrote a theoretical book of *jadal*, namely *al-Kāfiya fī al-jadal*. On the one hand, the book was an important contribution to *jadal* scholarship in general because it was considered the culmination of *jadal* development in the classical period as identified by Hallaq. On the other hand, *al-Kāfiya* also provided an epistemological foundation for Imām al-Haraman's juridical and theological works. Imām al-Ḥaramayn, through his *jadal* theory and application, could obtain a certain degree of certainty and share such sense of certainty to his students and readers. The certainty can be epistemological or psychological in both juridical and theological knowledge.

Reasoning (*naẓar*) is an intellectual process that seeks to establish certain knowledge (*'ilm*) or a preponderance of conviction (*ghalabat al-ẓann*), either through linguistic inference and signification of religious proofs or logical deduction based on rational proofs and premises (al-Juwaynī, 1950, p. 3). The certainty is epistemological when it is obtained through valid reasoning

(*nazar*) of either religious or rational proofs that are deemed intrinsically and certainly credible and conclusive (*qaṭ'iyāt*). In the case of religious proofs, the credible and conclusive proofs (*maḥṭū'āt*) consist of the univocal texts of the Qur'an, the univocal texts of the Prophetic Sunnah with numerous, recurrent, and corroborative chain of transmission (*sunnah mutawātirah*), and *ijmā'* (scholarly consensus). While in the case of rational proofs, the credible and conclusive proofs refer to valid and true premises in the context of demonstrative inference. The result of reasoning through these credible and conclusive proofs is called '*ilm* (certain knowledge) with the degree of epistemological certainty (*qaṭ'ī al-thubūt*).

Meanwhile, the certainty is psychological when it is obtained through valid reasoning (*nazar*) of either religious or rational proofs that have lower credibility and inconclusive (*ẓunūn*). In the context of religious proofs, these inconclusive proofs consist of the *nuṣūṣ* (univocal texts) of the Sunnah with a single chain of transmission, the *ẓawāhir* (equivocal texts) of the Qur'an, the *ẓawāhir* (equivocal texts) of the Sunnah, statements of the Prophet's Companions, and different forms and orders of *qiyās* (reasoning by analogy) and linguistic inferences. In the context of rational proofs, these proofs refer to premises that are not intrinsically and necessarily true and valid while used in the context of logical inference or *qiyās*. The result of reasoning based on these probable proofs is called *ẓann* (probable knowledge or opinion), which does not render any kind or certainty, either epistemological or psychological certainty. In order for a *ẓannī* opinion to render certainty, other scholars should agree on it so that consensus (*ijmā'*) can be reached or be tested through a process of *jadāl* (dialectic). If scholarly consensus is reached, *ẓannī* knowledge would then be elevated to the degree of epistemological certainty (*qaṭ'ī*).

However, if the *ẓannī* opinion is contested or controversial, it should undergo a "*jadāl* examination" and when it is proven to be false or defeated, a *ẓannī* opinion certainly does not engender

certainty of the truth and should be discarded. However, if *zannī* opinion is proven true or winning through a process of *jadal*, this opinion becomes the most compelling opinion or preponderance of conviction (*ghalabat al-zann*) that reaches the degree of certainty (*al-yaqīn*) (al-Juwaynī, 1979, p. 32). The certainty in this context is psychological because the conclusiveness and credibility of the proofs are considered probable; however, jurists or theologians who employ them in the process of *jadal* have no doubt in their validity and credibility, including the validity and credibility of conclusions and opinions derived from them.

Imām al-Ḥaramayn (1979) organized *al-Kāfīya* in three main parts. In the introductory part, he defined and discussed 135 key terms related to *jadal* theory. In addition to legal-theoretical terms, he also analyzed theological terminologies, such as *uṣūl al-dīn* (the principles of religion), *i'tiqād* (belief), *khiṭāb* (speech), *Ḥadd* (definition) and its synonyms (i.e. *ma'nā* and *Ḥaqīqah*), *jadal* (dialectic), *ilm* (knowledge), *naẓar* (reasoning), and their derivatives (pp. 1-87).

The second part of *al-Kāfīya* consists of 27 chapters that discuss the theory and application of *jadal* in a legal context. In these chapters, Imām al-Ḥaramayn attempted to formulate a *jadalic* method for obtaining religious knowledge with a certain degree of credibility and certainty. He explained among other things that there are two sources to derive legal knowledge. First, the transmitted sources (*khābar*) that consist of the Qur'an, Sunnah, and *Ijmā'*, with the second being the rational sources (*naẓar*) that consist of different forms of *qiyās* and legal understandings extracted from different modes of speech (*khiṭāb*) (al-Juwaynī, 1979, pp. 1-87). If one claims to derive a legal qualification (*Ḥukm*) from the transmitted sources, such claim can be challenged through series of dialectical move: ranging from questioning the validity of the interpretation, giving stronger contradictory evidence from the transmitter sources, to challenging the reliability of the transmission of the *khābar* sources. If the claim of legal rule based on rational sources (*qiyās*), the questioner

can challenge the opponent using different modes of refutation (*i'tiraḍāt*), such as: *fasad al-waḍ'* (false construction), *'adam al-ta'thīr* (ineffective ratio legis), *ishtirāk fī al-dalālah* or *qalb* (equivocation or reversal), *naqḍ wa munāqaḍah* (inconsistency), *al-qawl bi mujīb al-'illah* (limited acceptance), *farq* (distinction), and *mu'āraḍah* (counter-objection) (al-Juwaynī, 1979, pp. 148-440). In addition, Imām al-Ḥaramayn also explained the method of *tarjīh* (weighing and preponderance) in terms of determining a sound juristic qualification from contradictory legal evidences.

In the last four chapters, Imām al-Ḥaramayn (1979) deciphered *jadal* in a practical setting: listing “ethics or rules of *jadal*” (*ādāb al-jadal*), explaining the “tricks of disputants” (*Ḥiyal al-mutanazirīn*), addressing the signs of defeat, and discussing the possibility of using parables in a *jadalic* context (pp. 529-566). These points of conducting *jadal* in a practical setting are not only applicable in juridical *jadal* but also applicable in theological *jadal*.

2. Jadal

Imām al-Ḥaramayn's theory of *jadal* is comprehensively discussed in the second chapter of the book. This is the focus of this article. In his *jadal* theory, religious knowledge or juristic qualification is obtained through two primary epistemological authorities: the transmitted-religious sources (*khābar*) that consist of the Qur'an, Sunna, and *Ijmā'*, and rational sources (*naẓar*) that comprise *Qiyās* and accredited meanings derived from different modes of speech (*al-khiṭāb*). When one scholar's legal judgment contradicts that of another, their arguments and judgments are evaluated based on the authoritative weight of their proofs. In this respect, Imām al-Ḥaramayn lists proofs from both the transmitted-religious (*khābar*) and rational (*naẓar*) sources, providing what Walter E. Young calls “a hierarchy of epistemic authority” (Young, 2012, pp. 209, 419 n. 214, 456, 473, and 514). The hierarchy is the following:

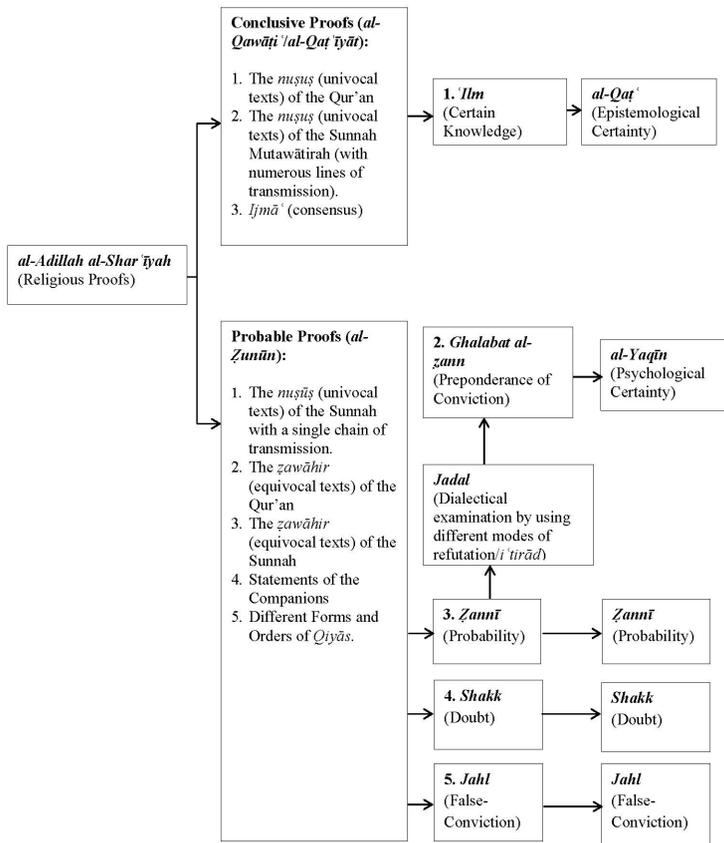
- a. The *nuṣūṣ* (univocal texts) of the Qur'an

- b. The *nuṣūṣ* (univocal texts) of the *Sunna Mutawātira* (with numerous lines of transmission).
- c. *Ijmā'* (consensus)
- d. The *nuṣūṣ* (univocal texts) of the Sunna with a single chain of transmission.
- e. The *zawāhir* (equivocal texts) of the Qur'an
- f. The *zawāhir* (equivocal texts) of the Sunna
- g. Statements of the Companions

Different forms and orders of *Qiyās* (al-Juwaynī, 1979, pp. 88-89).

