Shi‘ite Legal Theory

Sources and Commentaries

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Chapter 6

The Chapter on Analogy (Qiyās) from the Ḥāshiyat al-Fuṣūl al-luʾluʾiyya of ʿAḥmad b. ʿAbdallāh Ibn al-Wazīr (d. 985/1577)

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Introduction¹

The text presented in this chapter is a commentary upon Šārim al-Dīn Ibrāhīm b. Muḥammad al-Wazīr’s (d. 914/1508) al-Fuṣūl al-luʾluʾiyya. Šārim al-Dīn al-Wazīr was a prominent Yemeni Zaydi scholar of his time.² His birth has, in most cases, been dated as 834/1431, although Ṭab-ağāt al-Zaydiyya al-kubrā, an important bio-bibliographical source for Zaydi scholars, dates al-Wazīr’s birth in 806/1403–4.³ Al-Wazīr’s family descended from the founder of the Zaydi imamate in Yemen, al-Hādī ilā l-Haqq (d. 298/911), and consequently also from the second Shiʿi Imam al-Ḥasan (d. 50/670). While the sources do not specify the place of al-Wazīr’s birth, it was suggested that he hailed from Sa’dā, his father’s hometown.⁴ This appears to be a likely hypothesis, considering that biographical reports relate that al-Wazīr received part of his education in the North Yemeni city. He later moved to Ṣanʿāʾ, where he continued his studies.

Al-Wazīr studied theology and legal theory with numerous teachers. He studied not only Zaydi works, but also – with an Egyptian Shāfiʿī scholar – al-Subkī’s Jamʿ al-jawāmiʿ, Arabic language, applied law (furūʿ), Prophetic traditions as well as traditions of the Prophet’s family (Ahl al-bayt), biographies of the Imams (siyar), exegesis and other disciplines.⁵ He is described as an outstanding scholar in the field of ijtihād⁶ and as a firm adherent of the doctrines of the Zaydi Imams.⁷ Another indication of his scholarly prominence is the number of students mentioned by biographical sources, which include the Imam Sharaf al-Dīn Yaḥyā b. Shams al-Dīn (d. 965/1558) and the Imam’s son Aḥmad. Al-Wazīr died in Jumāda II 914/1508 in Ṣanʿāʾ.

Al-Wazīr was renowned for his contributions to the field of legal methodology,⁸ and al-Fuṣūl al-luʾluʾiyya – a commentary upon which is presented in this chapter – was his most important book in this field.⁹ He was also prolific in the field of Zaydi and Prophetic hadith, as well as related areas. In addition, he was the author of a commentary upon one of the most important works of Zaydi law, Imam al-Mahdī li-Dīn Allāh Aḥmad b. Yahyā b. al-Murtaḍā’s (d. 840/1436–37) Kitāb al-azhār, entitled Hidāyat al-afkār ilā maʿānī l-Azhār fī fiqh al-aʾimma al-athār.

Al-Fuṣūl al-luʾluʾiyya has survived in numerous manuscripts, and those we were able to consult (though not the originals, but in digital form) all contain extensive commentaries between the lines and in the margins. In the case of other manuscripts, which we were unable to check, we know from their descriptions in catalogues that they also contain interlinear or marginal commentaries. It is very likely that even in cases where catalogues do not mention any commentaries, the copies actually contain them: considering the lack of any standards for the description of manuscripts in our field, information offered by catalogue entries is often rudimentary and unsystematic. A list of the manuscripts of al-Fuṣūl al-luʾluʾiyya we were able to locate is provided below.
When we inspected a selection of copies of \textit{al-Fuṣūl al-luʾluʾiyya}, we observed that the same interlinear or marginal notes were found in more than one manuscript. This means that they are not the individual comments, remarks, or explanations of the scribes or the readers of the specific manuscripts, but rather that these commentaries consist of textual material transmitted along with the basic work by al-Wazīr. In addition, there are at least three independent commentaries on \textit{al-Fuṣūl al-luʾluʾiyya}, that have been attributed to specific authors: Luṭfallāh b. Muhammad al-Ghiyāth’s (d. 1035/1625) \textit{Sharḥ al-Fuṣūl}, al-Ḥasan b. ʿAli b. Muḥammad al-Jalāl’s (d. 1079/1668–69) \textit{Niṣām al-fuṣūl} and Šalāḥ al-Dīn Šalāḥ b. Ahmad b. al-Mahdī al-Muʿayyadī’s (d. 1044/1635) \textit{al-Ḍarārī al-muṣāfī}.

Finally, there is a fourth commentary, which to the best of our knowledge has been noticed so far only by Löfgren and Traini in their catalogue of the Arabic manuscript collection of the Ambrosiana Library in Milan: under the number 879 (ar. E 49) they record a \textit{Ḥāshiya} on \textit{al-Fuṣūl al-luʾluʾiyya} collected by Ahmad b. ʿAbdallāh b. Ibrāhīm b. Muḥammad Ibn al-Wazīr (d. 985/1577).\footnote{Löfgren and Traini describe the \textit{Ḥāshiya} as consisting of extracts from two commentaries abbreviated by the sigla $\delta$ and $\mu$, the first of which they identify with al-Muʿayyadī’s \textit{al-Ḍarārī al-muṣāfī}. In fact, the \textit{Ḥāshiya} appears to include extracts from more than these two texts, considering the use of additional abbreviations for sources, including س، ي، و، حا، ع، ف، ض and others. The \textit{Ḥāshiya} does not copy the text of \textit{al-Fuṣūl al-luʾluʾiyya} in its entirety. Rather, it quotes only the passages of \textit{al-Fuṣūl} that are subject to remarks or explanations. These citations are introduced by the formula \textit{qawluhu} and highlighted by the copyists in red ink. A large amount of the textual material from the \textit{Ḥāshiya} is also found in the copies of \textit{al-Fuṣūl al-luʾluʾiyya} in form of marginal and interlinear notes. Yet we have not found any copy of \textit{al-Fuṣūl al-luʾluʾiyya} that contains precisely the same selection of commentaries in its margins and between the lines – with one exception: the abovementioned MS Vienna, Austrian National Library, Glaser 61, which is nonetheless a specific case. Whereas all other consulted manuscripts of \textit{al-Fuṣūl al-luʾluʾiyya} place their scholia and notes either near the text upon which they comment or use specific cross-reference marks, this is not the case with Glaser 61. Here, the comments are written as running texts with precisely the structuring elements – headings (bāb) and subheadings (faṣl), and the introducing formula \textit{qawluhu} – as found in the two other copies of the \textit{Ḥāshiya}. We were unable to}
consult the textual layout of MS Milan, Ambrosiana ar. C 37, that also contains Ahmad b. ‘Abdallāh Ibn al-Wazīr’s collection of glosses, according to Löfgren and Traini.15

As mentioned by Ahlwardt in his catalogue entry, MS Berlin, Staatsbibliothek, Glaser 180 is incomplete, and the end of the text is missing.16 The text in IZbACF no. 110–02 ends on fol. 137a with a quotation from the chapter bāb al-ijtihād in al-Fuṣūl al-luʾluʾiyya and then marks the end of the commentary by مَعَد.17 This suggests that the Ḥāshiya was never completed: that is, it never covered the entire al-Fuṣūl al-luʾluʾiyya.

