

## The Genesis of Arabic Logical Activities: From Syriac Rhetoric and Jewish Hermeneutics to āl-Šāfi‘y’s Logical Techniques

Hany Azazy

Faculty of Arts,  
Ain Shams University,  
Arab Republic of Egypt

e-mail: [hany.moubarez@art.asu.edu.eg](mailto:hany.moubarez@art.asu.edu.eg)

*Abstract:* This paper tries to outline a history of development of informal logic in Semitic languages and especially in Arabic. It tries to explain how the first definite formulation of rules of this logic appeared at āl-Šāfi‘y’s *Risāla*, a work on *‘uswl āl-fiqh* or methodology of law. It attempts also to provide new theories and hypotheses about the translation movement in the Arabic and Islamic medieval world.

*Keywords:* logic, history of logic, legal hermenutics, analogy a fortiori, rhetorics, argumentation, rationality, argumentum a minore ad maius, argumentum a majori ad minus, argumentum of a similitude, methodology of islamic law.

### 1. Introduction

He who tries to write a history of the earlier informal Arabic logic has to do two things: (1) reconstruct the historical facts concerning its development, and (2) reformulate it formally<sup>1</sup> according to that reconstruction. Thus, (1) is a necessary step for (2). In this paper I shall concentrate only on (1) letting (2) for further research. The reason for (1) is due to that most of the accounts we have about it were not intended to be a definite history of the Arabic informal logic but as a complementary history to other branches of study such as history of Islamic law (for example: [82, ch.9] [35] [45, ch.3] [98, ch. 2])<sup>2</sup>. Furthermore, these accounts disagree with each other<sup>3</sup> as a result to the paucity of the resources or its fabrications. Thus, the historian of informal logic is compelled to reconstruct history on his own, introducing to this process some hypotheses and theories about the real history and the mental activities such as the translation movement and how texts transform as we shall see in due course.

However, the history of informal Arabic logic could be written through four disciplines: (1) Islamic law and exegesis (of the Scripture), (2) Arabic rhetoric, (3) Arabic and Islamic theology, and (4) Islamic peripatetic, especially its commentaries on Aristotle’s *Topics* and *On Rhetoric*. In this paper, I shall trace its development only through Arabic and Islamic law, exegesis and rhetoric. That

is because these disciplines were the first ones to formulate laws and rules of the informal logic in Arabic. This happened in the Arabic translation of Aristotle's *On Rhetoric* (which was made by Syriacs) on the one hand and in āl-Šāfi'y's *Risāla* on the other.

## 2. A preliminary Outline of the Development of the Logical Activities of the Semitic Peoples

Up to the middle of the seventh century C.E., and at the eve of the prophet Muḥammad's death (d.632), the Semitic peoples had been having three logical traditions: (i) the Hebrew informal logic<sup>4</sup> which founded in the first millennium by Hillel the Elder and developed into two traditions, one in Palestine ('Aqiva's tradition) thriving in its *yešhivaḥs*, and the other in Mesopotamia (Yišm'a'el's tradition) growing in Pumbedton and Sura *yešhivaḥs*<sup>5</sup>, in addition to Yemen<sup>6</sup>. The later tradition adopted strongly Hillel's seven rules for interpreting the Bible; i.e. '(1) an argument *a fortiori* (*qal wa-ḥomer*), (2) an argument by analogy (*gezerah šawah*), (3) a generalization (*binyan av*) based on one instance, [a generalization based on] two instances, (4) universal and particular terms, (5) particular and universal terms, (6) analogy drawn from another passage, and (7) the conclusion drawn from the context' [91, *San.* 7.11]. The first six of these are (informal) logical rules. Yišm'a'el, however, extended them to be thirteen rules. For the purpose of lucidity, these rules shall be called the Rabbinic sequence and shall be abbreviated as RS from now on, (ii) The second logical informal tradition arose at about the middle of the second century C.E. due to the Syriac polemical theology initiated by the writings of Tatian (d.172)<sup>7</sup> and Ephrem of Edessa (d.373)<sup>8</sup>, and (iii) The Syriac formal logic tradition which started off in the sixth century C.E. with translations of Porphyry's *Eisagoge* and Aristotle's *Organon* [32, pp. 42; 115 – 116; 122].