When this hierarchy is linked to a different level of certainty that it is supposed to render, it can be described in the chart below:

The Hierarchical Order of Religious Proofs and Certainty



The argument of dialecticians is supposed to be built around said hierarchy of epistemic authority. The questioner and answerer have to agree on its structure and authoritativeness before they proceed to their disputation. In this light Imām al-Ḥaramayn emphasizes, “It is necessary for the questioner to accept all principles presented by the answerer” (al-Juwaynī, 1979, p. 86). In addition, since the primary form of *jadāl* is question and answer (al-Juwaynī, 1979, p. 72), the role of the questioner is to attack and destroy the argument of the answerer; meanwhile, the role of the answerer is to defend a claim by constructing a valid and coherent argument.

Imām al-Ḥaramayn employs both restrictive (*su’āl ḥajr wa man’*) and non-restrictive (*su’āl tafwīḍ*) types of questions when he formulates an order of *jadāl* questions. This rubric is designed to equip a questioner with the necessary tool to initiate the process of *jadāl*, his attack on an opponent’s position. The first two are introductory questions that ask about the existence and the nature of an opinion (*madhhab*): “Do you have an opinion?” and “What is your opinion?” Here both restrictive and non-restrictive questions are used to identify the opinion (*madhhab*) of the answerer (al-Juwaynī, 1979, p. 77).

Both restrictive and non-restrictive questions are also employed in the second part of Imām al-Ḥaramayn’s order of *jadāl* questions. Here questions address the proof of a certain claims (*burhān* or *dalāla*) and verifying the aspect of that proof (*taṣḥīḥ al-burhān* or *wajh al-dalāla*). The question about the proof such as “What is the proof of your opinion?” is the third question in the order of *jadāl* questions after the questions about the existence and the nature of opinion. Meanwhile, the question about the verification of the proof or the mode of the proof like “Is your proof the correct proof?” is fourth in the order. Both questions on the proof and its verification aim to verify or examine the soundness of the opinion (*taṣḥīḥ al-madhhab*) (al-Juwaynī, 1979, p. 77).

If the questioner is already familiar with his opponent’s opinion and proof, does he still need to ask the first order of *jadāl*

questions regarding the existence and nature of the opposing opinion? Imām al-Ḥaramayn maintains that the questioner can turn directly to the third *jadal* question, about the proof (*dalāla*), if he already knows the opponent's opinion; likewise, if he already knows the opponent's proof, he can turn to the fourth question and commence his refutation of the proof that his proponent provides (al-Juwaynī, 1979, pp. 79-80).

Whether the questioner starts a question from the first *jadal* question or directly goes to the fourth, the dialectical move commences with the questioner's refutation of the respondent's proof, which is reflected in the third and fourth question (about the opponent's proof and its verification). Imām al-Ḥaramayn generally employs the term "*al-i'tirāḍ*" to refer to the notion of refutation.¹ He defines *al-i'tirāḍ* as "opposing (*muqābala*) the opponent's argument by means of something that can prevent him from attaining his goal through what he explains" (al-Juwaynī, 1979, p. 67).² It is also defined as "preventing the opponent (from proving his point) by taking a stand of equal probative force (*bi musāwātih*) against the argument that he presents (al-Juwaynī, 1979, p. 67)."³

3. Forms of Refutation (*al-I'tirāḍ*)

In Imām al-Ḥaramayn's *jadal* scheme, there are eight forms of *al-i'tirāḍ* (refutation), namely:

- a. *al-Man'* (disallowance)
- b. *Fasād al-waḍ'* (false construction)
- c. '*Adam al-ta'thīr* (ineffective '*illa*)

1 The *ilzām* refutation in Imām al-Ḥaramayn's explanation has three different types, namely contradiction (*munāqaḍa*), reversal (*qalb*), or disallowance (*mumāna'a*). However, there is no detailed explanation provided when he uses *ilzām* for refutation that has these three different forms. The word *al-i'tirāḍ* is used more frequently and consistently throughout *al-Kāfiyya*.

2 The translation belongs to Larry B. Miller (1984).

3 The translation belongs to Larry B. Miller (1984).

- d. *Da'wā al-ishtirāk fī al-dalāla* (equivocation) or *qalb* (reversal)
- e. *Munāqaḍa* (inconsistency)
- f. *al-Qawl bi mūjib al-'illa* (limited acceptance)
- g. *al-Farq* (distinction)
- h. *Mu'araḍa* (objection) (al-Juwaynī, 1979, pp. 67-68).⁴

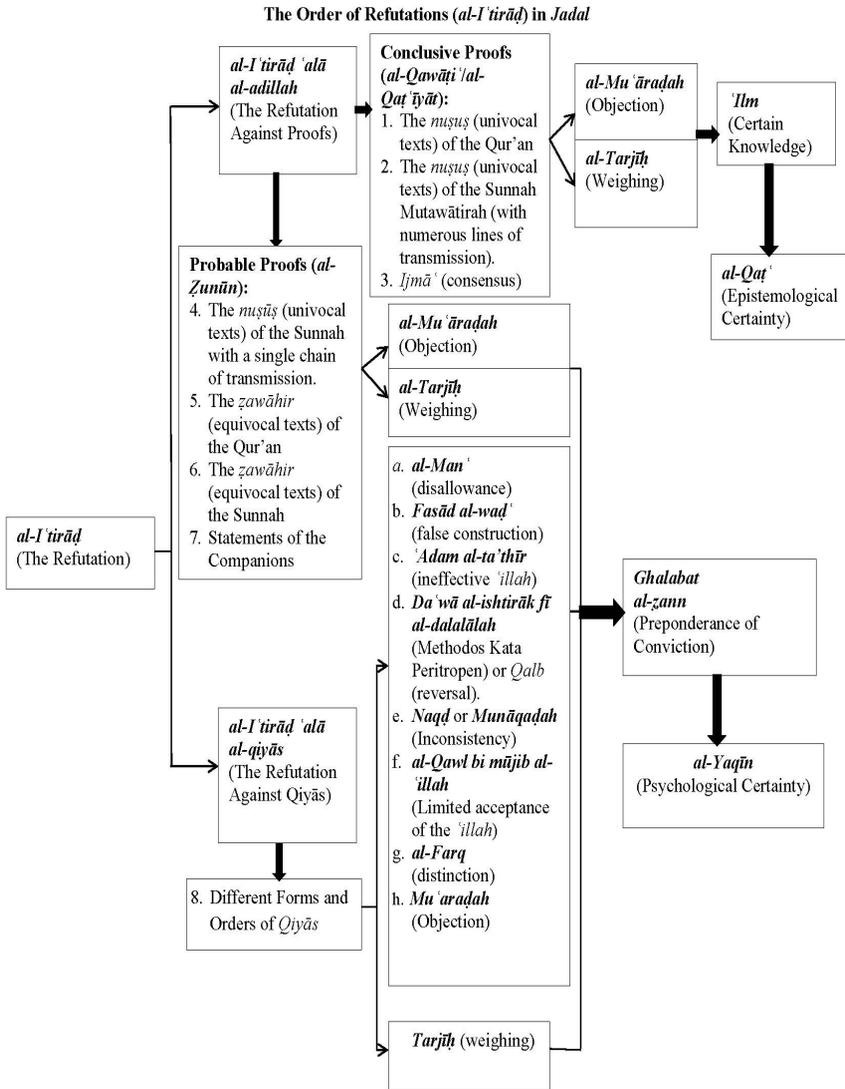
Some of the *i'tirāḍ* forms refute a general proof that is inferred from either the religious (*adillat al-shar'*) or the rational (*adillat al-'aql*) proofs, including the proof that is derived from the Qur'an, the Sunna, statements of the Companions or *Ijmā'*, and *Qiyās*. Imām al-Ḥaramayn uses the term *al-i'tirāḍ 'alā al-adilla bi al-munāqaḍa* (the refutation against argumentative proofs by means of showing an inconsistency) to designate this general sense of refutation.

