

WALTER EDWARD YOUNG. *The Dialectical Forge: Juridical Disputation and the Evolution of Islamic Law. Logic, Argumentation & Reasoning*, ed. Shahid Rahman, no. 9. Cham, Switzerland: Springer, 2017. xiv + 643 pages, appendices, glossary, index, ISBN 978-3-319-25522-4 (hardback), €116.99 / \$139.99.

In addition to making a major contribution to the history of Islamic legal theory and dialectic, *The Dialectical Forge* constitutes a highly technical yet passionate plea for the timeless and universal importance of disciplined truth-seeking debate. The book illustrates copiously and compellingly the sophistication of legal debate in the time of Muḥammad ibn Idrīs al-Shāfi‘ī (d. 204/820), and teases out its many continuities with the fully developed disputation theory of Abū al-Ḥusayn al-Baṣrī (d. 436/1044), Abū Ishāq al-Shīrāzī (d. 476/1083), and Abū al-Walīd al-Bājī (d. 474/1081). The book’s principal thesis is that both disputation theory (*‘ilm al-jadal*) and legal theory (*‘ilm uṣūl al-fiqh*) were hammered out in a “dialectical forge,” a shared practice of legal debate that long preceded the formal systematization of those disciplines. If the author seems overly optimistic about the truth-seeking motives and principled debating tactics of early jurists, this is due not to any lack of rigor but to an idealistic generosity of spirit that has been all too rare in scholarship on early Islamic law, my own included.

After introducing his project briefly in chapter 1, Young makes his case in three stages.

First, in chapter 2, he reviews the limited prior scholarship on the history of Islamic dialectical theory. This stakes out the space for his own contribution, which is to push the origin of legal dialectic far back into the 2nd/8th century and to argue that it emerged from a longstanding practice of face-to-face debate among jurists, not from the assimilation of earlier dialectical traditions from Greek philosophy or Islamic theology.

Second, he demonstrates in concrete detail the continuity of early disputational practice with classical dialectical theory and, to a lesser extent, with legal theory. He begins, in chapter 3, by introducing the literature of juridical disagreement (*khilāf*, *ikhtilāf*), including the 2nd/8th-century “subject-text” on which he will focus his analysis (the *Kitāb Ikhtilāf al-‘Irāqīyyīn* as found in al-Shāfi‘ī’s *Kitāb al-Umm*) and two 4th/10th- and 5th/11th-century Ḥanafī texts (by al-Karkhī and al-Dabbūsī [*sic*]) that exhibit a growing systematization of legal theory and, more tentatively, dialectic. Next, in chapter 4, he surveys the standard argumentative moves prescribed by the classical dialectical theory of his “lens-texts,” al-Baṣrī’s *Kitāb al-Qiyās al-Shar‘ī*, al-Shīrāzī’s *Ma‘ūna fī al-Jadal*, and al-Bājī’s *Minhāj fī Tartīb al-Ḥijāj*, comparing them with (and emphasizing

their many differences from) the Aristotelian dialectical tradition. Then, over the course of chapters 5 and 6, he uses that classical theory as a lens to interpret more than twenty debates of varying lengths between al-Shāfiʿī and various Ḥanafis, as these were recorded or imagined by al-Shāfiʿī in his *Kitāb Ikhtilāf al-ʿIrāqīyyīn*. Young explains as many of al-Shāfiʿī's argumentative moves as possible, and as many of the Ḥanafī opponents' moves as he can reconstruct, as instances of the standard moves prescribed by his lens-texts, and notes when they appeal to specific rules of legal theory. This detailed analysis of debates about particular points of law is the heart of the book: long, dense, rewarding, and chock full of insight into the hidden assumptions behind each argument. Because the exposition of each dialectical sequence is prefaced by the full text of the debate in both English and Arabic, chapters 5 and 6 would make an excellent annotated sourcebook for students learning to read Islamic legal texts.

Third, in chapters 7, 8, and 9, Young catalogs and explains both the continuities and discontinuities between early disputational practice and classical dialectical and legal theory, and fits them into a sweeping historical narrative. His principal thesis is that actual debates about particular points of law were the primary engine—the driving force and the “dialectical forge”—for the development of an argumentative episteme consisting of increasingly definite and shared standards (a proto-system) of legal interpretation, reasoning, and debate, and that the classical disciplines of legal and dialectical theory represent further developments and written systematizations of those shared norms. Although in al-Shāfiʿī's time there were still significant parallels with the Aristotelian dialectical tradition, the classical theorists codified a distinctively Islamic tradition of disputational practice and legal epistemology that were tacitly operative “since the earliest times” (555), by which he means the time of the Prophet and his Companions (513–514, 557). Although he argues that his reconstruction is largely compatible with the three historical models to which he compares it, including Norman Calder's relatively skeptical account, his narrative runs closest to the traditionalist view that legal theory was operative from the outset even though it was written down only later. Such a view assumes that the Prophet had already promulgated the concept of a comprehensive, systematic, revealed, and distinctly Islamic law—a premise for which the Qur'an itself contains compelling counterevidence. This doubtful reconstruction of origins, however, does not undermine Young's findings about the periods reflected in his sources, the later 2nd/8th and 5th/11th centuries.