The Arabs, up to this period, did not have a logical tradition. This only developed about two centuries later when they had an articulated informal logic thanks to āl-Šāfi'y (d.820). How can this be explained? Answering this question means providing a history of the development of that tradition. However, we have three theories: (1) The first theory stipulates that the rules of the informal logic of āl-Šāfi'y are a result of independent evolution of the methodological practices of earlier ancestors' jurists without any foreign influence. Thus, 'having had so many developments that it became mature to a great extent, the method [informal logic] was handed down to āl-Šāfi'y... who analyzed and presented it in an organized way' [11, p.83]. (2) The second theory considers that āl-Šāfi'y borrowed his informal techniques from the Rabbinic traditions via earlier jurists. This theory which was first articulated by Margoliouth [68, pp.73 – 97] and then defended by Schacht [83, p. 13], and followed by many others (for example: [97], who claims that the influence is direct and without mediation, p. 67), is based either on (a) the existing similarity between the two used terms for analogy, i.e. *qiyās* in Arabic and *heqqeš* in Hebrew [67, p. 320] [82, p. 99] [83, p. 14], both of them mean literally measurement, or (b) on 'striking parallels with the Talmudic method' [97, p. 60] i.e. the fact that there is the same succession in RS and āl-Šāfi'y's rules. (3) The third theory argues that āl-Šāfi'y borrowed his rules either from (a) the Iraqis who borrowed them from the Babylonian Rabbis [93, pp. 17-20; 23-25], and either (b) Aristotle's *prior analytics* to the extent that *qiyās* (definitely analogy not the *a fortiori*) is a form of Aristotelian syllogism [*ibid.*, pp. 14 – 16] or (c) from Aristotle's *Topics* [1].

The first theory cannot be adhered to, because the cultural diversity of the Islamic civilization compelled us to assume the fact of foreign influences on Arabic and Islamic disciplines. Although the second theory seems to be reasonable, there is no strong evidence for it. Concerning its (a), the linguistic and philological analysis alone is not enough for proving the borrowing, especially as the *Palestinian Talmud* employed the term *heqqeš* in a way different from how the Babylonians employed it, i.e. the *heqqeš* in the *Palestinian Talmud* was an attempt to search for the common element<sup>9</sup>, while *heqqeš* for the Babylonians (Yišm'a'el's School) was analogy of the judgement as a result to 'the proximity of two terms within a verse' [27, p. 82]. Given that most of Muslim jurists in the earlier period were living in the Arabian Peninsula or Mesopotamia, and that 'In applying *qiyās* the Kufians seek the element which is common to both the original and the

assimilated case' [23, p. 209], this theory needs more scrutiny. Concerning part (b) of this theory, we do not find any sequence in āl-Šāfi'y's *Risāla* like the RS one. In *Risāla* K: 122 – 125<sup>10</sup>, āl-Šāfi'y speaks about *qiyās* mentioning only analogy without any hint to the *a fortiori* argument. In *Risāla* K: 179 ff., he talks about the general and the particular after mentioning the importance of the Arabic language in understanding the *Qur'ān* but not as a term in a sequence. In *Risāla* K:1482 ff., when he mentions the *a fortiori* followed by analogy, there is no mention after this to the rest of RS. The same criticism of (2-a) can be applied to part (a) of the third theory. Its part (b) is either unacceptable or unreasonable. It is unacceptable because if Triyanta meant<sup>11</sup> Ibn āl-Muqaffa's translation of an incomplete epitome of prior analytics [36, pp. 63 – 93] [87, p. 530], we find a great difference in the terminology, Ibn āl-Muqaffa does not use the term *qiyās* at all; instead he uses the term 'san'a' for syllogism [36, p. 64] given that Ibn āl-Muqaffa himself uses the term *qiyās* for another mode of inference different from syllogism, i.e. analogy<sup>12</sup>. And it is unreasonable because if Triyanta meant the later translation of *Prior Analytics* by a certain Theodore, then it should be noted that this translation appeared in the ninth century only [88, p. 533], probably after āl-Šāfi'y's death (in 820). If Triyanta tried to reduce āl-Šāfi'y's analogy to *Prior Analytics*' syllogisms, Abdel-Rahman tried to reduce āl-Šāfi'y's the *a fortiori* to Aristotle's *Topics*. Thus, the (c) of the third theory seems probable especially that Timothy's (d.823) translation of *Topics* was current (about 782; [42, p. 61]) even in the time before āl-Šāfi'y's arrival to Baghdad (about 795; [34, p.182]). But the difference in the number of the *a fortiori* rules in *Topics* – Aristotle defines seven rules for the *a fortiori* in his *Topics*, ii, ch.X, 114b 37 – 115a 2 while in āl-Šāfi'y's *Risāla* there are only three [(*Risāla* K: 1483 – 1485)] – makes this part of the theory also improbable.