In the following discussion, however, this article will use the term *al-i'tirāḍ 'alā al-adilla* to refer to the kinds of refutation that are directed against general religious proofs (from the Qur'an, Sunna, *Ijmā'*, and *Qiyās*), which include *mu'araḍa* (and its stronger form, *munāqaḍa*) and *tarjih* (weighing contradictory proofs or opinions to obtain a preponderance of opinion). Meanwhile, other forms of the *i'tirāḍ* are exclusively to be applied to the *qiyās* (analogical and other forms of reasoning) as a rational proof. These forms include *al-man'* (disallowence), *fasād al-waḍ'* (false construction), *da'wā al-ishtirāk fī al-dalālāla* (equivocation) or *qalb* (reversal), *al-qawl bi mūjib al-'illa* (limited acceptance), and *al-farq* (distinction).⁵ Imām al-Ḥaramayn calls these types of refutation as "*al-i'tirāḍ 'alā al-qiyās bi bayān fasād al-waḍ'*" (the

4 Larry B. Miller includes *ilzām* in the above order of objections (which I call the order of refutations) but Imām al-Ḥaramayn does not because it is another name for the refutation itself. In addition, instead of following Miller's translation of "*mu'araḍa*" as "counter-objection," I prefer to translate it as "objection" because it is a part of *i'tirāḍ* (refutation) forms, not a counter argument against *i'tirāḍ* as Miller argues (1984, pp. 114 and 133-134).

5 The terminological translations of these forms of *i'tirāḍ* are borrowed from Miller's translation (1984, pp. 110-134)

refutation against the analogy by explaining its false construction). These forms of refutation, including their relationship with religious proofs and level of certainty that refutation can produce, are described in the following chart and its explanation below:



All above forms of refutation (*al-i'tirādāt*) are designed by Imām al-Ḥaramayn to obtain and ensure certainty in religious knowledge. To him, *jadal* through these forms of refutation (either refutation against religious proofs or rational-*qiyās* proofs)

provides a way to examine an opponent's thesis, to prove validity or invalidity of the opponent's argument, and eventually to arrive at either epistemological (*qaṭ'ī*) or psychological certainty (*yaqīn*) of religious knowledge.

These forms of refutation, including their relationship with religious proofs, can be further described below:

a. *Al-I'tirāḍ 'alā al-adilla* (The Refutation Against Proofs)

As already mentioned, the hierarchy of epistemic authority in Islam puts the Qur'an, the Sunna, and the consensus of Companions (*Ijmā'*) at the highest rank of religious proofs and evidences, then followed by *qiyās*. How then does the questioner refute their opponent's argument, if the opponent utilizes proofs stemming from these highly authoritative sources? Before answering this question, let us observe Wael B. Halaq's useful reformulation of dialectical questions and an order of refutations derived from the *jadal* theory of Imām al-Ḥaramayn and of other Muslim dialecticians, which is paraphrased by Walter E. Young below:

1. Q asks P's opinion regarding certain *Ḥukm*.
2. Q asks P to adduce the evidence and proof justifying his *Ḥukm*.
3. Q "casts doubt" on P's evidence and proof, causing P to validate them. If P fails in any stage, he must either adopt Q's opinion, another which he is capable of defending. If P succeeds at all stages, then Q proceeds to number 4.
4. Q raises objections to P's indicants
5. Q asks P's opinion regarding certain *Ḥukm*.
6. Q asks P to adduce the evidence and proof justifying his *Ḥukm*.
7. Q "casts doubt" on P's evidence and proof, causing P to validate them. If P fails in any stage, he must either adopt Q's opinion, another which he is capable of defending. If P succeeds at all stages, then Q proceeds to number 4.
8. Q raises objections to P's indicants

- If P's indicant is Qur'ānic, (a) Q makes that it is equivocal or abrogated, (b) Or, Q objects to the interpretation, and suggests another, (c) Or, Q discredits the indicant, and produces a stronger one.
- If P's indicant is Sunnaic, (a) Q makes change against the chain of transmission, or against the text, (b) Q may charge (as with Qur'ānic evidence) abrogation, or produce a more reliable, or univocal, *Ḥadīth*.
- If P's indicant is claimed to be established by consensus, (a) Q demands P confirm such consensus has taken place, (b) Q attempts to prove "the existence of dissenting voice."

If P's *Ḥukm* is derived through *qiyās*, Q objects to P's *qiyās*... (Hallaq, 1987, pp. 203-204; Young, 2012, pp. 135-136).

From the above order of questions and refutations, we have a picture of how questions and refutations operate in a dialectical setting. When the questioner (Q) starts to request the answerer (P) to provide a proof for his thesis or claim, the basis for the refutation is established.

In this regard, Imām al-Ḥaramayn formulates a series of refutations for different types of proofs. Against the answerer's evidence stemming from the Qur'an, Sunna, or Consensus of Companions (*Ijmā'*), the questioner can employ a type of refutation (*al-i'tirāḍ*) called *al-mu'arāḍa* (objection); and if the questioner finds contradiction of evidences in the opponent's argument, the questioner harnesses *tarjīḥ* (weighing) as a method to refute his opponent's proofs.

1) Al-Mu'arāḍa (objection)

Imām al-Ḥaramayn defines *al-mu'arāḍa* as "preventing an opponent (from attaining his dialectical goal) by making an equal (but opposing) claim" or "matching the opponent with regard to the claim of proof (*dalāla*) (al-Juwaynī, 1979, p. 69)."⁶

⁶ The translation is based on Miller's translation with a slight modification to make it clearer and closer to Imām al-Ḥaramayn's original text.

Elsewhere he regards *al-mu'araḍa* as a valid method of attacking the opponent's argument by making an equal but opposing argument or proof (al-Juwaynī, 1979, p. 412). In other words, *the mu'araḍa* aims to prevent the opponent from being successful in making a sound argument by showing an equal proof or claim. This is useful because the answerer who is responsible to answer dialectical questions is free to select varied types of evidence to support his argument, including from the texts of the Qur'an or Sunnah, the consensus (*Ijmā'*), or analogical reasoning (*qiyās*). Once he makes a claim and relates the claim to one of the above epistemic evidences, he is subject to refutation.

In Imām al-Ḥaramayn's dialectical scheme, the *mu'araḍa* has two forms: first, the objection to a claim by means of an equivalent but opposing claim (*mu'araḍat al-da'wā bi al-da'wā*) (al-Juwaynī, 1979, p. 412), second, the objection of the proof by means of an equivalent but opposing proof (*mu'araḍa bi al-dalīl 'alā al-dalīl*) (al-Juwaynī, 1979, p. 418).

a. The objection of the claim by another claim (*mu'araḍat al-da'wā bi al-da'wā*)

This type of objection takes place in many dialectical occasions. Sometimes the objection is rather simple, in the form of a direct objection to the answerer's claim. For example, the answerer argues that the prayer (*ṣalāh*) of a disbeliever is a proof of belief (*īmān*), since the prayer eliminates their state of disbelief. The questioner directly refutes this statement by stating that the prayer cannot be a proof of belief because the state of disbelief invalidates the prayer (al-Juwaynī, 1979, p. 422).

On other occasions, the objection can be rather complex. For example, the answerer claims to use a univocal status of texts from the Qur'an (*nuṣūṣ al-Kitāb*). In this regard, the questioner can provide an objection of such a claim by demonstrating another univocal text from the Qur'an (*naṣṣ al-Kitāb*) that renders a different meaning or by showing that the term used in the verse actually contains odd (*shāhdha*) or strange (*gharība*) language,

which makes the verse no longer unequivocal (*qaṭ'ī* or *naṣṣ*). Then, if the answerer cannot prove a univocal status of the text (eliminate the equivocal element in the text), they are defeated in the *jadal* context (al-Juwaynī, 1979, p. 90).

For example, the debate on whether the law of retaliation (*al-qawad*) on a Muslim who murdered a non-Muslim (*al-dhimmi*) is obligatory, where the answerer replies that the law of retaliation must be applied. When the questioner asks for a proof, the answerer provides the following Qur'anic verse (Sura al-Isrā': 7:33):

وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لَوْلِيَّهِ سُلْطَانًا فَلَا يَسْرِفُ فِي الْقَتْلِ
إِنَّهُ كَانَ مَنصُورًا...

"...whoever is slain unjustly, We have indeed given to his heir an authority, but let him not exceed the just limit in slaying; surely he is aided."

For the answerer, the above verse is a clear proof (*nass*) of the necessity of applying the law of retaliation by the non-Muslim victim's heir on the Muslim murderer. Yet the questioner then poses a follow-up question, saying that the word *sulṭān* (سلطان/ "authority") is in indefinite form (*nakira*)—meaning that the authority given to the heir of the non-Muslim victim is not solely the authority to execute the law of retaliation. Is it possible that the heir is also given the authority to ask for the blood money (*diya*)?