In the following, we will present a passage from the beginning of the chapter on analogy (qiyyās) from the Ḥāshiya (IZbACF no. 110–02, fols. 103a–b; MS Berlin, Staatsbibliothek, Glaser 180, fols. 116a-118a; MS Vienna, Austrian National Library, Glaser 61, fol. 133b). Before we turn to the text itself, we provide a list of manuscript copies of al-Wazīr’s al-Fuṣūl al-luʾluʾiyya based on a survey of relevant catalogues of Zaydi manuscript collections; we indicate whenever we know that they contain marginal or interlinear notes and, for those manuscripts we were able to consult (marked with an asterisk), whether their marginal or interlinear notes partly overlap with the Ḥāshiya.

List of Manuscript Copies of al-Wazīr’s al-Fuṣūl al-luʾluʾiyya
1) MS Munich, Bayerische Staatsbibliothek, Cod. arab. 1182, ZMT 00008; copied 918/1512; Sobieroj, Arabische Handschriften der bayerischen Staatsbibliothek zu München unter Einschluss einiger türkischer und persischer Handschriften, pp. 273–274, no. 124
2) MS Maktabat Muḥammad b. Yaḥyā b. ‘Alī al-Dhārī, no. 793; copied 973/1565–66; al-Ḥibshi, Fihris, p. 330
3) MS Ṣanʿāʾ, Maktabat al-Awqāf, no. 1627; copied ca. 982/1574–75; al-Ruqayḥī, et al., Fihrist, v. 2, p. 837
4) MS Ṣanʿāʾ, al-Maktaba al-Gharbiyya 904; copied 1012/1604; according to the catalogue entry, it contains between the lines and in the margins the commentary ‘known as al-Jawāhir al-muḍīʾa fi kashfa maʿānī l-Fuṣūl al-luʾluʾiyya’, which is in all likelihood al-Mu’ayyadī’s commentary entitled al-Darārī al-muḍīʾa; Īsawī, et al., Fihris al-makhṭūṭāt al-Yamaniyya li-Dār al-Makhtūṭāt wa-l-Maktaba al-Gharbiyya bi-l-Jāmiʿ al-Kabīr – Ṣanʿāʾ, v. 1, p. 447
6) MS Ṣanʿāʾ, Maktabat al-Awqāf, no. 1502; copied 1022/1613; al-Ruqayḥi, et al., Fihrist, v. 2, p. 841
7) *MS Maktabat Āl Hāshimi, no. 163, ZMT 01235, IZbACF 121–03; copied 1032/1623; contains marginal notes, which do not overlap with our Ḥāshiya; al-Wajīh, Maṣāḥīḥ, v. 1, p. 362 (here erroneously dated 1037 AH); digital images: https://w3id.org/vhmml/readingRoom/view/144359
9) MS from unidentified private Yemeni library, IZbACF 436–02;18 copied 1042/1633
10) MS Ṣanʿāʾ, Maktabat al-Awqāf, Majāmiʿ 87, fols. 22–113; copied 1044/1635; al-Ruqayḥi, et al., Fihrist, v. 2, p. 839
11) MS Ṣanʿāʾ, Maktabat al-Awqāf, no. 1435; copied 1047/1638; marginal and interlinear notes; al-Ruqayḥi, et al., Fihrist, v. 2, p. 838
12) MS Milan, Ambrosiana F 38; copied 1051/1641; contains ‘some glosses’; Löfgren, and Traini, *Catalogue*, v. 4, p. 16, no. 1333
13) MS Ṣanʿā’, Maktabat al-Aqwāf, no. 1440; copied 1051/1641; marginal and interlinear notes al-Ruqayḥī, et al., *Fihrist*, v. 2, p. 839
14) MS Milan, Ambrosiana ar. D 536:1; copied 1051/1641; with commentaries; Löfgren, and Traini, *Catalogue*, v. 2, pp. 400–401, no. 792
16) MS Milan, Ambrosiana ar. D 537:3; copied 1053/1643; Löfgren, and Traini, *Catalogue*, v. 2, p. 401, no. 793
18) *MS Berlin, Staatsbibliothek, Glaser 68, ZMT 00736; copied 1060/1650; extensive margin-
19) MS London, British Library, Or. 3795; copied 1062/1652 from a transcript of the autograph; Rieu, *Supplement to the Catalogue of the Arabic Manuscripts in the British Museum*, pp. 175–176, no. 267
20) MS London, British Library, Or. 3795; copied 1062/1652 from a transcript of the autograph; Rieu, *Supplement to the Catalogue of the Arabic Manuscripts in the British Museum*, pp. 175–176, no. 267
26) MS Milan, Ambrosiana ar. C 37; copied 1072/1662; extensive glosses in the margins and on fols. 18b, 21b, 23a, 24a–b, 32a, 35a–b, 47a, 52b, 60b, 65a, 68b, 87b, 91b, 92b, 95a, 97b, 107a–b, 118b, 122–123a; these commentaries are by different authors and were collected by al-Wazir’s grand-nephew Ahmad b. ‘Abdallāh b. Aḥmad Ibn al-Wazir; Löfgren, and Traini, *Catalogue*, v. 2. p. 145, no. 293

31) MS Šan‘ā’, Maktabat Muḥammad b. Muḥammad al-Kibsī, IZbACF 264–02 (only metadata, digital images contain other MS), ymdi_03_44; copy 1079/1669; with marginal and interlinear commentaries that overlap with our Ḥāšiyā; al-Wajīh, Maṣādir, v. 1, p. 230, no. 79; digital images: http://arks.princeton.edu/ark:/88435/1544bq37z


33) MS Munich, Bayerische Staatsbibliothek, Cod. arab. 1180, ZMT 00006; copy 1097/1686; extensive marginal and interlinear notes that partly overlap with the Ḥāšiyā; al-Wajīh, Maṣādir, v. 1, pp. 270–271, no. 122; digital images: http://daten.digitale-sammlungen.de/bsb00118344/image_151

34) MS Vienna, Austrian National Library, Glaser 36, ZMT 00285; codex includes a poem dated 1141/1729 and a reader’s note dated 1070/1660; comparatively few marginal notes that do not appear to overlap with our Ḥāšiyā; Grünert, Kurzer Katalog, p. 31, no. 99; digital images: https://www.vhmml.org/readingRoom/view/141698

35) MS Munich, Bayerische Staatsbibliothek, Cod. arab. 1181, ZMT 00007; copy 1088/1774 or 1188/1774; extensive marginal and interlinear notes that partly overlap with the Ḥāšiyā; al-Wajīh, Maṣādir, v. 2, p. 244; digital images: https://www.vhmml.org/readingRoom/view/141723