Young's overall project of focusing attention on the role of debate in the development of legal and dialectical theories is a masterful and needed complement to

previous histories of these disciplines. The role of debate has been acknowledged before, but never described or theorized in anywhere near this depth. The overall point that debate played a formative role is compellingly made, but I have three reservations about Young's argument that it was the single biggest driving factor. All three stem from misgivings about the author's tendency to posit widely shared and consistently applied rules and concepts behind particular arguments advanced by individuals, and about his generous inclination to credit early and medieval jurists with as much sincerity in seeking truth, as much consistency in reasoning, and as much harmony between theory and practice as he possibly can.

My first reservation is that Young extrapolates greater early systematicity and agreement than his subject-text actually indicates. Granted, he claims for al-Shāfi'ī's period only the existence of a "proto-system," by which he means a shared set of concepts, principles, and practices that lacks the exhaustive and systematic elaboration of classical "full-system" *jadal* theory. But this is still more than the evidence of the *Kitāb Ikhtilāf al-ʿIrāqīyyīn* actually demonstrates, on two fronts.

First, al-Shāfi'ī's arguments, brilliant as they may be, often appear too ad hoc and opportunistic to be taken as evidence of a rule-governed practice. Many of them can indeed be identified with specific dialectical moves in the classical lens-texts, but it does not follow that he was observing already-established rules of argument. As Young readily acknowledges (231, 373–374, 435–440, 458–461, 465, 535–544), his attempts to fit al-Shāfi'ī's arguments to the classical models are sometimes quite strained (e.g., in my opinion, 282, 335–342, 394–395, 397). Many arguments appear brilliantly ad hoc, or simply defy categorization in terms of classical theory (e.g., 278, 280, 354, 408), frequently coming closer to the older strategies of Aristotelian dialectic (e.g., 233–234, 253, 305, 317, 446, 461, 468, 488, 535–537). Sometimes, I would add, al-Shāfi'ī advances arguments that to me do not appear sound at all—a point I will return to below. Young seems intent on finding as much system as he can in the pre-classical debates, but his evidence often frustrates him. For example, he insists on categorizing all the different uses of the dialectical formulae *a-lā tarā* and *a-ra'ayta*—something the classical theorists themselves did not do—but all his classification really demonstrates is how variously, loosely, and unsystematically those formulae were used (418–428, 435 n. 1). Al-Shāfi'ī's arguments do display formulaic patterns, and no doubt he meant them to serve as instructional models to aid students in debating particular points of law (51, 417), but this does not mean that he was following or teaching a proto-system of dialectical rules. He could just as well be understood as following only a general episteme, a shared but often tacit sense of what kinds of evidence and argument can conceivably count,

within which he felt quite at liberty to advance any kind of generally relevant evidence or argument he could think of.

Second, for al-Shāfiʿī's principles of legal argument, reasoning, and interpretation to count as a proto-system, they would have to be followed fairly consistently by all parties to the debate. As Young himself acknowledges (e.g., 250, 515, 524, 544, 546), however, there were significant ongoing methodological disagreements. While many of the principal issues of *uṣūl al-fiqh* were already being discussed in al-Shāfiʿī's time, legal theory was still far from a shared set of rules that could govern the use of evidence in debate (e.g., 282). Young's categorization of *a-lā tarā* and *a-ra'ayta* formulae (419–427) reveals quite different patterns in how al-Shāfiʿī and his opponents employed those formulae, but Young himself is so committed to the idea of a proto-system shared by all parties that he never notices this. Moreover, his focus on a single subject-text has the drawback that even when both sides of a debate are recorded, or can be reconstructed, the argument is presented from the perspective of one side only. Young often supplements his subject-text with other sources that reveal the specific evidence al-Shāfiʿī's opponents might have used, but it remains doubtful whether they would have conceded the procedural validity of his arguments. Young's habit of reconstructing the other side of the debate on the assumption that those opponents would have argued in line with classical theory (e.g., 226–229, 245, 440) undermines the value of those reconstructions as evidence of a proto-system.

To Young's great credit, he catalogs not only the continuities but also the many discontinuities between the proto-system he ascribes to al-Shāfiʿī's era and the full-system theory of his lens-texts (459–474). In his overall conclusions, however, he overwhelmingly emphasizes continuity. Even as he acknowledges that the proto-system lacked many such key technical terms as *ʿilla*, for example, he asserts in the same breath that it was very nearly as complex as the classical theory (454, 493). His emphasis on continuity is not surprising, however, for it may have been all but determined from the outset by his method of interpreting the arguments of his subject-text using the categories, concepts, and terms of his lens-texts (4, 221).