The answerer responds by saying that blood money is not mentioned in the above verse, especially given the phrase in the last clause, "فَلَا يَسْرِفُ فِي الْقَتْلِ" (not exceed the just limit in slaying), implying that the authority (*sulṭān*) given to the heir is none other than the "slaying" (*al-qatl*) retaliation. The questioner then follows up with another objection to the interpretation stating that the indefiniteness of the term *sulṭān* (authority) makes it applicable to both slaying (*qatl*) and non-slaying (*ghayr al-qatl*), including requesting blood money. Furthermore, they could say

that the phrase “وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لَوْلِيِّهِ سُلْطَانًا” (whoever is slain unjustly, We have indeed given to his heir an authority) is a complete clause. Such complete conditional sentence, ending with an indefinite noun (*nakira*) of the term *sultān*, makes the subsequent phrase “فَلَا يُسْرِفُ فِي الْقَتْلِ” (so do not exceed the just limit in slaying) an independent phrase (*mustaqill*) (al-Juwaynī, 1979, pp. 107-108). In other words, in the questioner’s perspective, there is no direct and consequential relation between the first phrase (i.e. if someone is murdered unjustly, his/her heir will be given an authority) and the second (i.e. do not transgress in slaying). Therefore, a verse that is viewed as a univocal proof (*naṣṣ*) by the answerer can be challenged by the questioner through demonstrating the plausible interpretations of the word (i.e. *sultān*) that renders the equivocality of the proof (e.g. *muḥ tamal*, *zāhir*, *‘āmm*, or *mujmal*).

One of the formulaic questions in *mu’āraḍa* presented by Imām al-Ḥaramayn says, “If you say like this (in this case), do you not say like this (in a similar case)?” (al-Juwaynī, 1979, p. 413). In another place, he also presents a similar *mu’āraḍa* question, “If you say like this, do you not say like this in a similar case? Why do you differentiate between the two whereas they are identical (*naẓīrān*)?” In this regard, the questioner can ask the answerer, “If you say that the phrase *فَلَا يُسْرِفُ فِي الْقَتْلِ* (*falā yusrif fī al-qatl*) is specifying the indefinite word *sultānan*,⁷ do you not think that the word *الَّذِينَ آمَنُوا* (O you who believe) in Sura al-Baqara (2:178) is also specifying the word *‘qiṣāṣ’* (the law of retaliation)?”

That verse reads:

”يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرِّ
بِالْحُرِّ...”

“O you who believe! Retaliation is prescribed for you in the matter of the murdered; the freeman for the freeman...”

⁷ The specification (*takhṣīṣ*) implies that the authority (*sultān*) mentioned in this verse is the authority to carry out the law of retaliation by killing (*qatl*) the murderer.

Based on the generality of the word *fī al-qatlā* (in the matter of the murdered) in the above verse, the answerer argues that the law of retaliation (*qiṣāṣ*) is also applied to the case of a non-Muslim victim (*dhimmī*). It means that if the one who was murdered is a non-Muslim, his heir has a right to ask for retaliation (*qiṣāṣ*) because the word *al-qatlā* (the murdered) is considered general (*‘āmm*), applied for both murdered Muslim and non-Muslim alike (al-Juwaynī, 1979, p. 109). The questioner challenges this interpretation and reminds the answerer about the case when he specifies *sulṭān* (authority) with the word *al-qatl* (slaying). The questioner asks why the answerer does not do the same thing in this verse, namely specifying (*takhṣīs*) the word *al-qatlā* with the phrase “*alladhīna āmanū* (O you who believe).” If the specification applies, it means that the law of retaliation applies only for the believers since they are the addressed subject in the verse (al-Juwaynī, 1979, pp. 108-109). In this case, if the answerer (P) can defend his claim regarding the *naṣṣ* status of the verse, the victim heir’s obligation to apply the law of retaliation to Muslims and non-Muslims is certain (*‘ilm*), which reaches the level of epistemological certainty (*qaṭ’ī*). However, in this specific case, the questioner (Q) successfully challenges and invalidates P’s argument. Therefore, P’s claim regarding the univocal quality of the Qur’anic text (*naṣṣ*) is untenable. Therefore, the proof is considered inconclusive (*ẓannī*) and only renders *ẓann* (probability, uncertain knowledge), not *‘ilm* (certain knowledge). Meanwhile, the Q’s argument that regards the Qur’anic proof as equivocal (*ẓāhir*) prevails. Consequently, his implied argument regarding the permissibility of the victim’s heir to choose either applying the law of retaliation or asking for a blood money is deemed *ghalabat al-ẓann* (preponderance of conviction). The same applies with regard to his argument concerning the inapplicability of the law of retaliation to non-believers, which also becomes *ghalabat al-ẓann*, which eventually renders a psychological certainty (*yaqīn*).

This has been an example of how refutation in the form of *mu'āraḍa* can be applied against the claim of the answerer who uses Qur'anic verses as proofs of their argument. What is claimed to be *naṣṣ* (univocal, not subject to an interpretation) can be challenged to the extent that the proof becomes *Zāhir* or *muḥ tamal* (equivocal, subject to an interpretation). Similarly, what is claimed to be having a general meaning (*'āmm*) can be refuted to the extent that the verse under the discussion is proven to be specific in scope and meaning (*khāṣṣ*) and vice versa.

A similar scenario occurs when the answerer's thesis is based on the texts from the Sunna. Imām al-Ḥaramayn provides some possible flows of argumentation in which the answerer refers to evidence from the Sunnaic texts. If the claim is related to the status of whether the text is univocal (*naṣṣ*) or equivocal (*zāhir*) in meaning, the *mu'āraḍa* that is used to refute evidence from the Qur'an also applies to proofs stemming from the Sunna. In addition, the questioner can also challenge the claim by asking the soundness and reliability of the transmission (*isnād*) of the Sunna, namely whether the chain of the transmission is *ṣaḥīḥ* (sound), *mursal* (not mentioning a transmitter from the companion period), *munqaṭi'* (interrupted), *mawqūf* (halted in a name of a companion), *majhūl* (unknown), or another degree of reliability and soundness (al-Juwaynī, 1979, p. 92).

b. The objection to the proof by means of an opposing proof (*mu'āraḍa bi al-dalīl 'alā al-dalīl*)

According to Imām al-Ḥaramayn, one of the distinctions between *al-mu'āraḍa* (objection) and *al-munāqaḍa* (inconsistency) is the fact that the former allows for an objection to the proof by means of an opposing proof (whereas in the context of *al-munāqaḍa*, the refutation of the proof by means of an opposing proof is not valid. He does not explain this further or provide clear examples, but he presents some situations in which presumably “the objection to the proof by another proof” operates in a dialectical context. He sometimes calls the objection in these situations as “the objection to an argument by means of something similar to

what he claims to be an argument” (*mu’āraḍat al-Ḥujja bi mithli mā idda’āhu ‘alayhi Ḥujja*).

The prerequisite of “the objection to a proof by another proof” (*mu’āraḍa bi al-dalīl ‘alā al-dalīl*) is that the two proofs, objecting and opposing, have to be in contradiction (*ta’āruḍ*). There are two ways of dealing with the contradiction of proofs: through *al-mu’āraḍa* and *al-tarjīḥ* (weighing). The former negates or invalidates (*tanāfi*) the opposing proof (al-Juwaynī, 1979, p. 413), whereas the *tarjīḥ* is used to weigh and assess which of the two contradictory proofs have more preference, priority, or weight (al-Juwaynī, 1979, p. 419).

Imām al-Ḥaramayn explains that if there are two terms, one of them univocal (*naṣṣ*) and the other general (*‘umūm*), the former cannot be used as an objection for the latter because both are not contradicting. The former, the univocal term, functions as a specifying term (*takhṣīṣ*) for the latter. However, if both are univocal (*naṣṣayn*) and contradictory, there will be no reconciliation between the two. In this situation, a dialectician can use the univocal term to object to and invalidate the meaning of the opposing univocal term through *al-mu’āraḍa* or use one of the two terms to evaluate which has greater priority or weigh through *al-tarjīḥ* (weighing) (al-Juwaynī, 1979, p. 413).

In the case of contradiction between the Qur’anic or Sunnaic term (*lafẓ*) and the *Ijmā’* (Consensus), the term of the Qur’an/Sunna is to be used instead of *Ijmā’* in a dialectical context to determine a legal qualification of a case. However, if the *Ijmā’* gives a more specific understanding of the generality of the *lafẓ*, the *Ijmā’* should have a priority over the general term. Similarly, if there is a contradiction between *dalīl al-khiṭāb*⁸ and the general term (*al-lafẓ al-‘āmm*), the general term will negate the meaning

8 It seems that Imām al-Ḥaramayn use the term “*dalīl al-khiṭāb*” to refer to both *mafhūm al-muwāfaqa*, applying the meaning or ruling of what is clearly stated in the text to what is not clearly stated, and *mafhūm al-mukhālafā*, applying a contradictory meaning or ruling to what is not clearly stated by a statement.

resulted from the *dalīl al-khiṭāb*, unless the meaning or the ruling resulting from *dalīl al-khiṭāb* is more specific. In the same fashion, when the general terms contradict *qiyās* (analogical reasoning), then the general term eliminates the ruling resulted from the *qiyās*, except if the *qiyās* produces a more specific ruling or meaning than the one derived from the general term (al-Juwaynī, 1979, p. 413).