36) MS Maktabat Ḥammūd Muḥammad Sharaf al-Dīn, no. 32:1, fols. 7a–19a; copy 1091/1680–81; al-Wajīh, Maṣādir, v. 2, p. 326

37) MS Šan‘ā’, Maktabat Banī Ḥashīsh, no. 89; copy 1113/1701–2; al-Hibshi, Fihris, p. 51

38) MS Maktabat ʿAlī b. Ibrāhīm, no. 177; copy 1113/1701–2; al-Hibshi, Fihris, p. 90

39) MS Vienna, Austrian National Library, Glaser 61, ZMT 00310; reader’s note dated 1193–1194/1779–1780; this manuscript contains a copy of the Ḥāšiyā in the margin; Grünert, Kurzer Katalog, p. 31, no. 100; digital images: https://www.vhmml.org/readingRoom/view/141723

40) MS Maktabat Majd al-Dīn al-Muʿayyadi, no. 32; copy 1217/1802–3; al-Wajīh, Maṣādir, v. 2, p. 244

41) MS Maktabat Majd al-Dīn al-Muʿayyadi, IZbACF 166–05, fols. 8b–96b; copy 1354/1935; extensive marginal and interlinear notes, specifically at the beginning of the copy, and partly overlapping with our Ḥāšiyā


43) MS Milan, Ambrosiana ar. F 39, fols. 5a–197a (under the alternative title al-Fuṣūl al-jāmiʿ li-aqwāl al-rasūl fi ʿilm al-uṣūl); not dated; Löfgren, and Traini, Catalogue, v. 4, p. 16, no. 1334
In his ჈აშიიატ ალ-ფუსულ ალ-ლუ’ლუ’იია, ჰამდ ბ. აბდალა, writes a commentary on the work of Ṣārīm ლ-დინ ალ-უზირ (d. 914/1508), ალ-ფუსულ ალ-ლუ’लუ’იია, a Zaydi legal text summarising the basic principles of უსილ ალ-ფიქ. In his commentary, Ḥaḥīma ბ. აბდალა, explains points of interpretive disagreement among the schools of law and clarifies linguistic and terminological details of genre-specific vocabulary introduced by al-Uzir in ალ-ფუსულ. The brevity of ალ-ფუსულ, coupled with the commentary’s focus on foundational explanations in lieu of arcane detail, leads us to believe that these texts were written for teaching purposes.

We focus here on the first section of his chapter on analogy (qīyās). For the sake of clarity, we first present the base text as written in ალ-ფუსულ. We have translated the base text as closely to the Arabic as possible; however we have re-arranged sentences and inserted material as needed in order to make the passage more readable in English. Thereafter we present the commentary, referring to the base text as needed, as done by Ḥaḥīma ბ. აბდალა. In lieu of translating the commentary directly, we have opted to summarise and provide additional detail where needed, to provide the reader substantive clarity.
وأما في ما كتب مضبوط عما أختقاه والعلمية فيه ظاهر من الأيدي وعليه
ذوب وجاه السفن، فهذا الذي رأى قارئاً قارئاً كما هوا بينه، وعند ما كتب
رجلًا رجلًا، وحقل، حتى جد من السفن كان بيدنا، واحدهما، وانظرت
ووجد دينه من المذهب واللامع، كان معنى عن إخبارنا في المذهب المذكور
بكلمة: أنت لنا في الله، والله ملك الدنيا والآخرة. وشرحبه في الأرض، وسماه
وما فهم من الغرب من تلك الكلمات، فكانت لنا بحد ما قررنا من
الله، هم من جزء من مساحة، وبتغاضبنا ورثا بين كتاب المناقب، لأبي حضن
 المعروف، أموت يغفر في الذي صنفه سنن ناجية، ومن منهجه أجنحة ونافذ
والمباشة، وبهدئته، هم من نطق في كتاب المناقب، هنالك...
ولم نسأ خلفهم من النطق، ولا سبيلهم من الهروب بين
ولي، ومننا من الدلالة، والله罢ف، في المذهب، وتنبأ حديثاً، عن
هذا الطريقة، ونعتبد إلى، ونقول، أن من النطق، هنالك ما ينطلق
خليج بيننا، وله، من نطقه في جميع سياقاته، نقول: فلا يكون
إن ما أدركه فلا نعلمه، إنما كأجته أبو يوسف، واما من نطقه
ظاهري، وأنا في المذهب، وعينا، كنابهة في المذهب، والعلماء.
بينما بينه، وفي المذهب، والنطاق، كأنما كنابهة
الDirection: Figure 6.1 MS Staatsbibliothek, Glaser 180, Berlin, fol. 116a
Figure 6.2 MS private Yemeni library, Ṣanʿāʾ (IZbACF, #110-02), fols. 102b–103a
الفصول اللؤلؤية
السيد صارم الدين إبراهيم بن محمد الوزير م 914هـ

باب القياس

هو في اللغة التقدير والمساواة، وأما في الاصطلاح، فقياس الطرد إلحاق فرع بأصل في حكمه لاشتراكهما في العلة في نظر المجتهد. ولا يلزم الخطأ زيادة القيمة الأخير بخلاف المقصود لأن قياسه صحيح عندهم وإن تبين الغلط والرجوع. وقياس العكس تحصيل نقيض حكم الأصل في الفرع لافتراقهما في علة الحكم، كقول أصحابنا والحنفية: لمّا وجب الصوم في الاعتكاف بالنذر وجب بغير نذر قياسًا على الصلوة فإنها لمّا لم يجب فيه النذر لم يجب بغير نذر. وقيله الجمهور وهو المختار، وردّه ابن زيد وبعض الأصوليين، فإن أريد جمعهما بما واحد قيل: تحصيل مثل حكم الأصل أو نقيضه في الفرع لاشتراكمهما في علة الأصل أو لاختلافهما فيها.
Chapter 6: Ahmad b. ‘Abdallāh, Ḥāshiyat al-Fuṣūl al-lu’lu’iyya

The Chapter on Analogy (Qiyās)

Linguistically, analogy (qiyās) is defined as comparison (between two things) and measurement (of two things). As for terminological definitions, we have (two specific types of analogy):

1) **Co-presence** (qiyās al-tard) is the attachment of a judgment (hukm) governing a principal case (asl) to a derived case (far’). This is because in their view the analogical reasoning (qiyās) of the mujtahid is valid (so long as he has applied his reasoning to the best of his ability), even if he later realises his ruling was erroneous and hence retracts it.

2) **Co-absence** (qiyās al-ʿaks) is a type of reasoning whereby the converse of the judgment (hukm) of a principal case (asl) is applied to the derived case (far’), due to both cases having differing or opposing occasioning factors (ʿilla). An example mentioned by Zaydi and Ḥanafi jurists is the case of fasting (ṣawm) during the vowed iʿtikāf (al-iʿtikāf bi-l-nadhr).