My second reservation is that Young's analysis compares apples and oranges. If his subject- and lens-texts differed only in date and degree of systematization, then comparing them might yield a narrative of development over time; but these texts also represent different discourses: actual arguments advanced or recorded in the subject-text, and theories about argument in the lens-texts. To use them as comparable data points in a historical trajectory, one must assume that in both periods the theory corresponded to the practice of deriving, justifying, and debating law. That, however, is

something that historians of legal theory disagree about: did the theory govern or at least reflect the interpretations and arguments of jurists, or was it sometimes a more speculative exercise driven by other concerns?

Of course, there cannot help but be a strong relationship between theory and practice. Legal and dialectical theory can hardly have been formulated without actual debates in mind. Young's classical *jadāl* manuals do not provide instructions for conducting a debate (183), but they seem designed to be memorized and applied in actual disputations (96–97, 151), and some of the arguments they cite as examples are also found in earlier *khilāf* works (153–154, 332, 362, 366, 548–550). The same could be said of classical *uṣūl al-fiqh* manuals. But this does not prove that the theory was derived inductively from the examples, or that its principal aim or effect was to regularize and purify the conduct of debates. Just as I have questioned whether al-Shāfiʿī's arguments were always governed by shared principles, one must also consider that the classical theory might not fully reflect later disputational practice, which even in the full-system period was not uniformly shared across legal schools (146, 150, 165, 250). Even after the science of disputation was formalized and widely taught, jurists must still sometimes have argued spontaneously, for rhetorical effect, or by sleight of hand.

Despite Young's emphasis on continuity, the data he presents demonstrate just as clearly how much the early debates differed from classical legal and dialectical theory. He explains that gap as a matter of refinement over time, and never seriously considers the possibility that it reflects instead a gap between theory and practice. He does acknowledge in passing that theory did not necessarily always align with the practice of the day (461, 542 n. 98), but he appears unwilling to consider that this gap was anything more than accidental, an unfortunate imperfection that the theory was intended to eliminate. He seems to feel it would disparage the theoreticians to say that their goal was anything other than documenting, systematizing, teaching, and purifying the practice of legal debate. That idealistic assumption, unfortunately, renders Young's historical narrative less convincing to those historians who are more skeptical about whether theory actually governed practice, or who find some theorists to have been driven more by epistemology or theology than by the practical task of discovering and defending legal opinions.

Young's refusal to consider the possibility of any deep theory–practice divide appears to stem from his commitment to debate as a truth-seeking endeavor (1, 37–42). This idealism is the source of my third reservation: that he is too quick, and indeed doggedly determined, to attribute to every jurist as much sincerity, consistency, and conformity to shared principles as he possibly can. Consequently, he sometimes resorts

to overwrought readings of arguments to make them conform to classical rules. Many arguments in his subject-text do fit the classical paradigms quite well, but often al-Shāfiʿī seems to be improvising with arguments much looser than those of classical theory, and sometimes he advances what looks to me more like a sleight of hand or an irrelevant smoke screen than a coherent, principled, truth-seeking argument. For example, in a dispute over whether retaliation is permitted to a group of heirs when only some of them have reached the age of majority, it appears to me that Young misconstrues both al-Shāfiʿī's proof for his own position and his rebuttal of his opponents, taking his arguments as masterful examples of classical dialectical moves when to me they appear much looser, even sloppy, and at points self-contradictory (335–342). Young never acknowledges the possibility that al-Shāfiʿī might advance a bad argument, but to me it appears that he could easily have refuted many of his own arguments if he had wished to defend the opposing view. And Young is just as optimistic about classical jurists: the reason they did not preserve al-Shāfiʿī's more subtle disputational maneuvers is that they were too committed to the impartial quest for truth (543); the reason some forms of objection disappeared was that jurists stopped making arguments weak enough to warrant them (278, 415, 458, 535–536, 543). The only arguments Young offers in support of his idealistic view of debate as a truth-seeking endeavor are (1) the jurists' frequent adherence to dialectical principles, (2) their use of pious phrases about truth, (3) his own observation that jurists sometimes changed their minds in response to arguments, and (4) his dubious assertion that if debaters had been sophisticated instead of truth-seeking then there could have been little progress in developing legal and dialectical theories (37–42, 188, 416 n. 128, 506 n. 24). This optimism is a commendably charitable attitude in reading any historical text, but sometimes the text itself resists such a reading.

Young's principal thesis, that actual debates between jurists were by far the most important factor in the development of both *uṣūl al-fiqh* and *ʿilm al-jadal*, must therefore be taken as expanding rather than displacing prior historical explanations. He may not fully convince those historians who are not already convinced of the truth-seeking function of legal theory and dialectic, but the book will redirect their attention to a facet of Islamic thought whose formative influence has been sorely underappreciated. It is a monumental accomplishment and a marvelous primer in the difficult art of reading medieval legal texts. And I would hope that even its overly generous and charitable approach to the reading of texts and the history of Islamic law might serve as a model for other scholars, myself included, who are often too quick to spot inconsistencies and suspect self-serving motives. If such charitable reading is a

weakness, it is one we would all do well to cultivate, and Walter Young is an excellent model.

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