The general rule in dealing with contradictory proofs through *mu'āraḍa*, according to Imām al-Ḥaramayn are, when two proofs have equal weight and conclusiveness (*qaṭ'ī*), that is when it is impossible they are being harmonized, the rule of abrogation applies. His example is two contradictory but conclusive-reliable (*mutawātir*) reports. However, if it is possible to combine and harmonize two seemingly contradictory proofs, this harmonization (for example, that one specifies the other (*takhsīṣ*)) is necessary. Then, if one proof is conclusive (*qaṭ'*) and the other proof is not conclusive (*mā lā qaṭ'a fīh*), the indefinite proof should be nullified (al-Juwaynī, 1979, p. 417).

1) Al-Tarjih (Weighing)

In addition to *al-mu'āraḍah*, the second kind of refutations directed to examine the argument of the opposing dialectician is called *al-tarjih* (weighing). The *tarjih* can be used only in the context of the existence of contradiction of traditional proofs (*ta'āruḍ min adillat al-shar'*) and the like (al-Juwaynī, 1979, p. 440). The *tarjih* treats the contradiction of traditional proofs in an analogous way compared to that of *mu'āraḍat al-dalīl bi al-dalīl* but it has a slightly different rule and purpose. As mentioned earlier, the *mu'āraḍah* is designed to object to the opponent's argument by separating the relationship between the proof and the claim made based on that proof (*al-infiṣāl*) and by nullifying the validity of one of the proofs (*al-tanāfī*) in the case of contradictory proofs. Meanwhile, the *tarjih* is aimed at resolving the contradiction of proofs that create confusion and uncertainty (*ishtibāh* and *iltibās*) by means of making a priority or preference (*taqdīm*) of one proof over another based on a specific quality

that belongs to one of them (al-Juwaynī, 1979, p. 440 and 449). Therefore, the *tarjih* is expected to remove such confusion and to engender preponderance of conviction (*ghalabat al-ẓann*) as a form of certainty, a psychological kind of certainty (*al-yaqīn*). Unlike reasoning that generates knowledge, the *tarjih* renders an action (*‘amal*) (al-Juwaynī, 1979, p. 443 and 449).

Imām al-Ḥaramayn explains that in matters of rational proofs, the thing that is closer to senses or sights has a priority over the thing that is more distant from them. Similarly, the thing that is closer to knowledge by necessity has more weight than the thing that is far from it. Meanwhile, in matters of religion, a reference to a stronger proof in the context of the hierarchical proofs derived from the religious epistemic authority (i.e. the Qur’an Sunnah, *Ijmā’*, and *Qiyās*) should be prioritized instead of a reference to the weaker and lower proof in the hierarchy (al-Juwaynī, 1979, p. 441).

If there is a contradiction between two univocal texts (*naṣ ṣayn*) that cannot be harmonized, the *tarjih* method will take the following steps. If the history of each text is known, the text that comes first should be abrogated by the text that comes later. If both texts are from the Qur’an, one of them is revealed in Mecca and another text is revealed in Medina, the Medinan text should be prioritized over the Meccan because among other things the abrogation of the verses from the Qur’an by Medinan verses is more frequent than the abrogation of the Medinan by the Meccan (al-Juwaynī, 1979, p. 451).

If the two texts are reports transmitted from the Prophet (*āthār*), the dialectician should prefer and prioritize one transmission over another based on the time when the transmitters heard from the Prophet. If one transmitter who embraces to Islam earlier transmits a report and another transmitter who comes later transmits another report from the Prophet, the report transmitted by the later transmitter should take a precedence (*quddima*) because the later report is more probable to be the abrogating report than the earlier. Most probably, according to

Imām al-Ḥaramayn, the later transmitter heard the report from the Prophet later in his life, which makes the later report more likely to abrogate the earlier. For example, Imām al-Ḥaramayn prefers to use the transmission of Abū Hurayrah (d. 58/677) in the case of touching the penis in the prayer ablution (*wuḍūʿ*) over the transmission of Ṭalaq b. ‘Alī⁹ because Abū Hurayrah came later (al-Juwaynī, 1979, p. 452).

In the case of two contradictory reports from the Prophet, when the history of one of the reports is known, the *tarjīḥ* (weighing) or *naskh* (abrogation) can be applied although scholars have different opinions on which of them is preferred. For example, one narration reports that the Prophet used to say, “When the *imām* (leader of a prayer) prays sitting, then you should pray sitting.”¹⁰ Another narration reports that the Prophet, when he was ill before his death, prayed with his Companions sitting and the Companions were standing.¹¹ To deal with this contradiction, a dialectician can refer to which practice that have been used by the community (*ummah*). The common practice of the community (of Companions) after the death of the Prophet is considered *Ijmāʿ* that can be a reference to deal with the case of the contradiction of two conflicting reports. Therefore, if the common practice is that the Companions were standing while the ill *imām* was sitting in the prayer, this practice should be adopted. As a consequence, the report that requires the *maʾmūm* (the ones who pray behind the *imām*) to be sitting by following the *imām* is ignored or abrogated (al-Juwaynī, 1979, p. 452).

In addition to the above examples, giving a priority or preference (*taqdīm*) to one of the conflicting proofs based on

9 In the Ḥadīth narrated from the line of Ṭalaq b. ‘Alī, touching a penis does not nullify the prayer ablution because the penis is considered only as a part of human body, whereas in the Ḥadīth narrated from Abū Hurayrah’s line, touching the penis is considered nullifying the ablution.

10 The report is narrated by Abū Dāwūd, Aḥmad b. Hanbal, and others.

11 The report is narrated by al-Tirmidhī, Aḥmad b. Hanbal, al-Bukhārī, and al-Muslim.

its quality also applies in many other situations. For examples, if there are two equivocal terms, one is from the Qur'an and another is from the Sunnah, the equivocal term (*ẓāhir*) from the Qur'an takes precedence. The Sunnah transmitted by a number of transmitters should have a priority over the ones transmitted only by few transmitters (al-Juwaynī, 1979, p. 457). The Sunnah transmitted by the more reliable and mature transmitters should be preferred to the ones transmitted by the less reliable and the less mature (*ghayr bāligh* or *ṣabīy*) transmitters. The Prophetic reports with the transmission of those who have a strong memory (*quwā al-Ḥifẓ*) get higher priority than those who have a less strong memory. The reports received by a transmitter through a direct transmission have more weight compared to those that are received through an indirect transmission. The transmission of the more reputable Companions is stronger in quality than the transmission of the less reputable companions. The report heard by a direct encounter (*mushāhadah*) has priority over the report heard from behind a curtain. The report attributed to the Prophet through a clear verbal and textual report (*lafẓan wa naṣṣan*) is heavier in weight than the report attributed to the Prophet through an inference (*istidlāl*). The report from the Prophet's statement followed by his action has priority over the report of the statement without an action. The list goes on (al-Juwaynī, 1979, pp. 457-472).

The method of *tarjīh* is also applicable in the context of the contradiction of *Ijmā'* of the Companions. The *Ijmā'* that has a stronger line of transmission based on the number, reliability, or quality of transmitters should have priority over the weaker chain of the *Ijmā'*'s transmission. In terms of its content, the more univocal (*naṣṣī* or *qaṭ'ī*) and specific (*khāṣṣ*) the contents are, the stronger the *Ijmā'* will be for reference of an action or argumentation.

c. *Al-I'tirād 'alā al-qiyās* (The Refutation Against Qiyās Reasoning)

In addition to the models of refutation (*i'tirād*) against claims based on religious proofs by means of *mu'āraḍa* and *tarjih*, Imām al-Ḥaramayn provides a more extended discussion on the refutation against claims based on *qiyās* reasoning (*al-i'tirād 'alā al-qiyās*). *Qiyās* is important in Islamic dialectic and scholarship because it is the primary reasoning used in Islamic law, foremost focal point in *jadāl* practice and scholarship, and main rational proof employed in Islamic theology (Hallaq, 1987, p. 200; van Ess, 1970, p. 34; Young, 2012, pp. 146-147).

1) Refutation against the claim of *qiyās* validity

Wael B. Hallaq, as paraphrased by W.E. Young, eloquently reformulates how a refutation operates if the respondent uses *qiyās* reasoning as the proof to support their argument. He writes, "If P's *Ḥukm* is derived through *qiyās*, Q objects to P's *qiyās* in that:

- P's *Ḥukm* contradicts text or consensus
- P's derivation of *Ḥukm* from *aṣl* is not precise (thus *Ḥukm* of *far'* is compromised)
- P's *aṣl* is itself *far'* based on another *aṣl* (he must prove that the '*illa* of both first and second *aṣl* occasion the same *Ḥukm*)
- P's *far'* does not have all properties comprised by the '*illa* of his *aṣl*, or vice versa.