Ritual prayer (salāḥ) is not deemed a necessary condition for the validity of iʿtikāf more generally because it has not been stipulated as such for the vowed iʿtikāf. Extending this principal case (asl) of ritual prayer to the derived case (far’) of fasting, the same occasioning factor (ʿilla) is not present. It has been determined that fasting is a necessary condition for the validity of the vowed iʿtikāf. Applying the converse of the principal case (asl), this implies that since fasting is a necessary condition for the vowed iʿtikāf, it must also be that fasting is a necessary condition for iʿtikāf more generally. This is the view of the majority (in our school), and it is also the view we choose; however Ibn Zayd and some of the Uṣūlis refute this.

3) If we were to combine both into one definition, we would say: the application of the same ruling or its converse, of the principal case, to the derived case, due to their sharing the same or having different occasioning factors.

In this short passage al-Wazîr makes his views apparent on three issues. First, similar to the Sunnī jurists he cites – and contrary to the Twelvers – he considers qiyās to be a valid juridical tool of interpretation. Second, the disagreement between the mukhattî’a – namely the Twelvers – and muṣawwiba – namely the Zaydis and majority of Ḥanafis, Mālikis, and Ṣahīfs – on whether the judgment of every mujtahid is correct, versus the existence of only one empirically correct judgment in alignment with God’s Will, is a significant fissure in ʿusûl debates that will affect subsequent conversations. Third, co-presence (qiyās al-tard) and co-absence (qiyās al-ʿaks) are both valid forms of analogical reasoning (qiyās). While they can be combined into one singular idea, they are sufficiently distinctive such that they are best treated as different sub-types of analogical reasoning (qiyās). The recognition of co-absence (qiyās al-ʿaks) was an enormously controversial issue among jurists, yielding extensive debate between those who favoured and opposed its validity. Hence, as we will see, Ahmad b. ‘Abdallāh cites the two prominent Shāfî jurists Abû Ḥāmid al-Ghazâlî (d. 505/1111) and Abû l-Maʿâlî al-Juwayni (d. 478/1085) in support of al-Wazîr’s general position on qiyās. However, on the more specific matter of co-absence (qiyās al-ʿaks), al-Juwaynî does not consider it to be a valid form of analogical reasoning while al-Ghazâlî does.
In what follows, **bold text** is the base text, *al-Fuṣūl al-luʾluʾiyya* of Ibn al-Wazīr; the remainder is Ahmad b. Abdallāh’s commentary. Western Arabic numerals ([1], [2] etc.) mark sections in the Ḥāshiyat al-Fuṣūl al-luʾluʾiyya.

حاشية الفصول اللؤلؤية
أحمد بن عبد الله بن ابراهيم بن محمد ابن الوزير

باب القياس


[2.2] ذكر من حدوده في تعليق الفقيه ق أحد عشر حدًا حمدًا.


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1 V: يحيى
2 B, V: القسطاس
3 B, V: له كتابًا
4 B: وقياس
5 B: أبو
6 Y, B: وقد + الجهر
7 B: بالإلحاق
8 V: القائس
9 B: + تمّ
Commentary
In writing this commentary, Ahmad b. ‘Abdallāh provides additional detail to clarify al-Wazīr’s intended meaning, especially in those instances in which specific statements could be mis-interpreted without additional explanation. Such a concern would be especially relevant in a teaching context. In so doing, Ahmad b. ‘Abdallāh also earmarks the major distinguishing points of Zaydi thought on the controversial status of qiyās and its sub-categories vis-à-vis the Twelvers and the Sunni schools of law.

[1] Among the Twelvers, theoretically qiyās was considered too uncertain an interpretive tool to be used with authority. Despite their Shi‘i affiliation, the Zaydis – who were heavily influenced by Ḥanafi legal theory – adopted the position of the Sunni legal schools of the validity of qiyās. Hence, we find Ahmad b. ‘Abdallāh beginning his commentary by praising the significant status of qiyās in legal interpretation and pointing to its ubiquitous usage. He also lists examples of well-known jurists who engaged in prolific discussion on it, including al-Juwaynī in his book al-Burhān fi ʿusūl al-fiqh, al-Ghazzālī in his book Shifāʾ al-ghalīl, and Zaydi Imam al-Mahdī li-Dīn Allāh Ahmad b. Yahyā b. al-Muṭṭaḍā (d. 840/1436–37) in his book al-Qiṣṭās al-mustaqīm.

[2] Ahmad b. ‘Abdallāh then moves on to the topic that was of prime importance to al-Wazīr in this chapter: the defense of co-absence (qiyās al-ʿaks) as a valid sub-category of qiyās both intrinsically and separate from co-presence (qiyās al-ṭard). Jurists disagreed on whether co-absence (qiyās al-ʿaks) and co-presence (qiyās al-ṭard) could be deemed valid forms of qiyās. Co-presence (qiyās al-ṭard) referred to the idea that when a specific judgment was operative in a case, another feature co-existed in a correlative fashion in that case as well. That co-existing feature was the occasioning factor for that judgment. Co-absence (qiyās al-ʿaks) implied that the opposite was also true: when a specific judgment was not operative, then its corresponding feature was also not present in the case. An example would be the cases of wine and vinegar made from wine. Wine is forbidden while vinegar made from wine is permitted. Since the feature of intoxication was present in wine but disappeared with its conversion into vinegar, one could deduce that the occasioning factor for the prohibition of wine was in fact its intoxicating quality. Some jurists considered this line of reasoning to be air-tight, or at the very least probabilistic. Those who deemed it invalid argued that multiple features could correlate with the presence of a given
لا يمكن جمع القياسين بحد واحد لاختلافهما، فلهذا حدٌ كل واحدٌ منهما.

وقبله آخرون، وهو المختار لرجوعه إلى قياس الدلالة مثت.

وقال ابن زيد قال تليذه صاحب الهدية وهو دليل المعارضة.

وقال بعض الأصوليين وهو الذي ذكره البيضاوي وغيره. قالوا لأن أصول الفقه إذا يتكلم فيه على القياس المستعمل في الفقه وإذا يستعمل الفقهاء قياس العلة، وأما ما عداه كالالتزام والاقتراني فإن الذي يسميه قياس المنطقيين وقياس العكس من قبل التلازم مثت.
Chapter 6: Aḥmad b. ʿAbdallāh, Ḥāshiyat al-Fuṣūl al-luʾluʿiyya

judgment without having the causal force of being the occasioning factor for that judgment. In the case above, wine was both intoxicating and had a distinctive smell. Both features changed with its conversion to vinegar, so how could one deduce with absolute certainty which of the two was the occasioning factor? In such a case, these jurists argued that without weightier evidence, co-presence (qiyyās al-ṭard) alone was insufficient to single out one feature as the occasioning factor. Co-absence (qiyyās al-ʿaks) in their view was even weaker a premise since this process entailed the void or absence of a specific feature. In such a case, the question of what feature was missing was an exercise of conjecture.