In order to explain the rise of the informal logical tradition in āl-Šāfi'y oeuvre we need: (1) to reconstruct the Islamic legal and exegetical activities after Muḥammad's death on the one hand, and (2) to reconstruct also the earlier history of the translation movement in the Islamic civilization on the other hand. Both of these reconstructions will allow us to discuss the rise and development of the informal logical tradition in āl-Šāfi'y's *Risāla* and how he was influenced by RS and the Arabic translation of Aristotle's *On Rhetoric*.

### 3. The Islamic Legal and Exegetical Activities After Muḥammad's Death and the Earlier History of the Translation Movement in the Islamic Civilization

After Muḥammad's death and the extension the Arabic empire through many territories, the caliphs faced the problem of judicature between the members of the conquering tribes. In Muḥammad's days, believers used to obey his injunctions, but now faced new situation because they had new facts without Muḥammad being there. However, these first caliphs appointed many officers and judges who were judging, in addition to the *Qur'ānic* injunctions, according to customs and previous traditions and they were using their own opinions in some cases [47, p. 55]. 'Umar I (d.644) himself supported their using of their opinion (*ra'y*) by using analogy in a famous letter<sup>13</sup> to Ābw Mwsā āl-Āš'ary: '(1) Know the likes and the similes (2) then measure things / اعرف الأشباه / اعرف الأمثال، ثم قس الأمور عند ذلك' [7 ii, p.49]. The authenticity of This letter was apt to doubt by many scholars in the first half of the last century because it was contained 'the most weighty arguments of the defenders of *ra'y*, who endeavoured to fabricate for its validity an old tradition, and an authority going back to the earliest time of Islam' [41, pp. 8 – 9] as Goldziher claimed. But after then, other scholars such as Bravmann [31, p. 179 ff.] considered it trustworthy because of the identification of *rā'y*, 'ilm and 'ijtihād in earlier Islam. In fact, as we shall see, both of them are not right; the passage number (1) in which 'Umar I talks about the likes and similes is genuine, till here Bravmann is right, but the second part of the citation (2) where 'Umar I talks about *qiyās* is not genuine. This can be deduced from the continuation of the letter where we find 'Umar I saying 'and adopt the judgment which is most pleasing to God and most in conformity with justice so far as you can see / ثم اعد إلى أحبها إلى الله، وأشبهها بالحق فيما ترى' [7 ii, p. 49] [67, p. 312]. this passage is in nearly coincidence with Ibn āl-Muqaffa's criterion for choosing amongst analogies:

*qiyās* is a tool for inferring good things, if it led to what is good and known it should be taken, but if it leads to what is bad and denied it should be abandoned; that is because he who uses *qiyās* is not pursuing only *qiyās* but the good and known things and what is assigned as justice by its people.

وإنما القياس دليل يستدل به على المحاسن، فإذا كان ما يقود إليه حسناً معروفاً أخذ به، وإذا قاد إلى القبيح المستنكر ترك لأن المبتغى ليس غير القياس يبغي ولكن محاسن الأمور ومعروفها وما ألحق الحق بأهله [53, p.317].

Thus, ‘the defenders of ‘*ra’y*’, as Goldziher said, fabricated the second part of the cited passage (2) to enforce their position.

However, this letter is a keystone for discovering the evolution of the Arabic intellectual movement (translation movement) and the transmission of the Rabbinic logical tradition into the Arabs and Islamic legal system as we shall show.