P's '*illa* is not efficient in a whole, or its properties are not efficient in particular: co-absence and co-presence must be proven for all properties of the '*illa*, otherwise there is *naqḍ* (Hallaq, 1987, pp. 204-205; Young, 2012, pp. 135-136).

From the point when the questioner (Q) accuses the answerer (P) to use *qiyās* that contradicts text or consensus, the *i'tirād* (refutation) against the *qiyās* begins. Then it goes on to questioning the internal coherence and soundness of the *qiyās*. The refutation can attack the *qiyās* by comparing and weighing

it with a stronger proof or by showing its incoherence and flaws. Imām al-Ḥaramayn elucidates eight forms of refutation that can be employed to challenge the validity of *qiyās* (al-Juwaynī, 1979, pp. 67-68).¹²

a. *al-Man'* (disallowance)

This term *man'* is used by Imām al-Ḥaramayn as a synonym for *mumāna'a*, and *muṭālaba* (al-Juwaynī, 1979, p. 67),¹³ although the two former are more frequently utilized. All of them refer to a form of refutation that aims to disallow the validity of the *qiyās* reasoning by showing a defect in “the characteristic (*wasf*) peculiar to the original case (*asl*), to the parallel case (*far'*), to both of them together, or to the juristic qualification (*Ḥukm*) in the original case” (al-Juwaynī, 1979, p. 131; Miller, 1984, pp. 113- 114).¹⁴

For example, the respondent justifies the possibility of waiving and shortening the sequential order (*tartīb*) in the ritual ablution (*ṭahāra*) when one is travelling, just like in the case of a prayer, in which the sequential order is required and it can be shortened during travel (*safar*). In this light, one may argue further that when someone is on a journey, the sequence of the ritual ablution using water (*wuḍū'*), which requires the purification of four body parts, is shortened to be *tayammum* (the

12 Larry B. Miller includes *ilzām* in the above order of objections (which I call the order of refutations) but Imām al-Ḥaramayn in *al-Kāfiyya* does not include it as among the type of objection (i.e. refutation) because it is another name for the refutation itself.

13 Imām al-Ḥaramayn defines *man'* as “presenting an opposing claim” and *muṭālaba* as “refuting the opponent by making him explain the proof (*Ḥujja*).” In the latter, the questioner can request the answerer to explain two things, the basis and the establishment of his proof (*aṣl al-dalāla wa ithbātihā*) and the aspect of the proof (*wajh al-dalāla*).

14 This is the goal of *mumāna'a*, which Imām al-Ḥaramayn uses interchangeably with the term *man'*. According to him, the *fuqahā'* (legal jurists) specifies this term (*mumāna'a*) to denote the disallowance of the characteristic (*wasf*) that is peculiar to the original case (*asl*), to the parallel case (*far'*), to both of them, or to the juristic qualification (*Ḥukm*) of the original case that makes the *qiyās* fail to be valid.

ritual ablution using a dust), which requires the purification of only two body parts.

The questioner can refute and disallow this claim by showing a defect on the characteristic (*wasf*) used by the respondent, which is the possibility of a ritual sequence to be shortened in the state of travelling. One can say that the ritual ablution (*tahāra*) using water is not shortened to *tayammum* due to journey (*safar*), which itself has no influence this. The main reason for the change of ruling is rather the obstacle of performing *wuḍū'*. In other words, *tayammum* is not a short version of a ritual ablution using water (*wuḍū'*); it has its own rules and sequences, just as does *wuḍū'*. One is not an integral (if abbreviated) part of another. The requirement of purifying two body parts (i.e. face and hand) in *tayammum* is not the result of shortening the sequences of *wuḍū'* that requires purifying four body parts (i.e. face, hands, hair, and feet). This is called *man'* (disallowance) in the characteristic (*wasf*) of the parallel case (*far'*) (al-Juwaynī, 1979, pp. 134-135).

As a result, in this case, the respondent's argument is invalidated through *man'* and discarded. A traveler cannot waive the sequential order or reduce the number of body parts that need to be purified if it is based on the reason of travelling. Travelling is not the correct '*illa*. The correct '*illa* for the change from performing *wuḍū'* to *tayammum* is the obstacle of finding water. Therefore, a traveler can only perform *tayammum* only when he is unable to find water for *wuḍū'*. This questioner's opinion or conclusion is regarded as *ghalabat al-ẓann* (preponderance of conviction) and engenders a psychological certainty (*yaqīn*).

The same principle applies in the remaining form of refutations against *qiyās* reasoning. The argument based on an indefensible *qiyās* is invalidated and discarded while the remaining argument becomes *ghalabat al-ẓann* that renders *yaqīn* and need to be upheld.

b. *Fasād al-waḍ'* (false construction)

Imām al-Ḥaramayn defines *fasād al-waḍ'* as “(‘*awḍ al-waḍ'*) turning back the construction (of *qiyās*) by means of that which necessitates the falsification of the constructed” (al-Juwaynī, 1979, p. 68).¹⁵ He gives an example, among others, of *qiyās* applied in the case of the requirement of consecutiveness (*tatābu'*) in the fasting as expiation (*kaffāra*) for breaking an oath.¹⁶ Someone may argue that any kind of fasting to be observed over the course of less than a month has no sequential requirement based on the *qiyās* (analogy) to the case of *tamattu'* fasting,¹⁷ in which the consecutiveness is not required. In short, there is no requirement of the consecutiveness in both cases. The respondent tries to argue that the absence of the consecutiveness (*suqūṭ al-tatābu'*) requirement applies in both the original case (i.e. the *tamattu'* fasting) and in the parallel case (i.e. the *kaffāra* fasting).

This argument can be refuted by showing the falsity of the above *qiyās* construction. The questioner can show that respondent cannot base his *qiyās* argument of the absence of the consecutiveness condition in the *kaffāra* fasting on the case of the *tamattu'* fasting, because the legal status of the *suqūṭ al-tatābu'*

15 This is Miller’s translation, which I consider accurate to convey the meaning of *fasād al-waḍ'*. However, the editor of al-Juwaynī’s *al-Kāfiya*, Dr. F.H. Maḥmūd, notes that the first term used original text is *da’wā*, which means the claim. If this original word is kept, the definition of *fasād al-waḍ'* becomes “claiming the construction by means of what necessitates the falsification of the constructed.”

16 One form of expiation when somebody breaks an oath is to perform fasting for three days. This is based on the Qur’anic text, Sura al-Ma’ida 5: 89.

17 This is the required fasting for someone who performs a Ḥajj *tamattu'* (the pilgrimage in which one intends to perform ‘*umra* in the months of Ḥajj then followed by Ḥajj in the same year) and fails to offer a sacrifice. He/she is required to do fasting ten days: three days during the pilgrimage and seven days after returning home or ten days after returning home with a required separation of four days in between (three days of fasting, four days of break, then seven days of fasting). This is based on the Qur’anic text, Sura al-Baqara 2: 196.

(the absence of sequential requirement) in both cases is different. In the *tamattu'* fasting (i.e. the original case), the *suqūṭ al-tatābu'* is a consequence of the obligation (*wujūb*) of separation (*tafrīq*). There must be separation (*tafrīq*) between the ten days of *tamattu'* fasting, whether three days during the pilgrimage and seven days after returning home or all ten performed after returning home with four days break after the first three days. In contrast, in the case of *kaffāra* fasting (i.e. the parallel case), there is no requirement of separation (*tafrīq*) in the three days of fasting. Separation between the three days is permissible (*ibāḥa*). Therefore, the absence of sequential requirement in the *kaffāra* fasting is a result of the permissibility of having a break or separation (*tafrīq*); whereas in the *tamattu'* fasting, it is a result of the obligatoriness of the separation (*tafrīq*). An attempt to base the *qiyās* reasoning for the permissibility of non-consecutive *kaffāra* fasting on the grounds of the obligation of non-consecutiveness of *tamattu'* fasting is false because permissibility and obligation are not commensurate (al-Juwaynī, 1979, p. 155).

c. 'Adam al-ta'thīr (ineffective ratio legis)¹⁸

Imām al-Ḥaramayn explains that '*adam al-ta'thīr* occurs when the relation between "the juristic qualification (*Ḥukm*) and its *ma'nā* (significant factor, reason) or '*illa* (effective cause) is not apparent" (al-Juwaynī, 1979, p. 68). This is different from the opposite ('*aks*) in which the non-existence of the '*illa* renders the non-existence of juristic qualification. In '*adam al-ta'thīr*, the juristic qualification still exists even if the '*illa* or the *ma'nā* is not effective or absent. Therefore, Imām al-Ḥaramayn agrees with the definition that associates '*adam al-ta'thīr* with "the void of the '*illa*," "the null of the '*illa*," or "the insignificance of mentioning the '*illa*" (al-Juwaynī, 1979, p. 290).