In legitimising the existence of both sub-categories, Aḥmad b. ʿAbdallāh comments on the terminological usage of co-presence (qiyyās al-ṭard), noting that jurists holding alternate perspectives such as Ibn Zayd and the scholastic theologians (mutakallimūn) used the same term. He clarifies that in their use of qiyyās al-ṭard, “they do not intend the other category, al-ṭard al-mahjūr, the explicitly articulated qiyyās, a type of analogical reasoning that is mentioned as one of eleven definitions [of qiyyās] in jurists’ commentaries.” [2.2] One might imagine that demonstrating the common usage of this term as al-Wazīr defines it only serves to solidify his argument that co-presence (qiyyās al-ṭard) is in fact a separate type of qiyyās.

[4] Moving on to the definition of qiyyās al-ṭard, he clarifies what al-Wazīr meant by “both cases sharing the same occasioning factor,” noting that “this would apply whether the occasioning factor were apparent and known, like the case of qiyyās with an explicitly mentioned textual occasioning factor (qiyyās al-ʿilla)23, or if it were tacit, like the case of qiyyās with an inferred occasioning factor (qiyyās al-dalāla)24.” The fact that co-presence (qiyyās al-ṭard) retains attributes very similar to other well-recognised categories of qiyyās, he opines, lends credence to its validity.

[5–6] Moving on to co-absence (qiyyās al-ʿaks), he explains al-Wazīr’s partitioning it from co-presence (qiyyās al-ṭard), asserting that “combining the two types of qiyyās into one definition is not possible due to their clear categorical differences, hence each of the two categories is best defined in isolation of the other.” Aḥmad b. ʿAbdallāh understands al-Wazīr’s definition of the rule to be “the application of the converse of a rule of a case to another case.” Leaning on previously articulated arguments, he asserts that since this procedure entails the inference of a judgment by knowledge of its opposite, this necessarily falls within the purview of a type of analogical deduction and hence should appropriately be considered qiyyās. Acknowledging juridical disagreement on its status, he asserts that he chooses “to agree with those who accept it [as a valid category], given its traceability (and hence similarity) to qiyyās al-dalāla.”

[7–8.1] On what basis then, did jurists like Ibn Zayd adopt an opposing view? In responding to this, Aḥmad b. ʿAbdallāh reverts back to answering the question of whether qiyyās encompassed various forms of legal and non-legal reasoning (in lieu of functioning as one narrowly defined legal procedure). Borrowing from the Shāfiʿī Nāṣir al-Dīn ʿAbdallāh b. ʿUmar al-Baydāwī (d. between 699 and 705/1299 and 1306), he explains that those who took the opposing view argued that “usūl al-fiqh only speaks of qiyyās as it is operationalised in fiqh and employed by jurists in a legal context.” Hence, they deemed qiyyās al-ʿilla to largely be the one legitimate form of qiyyās. As for other non-legal types of qiyyās – such as the conditional hypothetical syllogism (qiyyās al-talāzum) and conjunctive syllogism (al-qiyyās al-ḥaqīqī) – while logicians deemed these to be types of qiyyās and jurists like al-Wazīr concurred, Ibn Zayd would not recognise them as such within the realm of jurisprudence.25

[8.1] Aḥmad b. ʿAbdallāh explains that “they consider co-absence (qiyyās al-ʿaks) to have the likeness of the conditional hypothetical syllogism (qiyyās al-talāzum).” Hence in this case, Aḥmad
شيعة القانون

التلازم

1. قولاً إن كان هذا إنساناً فهو حيوان لكنه ليس بحيوان فليس بإنسان ويسمى قياساً التلازم الاستثنائي 17 وقياس الاكتزان مثل كل جسم مؤلف، وكل مؤلف محدث، يُنتج كل جسم محدث. ويسمى القياس الاكتزالي تمتت 18.

2. ومن أمثلته قول الحنفية لما لم يجب القتل بصغير المثقل لم يجب بكبيرة بدليل عكسه في الحدود، فإنه لما وجب بكبيرة وجب بصغيرة. فالأصل المحدد والفرع المثل والحكم في الأصل الوجوب وفي الفرع تقيضه 19.

3. قال الرازي وليس بقياس في الحقيقة وإنما هو تمسك بنظام التلازم وإثبات لإحدى مقدمتيه 20 بالقياس، فإننا نقول لو لم يكن الصوم شرطاً لناكتف 21 لم يصر شرطاً له بالنذر 22 لكنه يصير شرطاً له بالنذر 23 فهو شرط له مطلق، فهذا يمسك بنظام التلازم واستثناء 24 لقياس اللازم لإنتاج 25 تقيض الملزم. قال الرازي ثم إلا نثبت المقدمة الشرطية بالقياس 26 بأن ما لا يكون شرطاً للشيء في نفسه لم يصر شرطاً له وإن علق بالنذر كالصلاة 27 وهذا قياس الطرد لا العكس 28.

16 V: قياس
17 B: +ـ
18 Missing in B.
19 Missing in B and V.
20 Missing in B.
21 B: مقدمته
22 V: في الأعتكاف
23 B: بالنذر
24 Missing in V.
25 B: بالنذر
26 V: واستثنى
27 Unclear in V due to ink spill.
28 B: بالقياس
29 B: كالصلاة
b. ‘Abdallāh is pointing out the fundamental disagreement between al-Wāzīr and Ibn Zayd on the scope of what *qiyyās* constituted. The former, he claims, permitted importing ideas from formal logic and accepting them at face value as such. The latter did not consider the act of borrowing ideas from non-legal genres to be valid within the realm of *qiyyās*. This is despite the fact that those who concurred with Ibn Zayd used many of the same interpretive tools either by assigning them an alternate category, or by asserting their textual (in lieu of speculative) roots. Therefore, in the view of Ibn Zayd, the likeness of co-absence (*qiyyās al-ʿaks*) to that of the conditional hypothetical syllogism (*qiyyās al-talāzum*) – a type of reasoning derived from formal logic – necessarily implied that it is outside of the realm of law. Since he deems syllogistic reasoning to be excluded from the formal definition of *qiyyās*, this implies that co-absence (*qiyyās al-ʿaks*) is therefore not a valid form of legal analogy.

[8.2] For all of the argumentation on the validity of using formal logic (*manṭiq*) in the realm of law, how did jurists integrate non-legal reasoning into the procedure of legal analogy? To further explain *qiyyās* in the realm of formal logic (*manṭiq*), he offers examples of the conditional hypothetical syllogism (*qiyyās al-talāzum*) and conjunctive syllogism (*al-qiyās al-iqtirānī*) as found in classical manuals of that genre; he then shows [8.3] how this is applied in the law, noting an instance of conjunctive syllogism (*al-qiyās al-iqtirānī*) in the view of the Ḥanafīs that when execution is not mandated for murder committed with a small rock, then it is not mandated for murder committed with a large rock, by way of the evidence of its converse. The converse in this case was that execution could only be mandated for instances in which an iron weapon capable of cutting or piercing was used, on the basis that only with the use of such a weapon could an intent to kill be established. He continues, focusing on how such syllogistic logic would work, noting that “[the same syllogistic relationship would exist if the opposite were true, namely that], if execution were mandated in cases in which a large rock were used as the murder weapon, then it would also be mandated in the case of the small rock, with the primary case (*asl*) being that of the iron weapon, the derived case (*farʿ*) being that of the rock, the judgment (*ḥukm*) for the *asl* being the obligation to execute, and the judgment (*ḥukm*) for the *farʿ* being blood money (and hence the converse of the obligation to execute).”