### 3.1. ‘Umar I and the Translation Movement

‘Umar I was not illiterate, ‘he was reading the books’ [61 *iii*, p. 248] [cf. Also, 20 *iv*, p. 201]. Moreover, he had always been interesting in the Bible or the ancient religious books<sup>14</sup> and Jewish narratives<sup>15</sup>, he was even copying the Bible<sup>16</sup>, he also permitted to Tamym āl-Dāry (d.660) to tell religious stories<sup>17</sup> in the mosque, and let the Jewish Rabbi Ka‘b āl-Āḥbār<sup>18</sup> (d.653) and the scholar most influenced by Jewish traditions, i.e. Ibn ‘Abbās (d. 688)<sup>19</sup>, have been the most prominent members of his circle. These facts make us infer that ‘Umar I was a man of culture<sup>20</sup>, especially that he was alleged to have had important role in collecting the *Qur’ān* [61 *ii*, p. 307] [50 *i*, p. 166]<sup>21</sup>. Although Muḥammad’s objection to his reading and copying books<sup>22</sup>, when he became a caliph he made the translation of the Bible more disciplined than it was at Muḥammad’s time<sup>23</sup>. Thus, we can infer that he established the first translation movement in the Arabic and Islamic civilization from the other Semitic languages into Arabic<sup>24</sup> as a result to his previous interest in the scripture on the one hand and the need to understanding the *Qur’ānic* hints to the Semitic stories on other hand. The two figures who mainly carried the burden of this movement were the Yemenites Tamym āl-Dāry and Ka‘b āl-Āḥbār. As the early Muslim society was as yet unfamiliar with organized institutions, story-telling was the first way of translating; hence the translation was oral not written. Thus, ‘Umar I gave permission for āl-Dāry to narrate in the mosque, he did so also with Ka‘b<sup>25</sup>, and the secretary of this movement was Ibn ‘Abbās<sup>26</sup>, and it is not surprise that Ibn ‘Abbās’ family had the legal guardianship on Ka‘b<sup>27</sup> (he was their *mawlā*).

But which books were being translated by Ka‘b and the others? By answering this question we can at least partly solve the problem of how āl-Šāfi‘y was influenced by the Rabbinic logical tradition. The answer also will let us get rid from what I would call it *the kaldwnian hypothesis*, i.e., that the first Muslims were influenced only by Jewish oral recounts and superstitions<sup>28</sup>, anecdotes [2, p. 1] or at best some isolated sayings of the Rabbis (from the *Talmud*) [40, pp. 40; 44].

There are two books candidates to have been translated orally by ‘Umar’s translation movement, i.e. *Avot de Rabby Natan* or *The Fathers according to Rabbi Nathan* version A (henceforth referred to as *ARNA*) and the *Toseft’a*. In this paper I shall concentrate only on *ARNA* sayings and themes from which many passages were frequently cited by and from ‘Umar’s secretary of the translation movement (Ibn ‘Abbās) and his circle and the adherents of this heritage. If we are able to prove this, it will be easy to prove in addition the transition of the Rabbinic hermeneutical sequence through this book to the early Arabic and Islamic legal traditions, and then to āl-Šāfi‘y, because *ARNA* contains that sequence.

To wit: What I shall do would run as the following: Firstly, I shall prove that ‘Umar’s translators transmitted this book into Arabic through embedding it in some of the prophet’s traditions on the one hand, and through its influence on Ibn ‘Abbās and his circle on the other. Then, I shall show the influence of the Hebrew logical tradition on Ibn ‘Abbās and his circle.

Secondly, I shall show how most of ‘Umar’s translators were Yemenites which implies the spread of this book and the Rabbinic logical tradition in Yemen. Thirdly, I shall trace āl-Šāfi‘y’s biography to show how he was indirectly influenced by the Jewish logical tradition and how he amended it and why.

### 3.2. *The Fathers in Arabic and Islamic Traditions*

We have two versions of *The Fathers according to Rabbi Nathan*: A and B. Though *ARN* has a Palestinian origin, both of its versions were known to the Babylonians [80, pp. 16 – 18]. Some scholars even think that version A may have been written in Babylonia [*ibid.*, n. 44]. Because of this, Version A then is our target, and it is thought to have probably been compiled sometime between the seventh and ninth centuries [39, p. xxi]. This would be sufficient for it to be known for Ka‘b and the Jews of Yemen. We know that Ka‘b āl-Āḥbār had books other than the *Torah*<sup>29</sup>, and he possibly belonged to a Rabbinic tradition<sup>30</sup>, therefore it is probable that *ARNA* was one of these books. What supports this is the following sentence of a certain exilarch to the Muslims about Ka‘b: ‘what Ka‘b told you about what shall happen is from Israel’s prophets and their companions as you tell from your prophet and his companions / فإنما هو من أنبياء بنى إسرائيل وأصحابهم كما ما حدثكم كعب بما يكون، فإنا من أنبياء بنى إسرائيل وأصحابهم كما ما حدثكم كعب بما يكون، فإنا من أنبياء بنى إسرائيل وأصحابهم كما ما حدثكم كعب بما يكون’ [55 l, p. 171]<sup>31</sup>. These sayings of ‘the companions of the prophets’ could not be anything other than the books of the Rabbis, and *ARNA* is one of these books. Moreover, I shall prove now the influence of *ARNA* in the fabricated prophets’ traditions and in Ibn ‘Abbās and his circle opinions.