For example, it is said, "a slave belongs to a master, so that it is permissible to be guaranteed of his service (*bi al-yad*)."¹⁸ In this example, relating the slave with the master or to a certain person

¹⁸ The translation is borrowed from Miller's version.

does not nullify the juridical qualification (i.e. the permissibility of the guarantee) (al-Juwaynī, 1979, p. 290).

d. *Da'wā al-ishtirāk fī al-dalāla* (Equivocation) or *Qalb* (reversal).

Both terms, *da'wā al-ishtirāk fī al-dalāla* and *qalb*, are used interchangeably to denote the situation when the questioner agrees with the answerer's evidence but in order to derive a contradictory conclusion (al-Juwaynī, 1979, p. 68; Miller, 1984, p. 122). For example, a party of disputants argues for the nullification of expiation (*kaffāra*) for an intentional killing ('*amd*'). He bases his argument on the Quranic text (Sura al-Nisa' 4: 92), which says, "...and whoever kills a believer by mistake (*khaṭa'*), then he should free a believing slave girl and a compensation payment presented to the family of the slain unless they remit as *ṣadaqa* (charity)..." He insists that the word "*khaṭa'*" (mistake) is applied specifically to this context. It means that only the killing done by mistake (*khaṭa'*) requires expiation and blood-money (*diya*), whereas, the killing done by intent ('*amd*') is not punished by such expiation and blood-money payment.

The opposing party can refute this argument by the *ishtirāk*, saying, "The term "mistake (*khaṭa'*)" is sometimes the antonym of the term "intent ('*amd*)" but it is also sometimes the antonym of the term "right (*ṣawāb*)," therefore applying the *kaffāra* to the killing by "mistake" (as an antonym of "right" in the sense of a "justified killing") is necessary." This is possible because "right" and "intent" share a linguistic antonym, namely "mistake (*khaṭa'*)" (al-Juwaynī, 1979, p. 223).

e. *Naqḍ* or *Munāqada* (Inconsistency)

Naqḍ or *Munāqada* is a type of refutation, which is defined by Imām al-Ḥaramayn as "the rejection of a juristic qualification from what is claimed to be the '*illa*.'" He also presents another definition: "when '*illa* exists but what is claimed to be its juristic qualification is missing" and "discharging (the effectiveness of) '*illa* due to the absence of juristic qualification" (al-Juwaynī, 1979,

p. 69). Some other scholars explain that *naqđ* is actually not an inconsistency of inferential relations within an argument but a contradiction between the inferential relations with an incorrect opinion held by someone who makes an argument. Therefore, if he abandons his opinion, the inference will be sound in itself (al- Juwaynī, 1979, p. 172).

One example of *naqđ* is taken from the situation where a disputant justifies his opinion by means of something that renders the nullification of that opinion. For instance, he argues with regard to the safety of a slave saying, “It is not permissible for a slave to go to war without permission from his master (for the sake of his safety).” In response to this opinion, another party of disputants can employ *naqđ* by saying that the term “safety (*amān*)” is an opposition to the term “war (*qitāl*).” If the reason (*‘illa*) for requiring the master’s permission in order for a slave to go to war is his safety (*amān*), with the same *‘illa* (i.e. the safety of the slave), going to war is not allowed since war (*qitāl*) puts his safety in danger. In other words, the initial opinion, which allows the slave to go to war by the permission of his master for the purpose of his safety, is contradictory to the latter legal conclusion that is derived from the same *‘illa*, which is the necessity of prohibition of going to war to ensure the slave’s safety. If the master gives permission for the slave to go to war, it signifies that he gives up the reason of the slave’s safety (*‘alaman ‘alā suqūṭ amānihi*) (al-Juwaynī, 1979, p. 174). If this happens, meaning the reason of slave’s safety is nullified by the disputant, the argument will be consistent with his original view in terms of allowing the slave to go to war.

f. al-Qawl bi mūjib al-’illa (Limited acceptance of the ‘illa)

By *al-qawl bi mūjib al-’illa*, Imām al-Ḥaramayn means that the questioner agrees with his opponent on the juristic qualification of the *‘illa* while excluding its application to the

object of dispute (al-Juwaynī, 1979, p. 69).¹⁹ For example, al-Kūfī argues for the requirement of fasting for the validity of the ritual seclusion (*i'tikāf*). Like the standing (*wuqūf*) at Arafa during the Hajj, the *i'tikāf* is characterized by “staying in a specific place (*al-labth al-mukhtaṣṣ bi al-makān al-makhṣūṣ*)” but “the stay in a specific place” alone does not constitute an act of worship.

In the above argument, the reason (*'illa*) of the requirement of fasting is the fact that “the stay in a specific place” alone does not constitute an act of worship. However, the point of dispute (*mawḍi' al-nizā'*) is not whether fasting is required for the *i'tikāf* but what other essential element needs to be added to the “stay in a specific place.”

In his refutation, the questioner may agree with al-Kūfī on the fact that there must be something added to “stay in a specific place” for *i'tikāf* or *wuqūf* to be a valid act of worship, since “staying in a specific place” alone does not become an act of worship. In the case of *i'tikāf*, the questioner would say that the essential element that needs to be added is the intention (*nīya*), which is no doubt “the essential part of *i'tikāf*” (al-Juwaynī, 1979, p. 162). In the context of *wuqūf* at Arafa, the essential element is *iḥrām* (the state of pilgrimage’s ritual consecration) since without it “the standing-vigil at ‘Arafa” will not be regarded as a valid *wuqūf*. As a result, the requirement of fasting in the earlier argument is excluded from the discussion of what essential elements that can constitute a valid act of worship.

g. al-Farq (distinction)

Imām al-Ḥaramayn considers *farq* to be a type of *mu'āraḍa* (objection) because the parallel case (*far'*) differs from the original case (*aṣl*) with respect to the *'illa* of the legal qualification (al-Juwaynī, 1979, p. 69). The definition of *farq* itself, according to Imām al-Ḥaramayn, is a separation of two components (of *qiyās*) that converge to derive a juristic qualification (*Ḥukm*) by virtue

¹⁹ This translation is a slight modification of Miller’s translation.

of a disagreement of their two juristic qualifications (al-Juwaynī, 1979, p. 298).

For example, separation of the parallel case (*far'*) from the original case (*aṣl*) with a clear *ma'nā* (factor, reason) that severs the two. This separation is considered valid by most legal scholars. The example of this valid *farq* is with regard to the intention (*nīya*) in the minor prayer ablution (*wuḍū'*). For instances, the answerer argues, "The *wuḍū'* is purification by means of water just like cleaning filthy (*najāsa*), therefore it is valid to be performed without an intention (*nīya*) (just like cleaning filth, which does not require intention)." In this argument, the answerer uses only one '*illa*, which is "purification with water (*ṭahāra bi al-mā'*)," to derive a legal qualification of not requiring the intention in both *wuḍū'* and *najāsa*.

The questioner can refute this argument by applying *farq* to the *qiyās* made by the answerer. He then can say, "The main element (*ma'nā*) of *wuḍū'* is not purification with water but its nullification due to a ritual impurity (*Ḥadath*); therefore, it is invalid without an intention like the *tayamuum* (ritual purification using a dust)." He continues, "As for the cleaning of *najāsa*, it is purification that is not nullified with *Ḥadath* (ritual impurity); therefore it does not need an intention (to be valid)." In this *farq*, the questioner shows that the one '*illa* used by the answerer is not correct. The correct one is that each case, the original case (i.e. *najāsa*) and the parallel case (i.e. *wuḍū'*), has its own '*illa*; that of the former is "not nullified by the occurrence of the ritual impurity", and of the latter is "its nullification with the ritual impurity." As a result, they have different juristic qualifications with regard to the intention (*nīya*). If performing *wuḍū'* requires an intention; performing *najāsa* does not need one. Therefore, in this case, the original case (i.e. the intention in *najāsa*) and the parallel case (i.e. the intention in *wuḍū'*) are separated by a separating *ma'nā*, which is "the nullification of purity with the occurrence of ritual impurity (*Ḥadath*)" (al-Juwaynī, 1979, p. 307-308).. The conclusion derived from this genuine *farq* considered

ghalabat al-ẓann (preponderance of conviction), which renders psychological certainty (*yaqīn*).

h. Mu'arāḍa (Objection)²⁰

We have discussed the definition of *mu'arāḍa* and its application in the context of refutation against arguments that rely on proofs extracted from the Qur'an, Sunna, or *Ijmā'*. As mentioned, the main goal of *mu'arāḍa* is to prevent the opponent from making a successful and valid argument by providing an equal or stronger argument. There are two forms of refutation (*i'tirād*) that fall under the category of *mu'arāḍa*: *farq* (distinction) and *munāqaḍa* (inconsistency).²¹ The reason to put *mu'arāḍa* in a different category here is that *mu'arāḍa* is more general and inclusive than either *farq* or *munāqaḍa*. The *farq* is only applied to the *qiyās* reasoning by separating the parallel case (*far'*) from the original case (*aṣl*). The *munāqaḍa* cannot be applied in the context of refutation of one proof against another

20 Larry B. Miller includes *ilzām* in this order of objections (which we call the order of refutations). However, I agree with Young, *ilzām* is not listed and included as part of *i'tirādāt* in *al-Kāfiyya* (Young, 2012, p. 185). Therefore, in this discussion, *ilzām* is deemed as another name of the refutation (*i'tirād*) itself, not as a type of the eight forms of refutation (*i'tirādāt*) that we discuss here.