[8.4] Ahmad b. ‘Abdallāh then moves on to the oft-cited query used to demonstrate the application of co-presence and co-absence (*qiyyās al-ṭard wa-l-ʿaks*), namely the problem of whether fasting and prayer are individually obligatory for *iʿtikāf* to be valid. Jurists puzzled over two major issues on the rulings related to *iʿtikāf*. First, were the necessary conditions of the vowed *iʿtikāf* the same as those of the superogatory *iʿtikāf*? Second, was the performance of prayer, fasting, or both, obligatory for one’s *iʿtikāf* to be valid? Citing the Shāfiʿī jurist and philosophising Ashʿarī scholar Fakhr al-Dīn al-Rāzī (d. 607/1210), he explains that the analogical reasoning applied in this case on the part of those Zaydis who concur with al-Wazīr’s approach is not the specific legal procedure denoted by the Shāfiʿīs, but rather the application of conditional and syllogistic reasoning borne from formal logic (*manṭiq*). The case of fasting and vowed *iʿtikāf*, he notes, “adheres to the line of reasoning known as conditional and exceptive syllogism by way, in this case, of the application of the converse of the necessary condition producing the converse of the sufficient condition.” He continues his discussion of Rāzī’s explanation, who states that “we have hence established the conditional premise by way of *qiyyās* that whatever is not a prerequisite for (the validity of) *iʿtikāf* independently in and of itself cannot thereafter then become a prerequisite for it (later or in a new circumstance); this is true even if the proposed prerequisite is associated with the case of the vowed *iʿtikāf*, such as the case of prayer, which is an instance

[8.6] ففي الصورة الأولى يجب عليه الصوم في حال الاعتكاف لأنه التزمهما ولا تجب عليه الصلاة في هذه الصورة. قال السراج وذلك بالإجماع. والفرق أن الصوم والاعتكاف متناسبان في أن كل واحد منهما كف، وأما الإصرار فيصلح أن يكون أحدهما وصافًا للآخر، والصلاة أفعال تباشر فلا مناسبة بينهما وبين الاعتكاف.

[8.7] هكذا قرره بعض الفقهاء وهو ضعيف. فإن لائق أن يقول: إن يقول بين الاعتكاف والصلاة مناسبة وهو أن كل واحد منها طاعة شاقة على النفس. فالأولى أن يقال: إنما لم يجب الصوم في الاعتكاف. ووجب الصوم فيها لأنها عبادة مستقلة جعلت شرطا في الاعتكاف وهي غير مقدورة، والشرط إذا كان غير مقدر لا يجب، ويأتي أن الصلوة متعدرة في جميع أجزاء اليوم قطعاً، ولو لم يكن ذلك إلا في حال التسليم بعد الفراغ من ركعتين مثلًا، فإن النذر لا يكون في تلك الفينة صلاة وإن عقب صلواته بصلاة أخرى لأنه لا بد من جزء من الزمان يخلل بين الصلواتين بوصف المعتكف بأنه فيه غير مصل، ولأن في اليوم ثلاثة أوقات تكره فيها الصلاة والصوم لا يجري فيه ما ذكر، فإذل ذلك وجوب في هذه الصورة ولن تجب الصلوة والصورة الثانية مثل الأولي في وجوب الاعتكاف والصوم جميعًا.


[8.9] فذهب شن أن لا يجب الصوم مع الاعتكاف في هاتين الصورتين وذلك لأن كل واحد من

of co-presence (qiyyās al-ṭard) and not co-absence (qiyyās al-ʿaks)."

[8.5] He expands further, outlining four hypothetical cases borrowed from Rāzī’s discussion for further investigation. The first case is that one vowed to perform ḫitkāf for a day along with praying and fasting; the second, that one vowed to perform ḫitkāf while fasting only; the third, that one vowed to perform ḫitkāf but without the restriction of fasting; and the fourth, that one chose to perform a superogatory ḫitkāf for a day, without a vow.

[8.6] Aḥmad b. ʿAbdallāh then mentions the implications of each scenario as articulated by al-Rāzī, appending his own analysis. In the first case, fasting would be obligatory because it is deemed a necessary condition for the validity of the vowed ḫitkāf, however prayer would not be obligatory even if explicitly articulated in a vow. He notes that according to the Ṣaḥīḥ jurist and logician Sirāj al-Dīn al-Urmawī (d. 693/1294), this view is backed by consensus (ijmāʿ). The distinction between fasting and prayer as applied to the vowed ḫitkāf is that fasting necessarily co-exists with ḫitkāf such that if one breaks one’s fast during the time of day that it should normally be kept, one has also broken one’s ḫitkāf. The vowed ḫitkāf could be conceptualised as the occasioning factor (ʿilla) for fasting in this case. Both fasting and ḫitkāf necessarily co-exist such that one of the two can be mentioned as an implied description of the other. Prayer, on the other hand, is an act initiated by its own separate and independent procedure, hence as a “state” (ḥāl) it cannot retain equivalency with ḫitkāf.

[8.7] Aḥmad b. ʿAbdallāh finds this line of reasoning to be weak. In his view, one could just as much argue for an equivalency between prayer and ḫitkāf through an alternate avenue, namely that both share the feature of being directed devotional obedience and hence have a parallel relationship as well. He suggests an alternate line of reasoning as more convincing instead, namely the application of the idea that a condition or prerequisite that is not humanly feasible cannot thereby be mandated as an obligatory act. In this case, there are time periods during the day in which prayer is prohibited or disliked such that the day is divided into portions in which prayer is permitted and portions in which it is not. Due to this, prayer is not a state within which one can persist in uninterrupted continuity alongside the state of ḫitkāf. Rather, there are moments in which one must be in a state of ḫitkāf but not be in a state of prayer, or else one risks engaging in sin. Fasting, on the other hand, is a continuous act during a part of the day which does not suffer disruption; hence it can be made obligatory as a condition that is humanly feasible, while prayer cannot be made as such.

[8.8] As for the second hypothetical, this adopts the same judgment (ḥukm) as the first hypothetical in the obligation to fast. He cites the Mālikī jurist Ibn al-Ḥājib (d. 646/1249), noting that fasting was obligatory in the case of the vowed ḫitkāf whether or not one specifically articulated a vow to fast along with a vow to perform ḫitkāf. Hence, for the Mālikīs, the second and third hypotheticals yielded the same result of the requirement to fast. As for the fourth hypothetical, he notes that Ibn al-Ḥājib indicates that fasting is nonetheless still obligatory even in cases of the superogatory ḫitkāf as well.