However, such influence happened on three axes, literal translation, translating the meaning and transmitting themes of *ARNA*.

But first of all, I have to refer briefly to a methodological problem about the traditions which we are going to depend on (and also to the ones we have quoted so far). Some of these traditions are relating to the sayings of the prophet (*Ḥadyt*), and others are relating to the exegetical and legal traditions, especially of Ibn ‘Abbās’ traditions. On the whole, there are three positions concerning the authenticity of these traditions weather in respect of their content (*matn*) or ascription (*‘isnād*)<sup>32</sup>. The first position is extremely skeptical about them. Thus, Schacht thought that ‘legal traditions from the Prophet began to appear, approximately, in the second quarter of the second century A.H.’ [81, p. 145], and ‘traditions from Companions, too, were put into circulation during the whole of the literary period, including the time after Shāfi‘ī’ [82, p. 150]. Wansbrough [96] extended this skepticism to all types of Islamic literature before the third century A.H. [96, pp. 52, 78, 88, 92, 97, 98, 101]<sup>33</sup>, including Ibn ‘Abbās’ traditions [*ibid.*, p. 158]. Thus, A. Rippin [78] claimed that we cannot know anything about what happened in the first two centuries of Islam [78, p. 157]<sup>34</sup>. The second position accepts most traditions after applying philological methods on them<sup>35</sup> [29, pp. 21 – 23; 72] [71, pp. 35 – 36]. Thus, F. Sezgin believes in the authenticity of the books which were attributed to Ibn ‘Abbās [2, p. 17]. However, we cannot accept this second position, the quasi full trust in the traditions is not acceptable, Rippin’s analysis of the alleged Ibn ‘Abbās books according to methodological and philological considerations seems to be correct<sup>36</sup>. But on the other hand the skepticism of Wansbrough is not acceptable either; we cannot imagine a sudden appearance of the written Islamic literature at the beginnings of the third century A.H. without there being a background for that emergence. This brings us to the third position. This position, on the whole, claims that if we denied the authenticity of the traditions, we could accept that the ideas which lie behind them go back to the earlier Islam. Thus, U. Rubin expresses this position concerning the prophet’s sayings as follows: ‘But the fact that traditions cannot be dated earlier than 100 A.H. [719 C.E.] does not mean that the *ideas* reflected in them were not circulated prior to 100 A.H. The lack of documentation does not mean non existence. In other words, the dates of traditions and the dates of exegetical ideas must be considered separately’ [79, p. 149]. Schoeler and his school believed also in the possibility to reach to the ideas of the first century A.H. by *isnād cum matn* analysis<sup>37</sup>. Thus, the sayings of the prophet or of Ibn ‘Abbās express on traditions, in the technical meaning of this term<sup>38</sup>, therefore it will not come as a surprise to find that even some of the words of Ibn

‘Abbās’ sayings were kept sometimes literally in the minds of their transmitters as I shall show. This position seems plausible and it is our position in this paper, and our reconstruction will prove it. It is the time now to show how ARNA influenced Ibn ‘Abbās and his circle.

### 3.2.1. The Literal Translation

I shall display in this subsection only two traditions, the first one is attributed to Ibn ‘Abbās and the other to the prophet:

‘Ibn ‘Abbās said student of the *Qur’ān* are jealous’<sup>39</sup> / قال ابن عباس: العلماء يتغايرون

In ARNA we find the same wording: ‘היו עושין מקנאין זה לזה’/they [students of the *Torah*] acted jeaously toward each other.’<sup>40</sup>

The following second tradition I divided it into two divisions, the first division does not interest us here, though I shall discuss it in the next subsection of translating by meaning.