21 With regard to *munāqaḍa*, the editor of *al-Kāfiyya*, Fawqīya Ḥ usayn Maḥmūd, mentions in the body of the text that *mu'arāḍa* is a kind of *munāqaḍa* (al-Juwaynī, 1979, p. 418). The text confuses Larry B. Miller because in the following line Imām al-Ḥaramayn mentions that *mu'arāḍa* as a form of *munāqaḍa* is the strongest form of *mu'arāḍa*. The unnecessary repetition of the word *mu'arāḍa* in this phrase creates an unclear relationship between *munāqaḍa* and *mu'arāḍa*, but Miller's confusion is resolved by W.E. Young, who points out that Fawqīya Maḥmūd mentions in the footnote that the original phrase used by Imām al-Ḥaramayn is "*al-munāqaḍa* is a form of *al-mu'arāḍa* and it is the strongest form of *al-mu'arāḍa*," which is different from the phrase used in the body of the text. This is more plausible because what is regarded as the strongest *mu'arāḍa* is not *mu'arāḍa* itself as suggested by editor in body of the text, but the *munāqaḍa* (al-Juwaynī, 1979, p. 418; Young, 2012, p. 182) Here I agree with Young and consider *munāqaḍa* a form of *mu'arāḍa* and not vice versa.

(*mu'āraḍat al-dalīl bi al- dalīl*) (al-Juwaynī, 1979, p. 418). *Mu'āraḍ a* is considered broader than the other two forms of *mu'āraḍ a* because its application is not only limited to the refutation in the realm of *qiyās* reasoning but also in the realm of other main religious proofs (the Qur'an, Sunna, and *Ijmā'*).

Since we have already presented a multitude of examples as to how *mu'āraḍa* is utilized in the refutation against arguments and proofs extracted from the main religious authorities, let us now observe an example of how *mu'āraḍa* is used against *qiyās*-based reasoning. One example presented by Imām al-Ḥaramayn al-Juwaynī is through a statement differentiating the original case from the parallel case, which renders a nullification of the '*illa* presented by the opponent.

For example, if someone argues, "If the call to prayer (*adhān*) is valid with the attendance of congregating people, the sermon (*khuṭba*) should also be valid without the attendance of congregating people because the congregation is not a condition of the sermon validity." Then the questioner can use the *mu'āraḍa* to refute this argument by explaining the nature of each case. He can explain, "If the *adhān* is only made for the (assumed) absent people who are spreading and scattered to come, it is necessary that there are people who are scattered and not in presence during the *adhān*. For this reason, it does make a sense that "the call to prayer" is called *adhān* (which literally means a "call")." He continues, "The *khuṭba* (sermon, preaching) is a sermon to the people who are present; thus, their assembly and respect are necessary in order to make the meaning referred by the term "*khuṭba*" sensible in the context of a communication between the addressing subject and the addressed (*mukhāṭaba*)" (al-Juwaynī, 1979, pp. 435-436).

In this *mu'āraḍa*, '*illa* presented by the answerer, which is the availability of the congregation in the *adhān* as the '*illa* for the permissibility of the absence of congregation in *khuṭba*, is nullified by the nature of *khuṭba* itself, which requires a congregating audience to be present. Without the presence of a congregating

audience, it cannot be called a *khuṭba*; yet the presence of the congregation during *adhān* does not nullify its validity because it still assumed to call those who are not yet present.

i. Tarjih (weighing)

We have mentioned the definition of *tarjih* earlier, regarding efforts to resolve the problem of contradictions between two or more legal proofs. In the context of contradiction, a disputant uses *tarjih* to analyze a specific quality belonging to each of two contradictory forms of evidence and to make an assessment regarding which is stronger, weightier, or more preponderance so that the dialectician will make a priority of preference. The *tarjih* method will result in a preponderance of conviction (*ghalabat al-ẓann*), which is a psychological certainty (*yaqīn*) that a scholar is looking for.

In addition to the application of *tarjih* in the contradictions of legal evidences, which are derived from the Qur'an, Sunna, and *Ijmā'*, it is also applicable to deal with contradictions in *qiyās* reasoning and its components. Among the possibilities of contradiction is that different forms of *qiyās*, which have differing degrees of quality and strength in their '*illa* or *Hukm*.

For example, if there is a contradiction between *qiyās* whose '*illa* in the parallel case (*far'*) is more evident than in the original case (*aṣl*) than with the *qiyās* whose '*illa* in the parallel is less evident compared to the original case, the first type of *qiyās* should be prioritized (*taqdīm*). The first *qiyās* is called *qiyās al-awlā* (the superior type)²² and the latter is called *qiyās al-adnā* (the

22 An example of this *qiyās al-awlā* is the analogy between the unintentional killing and an intentional killing. The original case, which is clearly stated in the Qur'an's text, if someone commits the unintentional killing, he should be punished among other things by an obligation to pay *kaffāra* (penance) for his act of transgression. In the parallel case, for example someone kills intentionally, the act of transgression (transgression as an '*illa*) is more evident than the original case. Therefore, the application of *kaffāra* is strongly supported by the more evident '*illa*, which is the higher degree of transgression (Kamali, 1991, pp. 214-215).

inferior type of the *qiyās*).²³ The similar situation applies to the context of a contradiction between *qiyās al-jalī* (obvious *qiyās*)²⁴ and *qiyās al-khafī* (hidden *qiyās*).²⁵ If a contradiction between the two occurs, the *qiyās al-jalī* is should be more preferred than the *qiyās al-khafī* or any other less obvious *qiyās* (*qiyās ghayr al-jalī*) (al-Juwaynī, 1979, p. 494).

C. Conclusion

From the above discussion, it can be seen how Imām al-Ḥaramayn attempts to find a solid ground for obtaining certainty. The certainty can be obtained through a univocal and conclusive text (*naṣṣ* and *qaṭ'ī*). But what then of knowledge derived from equivocal texts (*ẓāhir*) and rational inference (*qiyās*)? In itself, this knowledge achieves only a level of probability (*ẓann*); in order to reach higher level, *jadāl* plays an important role. The different forms of refutation (*i'tirāḍāt*) that is elucidated above, including *tarjīh*, ensure that a sound reasoning and well-defended argument will bring about a higher degree of certainty, called *ghalabat al-ẓann* (preponderance of conviction).

The value of *jadāl* is not only polemical and apologetic but also scholastic for its examinational capacity of one's argument and reasoning. Imām al-Ḥaramayn's *jadāl* theory with its different forms of refutation enables a dialectician to examine opponent's thesis, to scrutinize his claim of argument validity, and to establish the "truth" of knowledge resulting from *jadāl*

23 An example of this *qiyās al-adnā* is the analogy of the prohibition of exchanging wheat with something that is unequal. Some scholars apply this prohibition ruling to the exchange of apple with something else because both wheat and apples are edible and measurable. However, the analogy between the two is considered quite weak because apples are not a staple food like wheat. See (Kamali, 1991, p. 215)

24 This is a *qiyās* in which the analogy between the *aṣl* and *far'* is obvious and the discrepancy between the two is removed by clear evidence (Kamali, 1991, p. 216).

25 This is the *qiyās* in which the equation between the *aṣl* and *far'* is less obvious and the removal between the two is by means of probable evidence (*dhanni*) (Kamali, 1991, p. 216).

examinational process. The “truth” here is not ontological (i.e. the divine truth), but epistemological and psychological. The “truth” is epistemological when it is proven to be derived from conclusive proofs (*qaṭ’iyāt*),²⁶ free from logical defects and fallacies, and not proven inconclusive by opposing reasoning and argument. This kind of truth renders what this paper calls “epistemological certainty (*‘ilm*).” Meanwhile, the “truth” is psychological when it is derived from inconclusive proofs (*ẓunūn*), opposed by another scholar’s reasoning and argument, but in the end elevated to the level of psychological truth after passing *jadal* examination and scrutiny. This kind of truth engenders what this article names “psychological certainty (*yaqīn*).” Imām al-Ḥaramayn’s theory of *jadal* in *al-Kāfīya* shows this kind scholastic value of *jadal*, not sophisticated nature of it. It might resemble Aristotelian *peirastic* dialectic, which its examinational capacity, can provide a way to the first principles of a given science.

²⁶ The list of conclusive religious proofs consists of unequivocal texts from the Qur’an, Sunnah with recurrent lines of transmission, and *Ijmā’*.

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