[8.9] The Ṣaḥīḥis, on the other hand, did distinguish between the second and third cases. Contrary to the Ḥanafis and Zaydis, they deemed fasting to be an independent act of worship, separate from ḫitkāf. Hence, if fasting were excluded from the vow, as in the third case, then it was not required in order to complete the vowed ḫitkāf. Fasting was likewise not required in instances of the superogatory ḫitkāf, as in the instance of the fourth case.
الصوم والاعتكاف عبادة مستقلة ولم يذكر إلا الاعتكاف، فوجب من دون الصوم.

لمدة وتدب الخفية وجوب الصوم في الاعتكاف مع الاعتكاف، وذلك لأن الاعتكاف نفسه ليس بقربه، وإنما القربة الصوم فلزم، واحتج أصحابنا والحنفية في هذين الاعتками بقياس العكس


وعظم الصلاة في حال الاعتكاف فإنها لما لم يوجب الصوم النذير، كذا ذكر في الصورة الأولى لم يوجب في الاعتكاف الآخرتين. فالأصل هو العلمة في الاعتكاف، والفرع الصوم في الاعتكاف الآخرتين، وحكم الصلاة أنها لا يجب في الاعتكاف كذا ذكر والثابت في الصوم تقيي هذا الحكم المذكور للصورة وهو أنه يجب في الاعتكاف النذير، كذا ذكر في مطلق الاعتكاف، ويشمل هذا المضم الصوتي الآخرتين، فحكم الأصل وهو الصوم عدم الوجب وهو الصوم الجرء والعلاه فيما أن الاعتكاف غير شرط في الصلاة والصوم شرط فيه، فيثبت في الفرعت الذي هو الصوم حكم هو الوجب، وهو مناقض حكم الأصل الذي هو الصلاة إذ حكمنا عدم الوجب بنقيض علة الأصل لأن علة الصلاة في عدم الوجب.

أنها ليست شرطا في الاعتكاف وقبولنا أن الصوم شرط فوجب في الاعتكاف والله أعلم.

[12] وعلم أن قول ابن الحاجب لما وجب الصوم في الاعتكاف النذير لا يدخل تحته إلا الصورة التي ينص الناذر فيها على الصوم فقط، وقوله وجب نذر تشمل الصورة الرابعة فقط باظاهر لنظمه، والصورة الثالثة حكمها حكمهما فاعرفه، وعلم أن مدني الإجماع على أن الصلاة غير وجوبه في الاعتكاف الأولي يحتاج إلى أن يستفسر عن مراده فإن أراد أنه لا يلزم الناذر الجرم بينهما فإن الإجماع فهو صحيح، وإن أراد أنه لا يلزم كلاهما بالإجماع فهو ممكن، فإن مذهبه أنه يلزم الناذر لكن عليه أن يفعل الصلاة في غير هذا اليوم الذي نذر فيه الاعتكاف. فإن قال ش قولك في قياس العكس المذكر وحكم الصلاة فإننا لما لا يجب في النذير بالإجماع إلى آخره ممنوع فإننا ندعى على نذر بالإجماع مصلوب وموجب، وإن لا يجب عليه الجرم بينهما، فإننا فكان يجب على مقضي قياس العكس وجب الصلاة في مطلق الاعتكاف عندكم وإن لا يجب عليه الجرم بينهما ولا قائل به والله أعلم.

56 B: صوم
57 Y: الأخرين
58 B, V: ذكره
59 Y: الأخرين
60 Above the line in Y.
61 Y: الأخرين; Missing in V:
62 B: الأصل
63 Y: والثابت
64 V: الصلاة
65 Y: الأخرين
66 Missing in V:
67 V: حكمها
68 B: الصوم
69 B: الذي
70 B: والثالثة
71 B above the line: V: حكمها
72 B: أراده
73 V: يثبت
74 Missing in V.
75 B above the line: هو الله
76 B: أنه
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[8.10] Aḥmad b. ‘Abdallāh finally turns to the Zaydi and Ḥanafī positions. He notes that in their view, fasting was in fact obligatory in the third and fourth cases alongside iʿtikāf, because iʿtikāf in itself did not yield the result of attempting to achieve closeness to God; rather it was the act of fasting that fulfilled this, hence, it was a necessary condition for iʿtikāf in all cases, even if one excluded fasting from one’s vow as in the third case, or performed superogatory iʿtikāf as in the fourth case.

[8.11] His channel of reasoning to support his view was the application of co-absence (qiyyās al-ʿaks). In this view, he notes that when fasting is obligatory for the vowed iʿtikāf as in the first and second cases, then it is also obligatory in the third and fourth cases. The converse case is prayer, because when prayer was not obligatory to fulfill the vowed iʿtikāf by consensus (ijmāʿ) as in the first case, then it was also not made obligatory in the last two cases. Hence, in this scenario the principal case (aṣl) is the case of the vowed iʿtikāf and prayer, and the derived case (fard) is the case of fasting in the third and fourth cases. The judgement (hukm) for prayer would be that it is not obligatory for the vowed iʿtikāf, and therefore the judgment (hukm) for fasting would be the converse, namely that it would be obligatory in the case of the vowed iʿtikāf. The occasioning factors (ʿilal) in both were that prayer is not a condition for the vowed iʿtikāf, and that fasting is a condition for it. In the Ḥanafī view, an element not accounted for by co-absence (qiyyās al-ʿaks) was the added implication that because fasting was obligatory in the vowed iʿtikāf, it was then obligatory in an absolute sense in all cases, including the fourth hypothetical case of the superogatory iʿtikāf.

[8.12–8.13] The Shāfīʿīs, Aḥmad b. ‘Abdallāh notes, were critical of the Ḥanafīs on two points. First, they took issue with the idea that the Ḥanafīs could consider prayer not obligatory in any category of iʿtikāf. Second, the Ḥanafīs were allowing for a logical fallacy. Co-absence (qiyyās al-ʿaks) accounted for obligating fasting in the case of the vowed iʿtikāf, however it did not account for the additional Ḥanafī view that fasting was obligatory in all cases including superogatory iʿtikāf. To the first point, Aḥmad b. ‘Abdallāh responds that there is no doubt that prayer was an obligatory act to perform more generally. However, the performance of prayer was obligatory outside of iʿtikāf as well. Hence, for the Ḥanafīs the obligation of prayer did not correlate with being in a state of iʿtikāf since the obligation existed outside of iʿtikāf and since there were periods of time during iʿtikāf in which prayer was prohibited. As for the second point, Aḥmad b. ‘Abdallāh concurs that co-absence (qiyyās al-ʿaks) does not account for the obligation to fast in all cases. But, he argues, the Ḥanafīs never intended for co-absence (qiyyās al-ʿaks) to account for both. Rather, the procedure of qiyyās al-ʿilla was used to demonstrate that if fasting were required for the vowed iʿtikāf, then this could also be extended to superogatory cases.

In plain language, al-Wazīr argues for the validity of qiyyās as an interpretive tool, in contradistinction to the classic Twelver position. As Aḥmad b. ‘Abdallāh demonstrates, he also opines with those Zayyids who applied reasoning in congruence with the Ḥanafīs allowing for the application of syllogistic reasoning as a valid form of qiyyās. Hence, co-presence (qiyyās al-ṯard) and co-absence (qiyyās al-ʿaks) receive formal entries as valid categories in his text. In the earmarked case described above, the Ḥanafīs and Zayyids used the widely accepted procedure of qiyyās al-ʿilla – which the Shāfīʿīs and Mālikīs would have theoretically found unacceptable – to connect the two cases of fasting in the vowed and superogatory iʿtikāf. However, in addition to this they also used syllogistic reasoning to connect the two cases of prayer and fasting through the application of co-absence (qiyyās al-ʿaks). The Ḥanafīs took prayer to be the principal case (aṣl), with its judgment (hukm) being that it is not a prerequisite for iʿtikāf. They wanted to situate the judgment
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Endnotes

1 Jan Thiele’s work on this publication was conducted under the aegis of the grant RYC-2015–18346, funded by MCIN/AEI/10.13039/501100011033 and FSE “El FSE invierte en tu futuro.”
3 Al-Shahārī, Ṭabaqāt, vol. 1, p. 80.
4 See editor’s introduction to al-Wazīr, al-Falak al-dawwār, p. 16.
5 Al-Shahārī, Ṭabaqāt, vol. 1, pp. 81–85 collects a number of chains of transmissions and ijāzāt.
7 See editor’s introduction to al-Wazīr, al-Falak al-dawwār, p. 19.

[8.13] وقِد وَرَدٍ ٧٧ يَقَالُ مَا الْصُّوْمِ إِذَا نَذَرَ بِهِ ٧٥ ٧٦ الْإِعْتِكَافُ بِالنَّذَرِ ٧٩ أَصِلَ، وَبِغَيْرِ نَذَرٍ فَرْعٌ، إِذَا لَفَقْرٍ إِذَا عُرِفَ أَنَّهُ لَفَقْرٌ بَلْ سَيْرٌ بِأَنَّ يَقَالُ مَا ٧٨ الْإِعْتِكَافُ بِالنَّذَرِ ٧٣ أَصِلَ، وَبِغَيْرِ نَذَرٍ فَرْعٌ، إِذَا لَفَقْرٍ إِذَا عُرِفَ أَنَّهُ لَفَقْرٌ بَلْ سَيْرٌ بِأَنَّ يَقَالُ مَا ٧٨ الْإِعْتِكَافُ بِالنَّذَرِ ٧٣ أَصِلَ، وَبِغَيْرِ نَذَرٍ فَرْعٌ، إِذَا لَفَقْرٍ إِذَا عُرِفَ أَنَّهُ لَفَقْرٌ بَلْ سَيْرٌ بِأَنَّ يَقَالُ مَا ٧٨ الْإِعْتِكَافُ بِالنَّذَرِ ٧٣ أَصِلَ، وَبِغَيْرِ نَذَرٍ فَرْعٌ، إِذَا لَفَقْرٍ إِذَا عُرِفَ أَنَّهُ لَفَقْرٍ بَلْ سَيْرٌ بِأَنَّ يَقَالُ مَا
Chapter 6: Ahmad b. ‘Abdallāh, Hāshiyat al-Fuṣūl al-lu’lu’iyya

12 For Ahmad b. ‘Abdallāh’s biography and works see Ibn Abī l-Rijāl, Maṭlaʿ al-budūr, vol. 1, pp. 329–345 (no. 141); al-Shahārī, Šabāqāt, vol. 1, pp. 153–158 (no. 58); al-Wajīh, Aʿlām, pp. 129–130 (no. 101). Löfgren and Traini state that Ahmad b. ‘Abdallāh was Šārīm al-Dīn al-Wazīr’s grand-nephew rather than his great-grandson, but this is not supported by the name given in the biographical literature.


14 For the manuscript see Ahlwardt, Kurzes Verzeichnis, p. 31; Ahlwardt, Verzeichnis, vol. 4, pp. 327–328, no. 4942; a digital copy (ZMT 00848) can be accessed via https://digital.staatsbibliothek-berlin.de/werkansicht?PPN=PPN733271049&PHYSID=-PHYS_0237&DMDID=DMDLOG_0001.

15 See no. 26 in the list of manuscripts of al-Fuṣūl al-lu’lu’iyya.


17 The end of the text reads as follows:

قوله وقد توسع بعض علمائنا كالحفيد فإنه ذكر في ترجيح العلة مائة وجه تمت ه


20 Qiyās al-ṭard by itself or in combination with qiyās al-ʿaks is sometimes also translated as “concomitance.”

21 Some authors use the term reductio ad absurdum, however this would be incorrect as such arguments correspond more closely to a fortiori arguments, not qiyās al-ʿaks. We have found “co-presence” and “co-absence” to be the most accurate in this case, the terms used by Weiss. See Weiss, The Search for God’s Law, pp. 623–624.

22 Iʿtikāf refers to the recommended practice of retreatizing and isolating oneself in a mosque for the purpose of voluntary worship. Iʿtikāf can be performed on any day or night of the year and is considered a superogatory (nafl) act. However, if one has made a vow (nadhr) to perform iʿtikāf, then the act becomes obligatory (waḥīb) to complete. The vow (nadhr) could either be: 1) a vow made to God by way of articulating a specific intent to perform iʿtikāf or 2) a vow based on the fulfillment of a condition as in “if a specific event occurs, I will perform iʿtikāf for ten days.” The legal schools differed on the details of these categories and what acts of ritual worship were deemed necessary conditions for the validity of each category of iʿtikāf.

23 Qiyās al-ʿilla is also sometimes referred to as qiyās manṣūṣ al-ʿilla – analogical reasoning with explicitly mentioned occasioning factor; or al-qiyās al-jālī – analogical reasoning with an explicit occasioning factor. The concept refers to analogical reasoning whereby the judgment (ḥukm) as recorded by evidentiary texts directly articulates the occasioning factor (ʿilla) of the case as well, leaving no doubt as to God’s intention and hence no need for jurists to deduce what the occasioning factor (ʿilla) might be. This type of qiyās was largely deemed to be the be the most reliable of the various types.

24 Qiyās al-dalāla, generally speaking, refers to instances in which the analogical relationship had to be inferred or deduced by jurists and was not explicitly textually referenced, as in the case of qiyās al-ʿilla. There are sub-categories of qiyās al-dalāla based on the type of inferential reasoning that is being deployed; This line of reasoning was also sometimes referred to as qiyās al-shabah.

25 In many instances jurists who did not subsume syllogistic reasoning under qiyās instead subsumed it under a fifth category – outside of qiyās, ijmāʿ and the two textual sources – the category of istidlāl.
Bibliography