‘... from Ānas tracing in back to the prophet ‘(a) Students of the *Qur’ān* are secretaries of the messengers for the worshipers, (b) unless they make intimacy with ruling powers’.’<sup>41</sup> In ARNA, we find: ‘ואל תתודע לרשות’ / Do not make intimacy with the ruling powers’ (my translation).<sup>42</sup>

However, it should be noted here the following:

1. Both the verbs תתודע and تخالطوا are verbs in the increased conjunctive form, and both of them are close semantically, i.e. acquaintance, affinity, knowledge, intimacy and communion.
2. The meaning of the Arabic word *āl-sulṭān* does not signify a king, this was a later development<sup>43</sup>, but it signifies power, authority or sovereign<sup>44</sup>, and this is the same meaning of רשות, hence I translated it in both of the texts as ruling powers. (Nuesner, J. [77], was translating it sometimes as authority, pp. 84-5, and sometimes as sovereign, p. 84)
3. ARNA continues ‘for once his name comes to the attention of the ruling powers,’ (Goldin’s [39] trans. P.62). This sentence has close relationship to the concept of intimacy or *āl-mukālaṭa*<sup>45</sup> in the Arabic tradition.
4. Again, ARNA continues ‘they cast their eye upon him and slay him,’ (*ibid.*). This we shall find in another tradition transmitted by Abw-Hurayra, but the translation will be by meaning<sup>46</sup>.

### 3.2.2. Translating the Meaning

The following traditions are translations from ARNA by meaning; I shall first provide the Arabic tradition then its equivalent(s) in ARNA:

1. ابن عباس مرفوعاً يا إخواني تناصحوا في العلم ولا يكتم بعضكم بعضاً... [16 i, p. 207].

Ibn ‘Abbās tracing in back to the prophet ‘O my brethren, do advice each other in learning and do not conceal it from each other’.

רבי מאיר אומר אם למדת מרב אחד אל תאמר דיי אלא לך אצל חכם ואחר ולמוד תורה [26, p. 16]

Rabbi Meir says, If you have studied the *Torah* with one master, do not say, ‘That is enough,’ but go to another sage and study the *Torah* (Nuesner’s [77] trans., p. 33).

והוי מתאבק בעפר רגליהם כיצד בזמן שתלמיד חכם נכנס לעיר אל תאמר איני צריך לו אלא לך אצלו  
ואל תשב [26, p. 27]

AND SIT IN THE VERY DUST AT THEIR FEET: how so? When a scholar comes to the city, say not 'I have no need of him.' On the contrary, go and sit with him (Goldin's [39] trans. With my modification.).

2. ... عن أبي هريرة، قال: قال رسول الله: 'من ولي القضاء، أو جعل قاضياً بين الناس، فقد ذبح بغير سكين  
[17 iii, 1325].

...Abw Hurayra said: The messenger said: 'Whoever become a judge or is appointed as a judge for the people, has been slain without a knife'.

כיון שיצא לו שם ברשות סוף גותגין בו עיניהם והורגים אותו

[26, p. 46]

For once his name comes to the attention of the ruling powers, they cast their eye upon him and slay him (Goldin's [39] trans., p.62).

3. ... عن أبي عمران الجوني، عن عبد الله بن الصامت، عن أبي ذر. قال: قال لي النبي ' لا تحقرن من المعروف شيئاً، ولو أن تلقى أخاك بوجه طلق'  
[74 i, 2626]

... From Abw 'imrān āl-Jawny, from ' Abdallāh b. āl-Ṣāmit, from Abw Ḍarr. He said: The prophet told me '(a) Do not disdain anything of the good, (b) even if you were to receive your brother with a cheerful face'.

In ARNA we find:

והוי מקבל את כל האדם בסבר מקבל יפות כיצד מלמד שאם נתן אדם לחברו כל מתנות טובות שבעולם ופניו כבושים בארץ מעלה עליו הכתוב כאלו לא נתן לו כלום אבל המקבל את חברו במבר ס גים ימות אסילו לא נתן לו כלום מעלה עליו הכתוב כאלו נתן לו כל מתנות טובות שבעולם

[26, p. 57]

AND RECEIVE ALL MEN WITH A CHEERFUL FACE: what is that? This teaches that if one gives his fellow all the good gifts in the world with a downcast face, Scripture accounts it to him as though he had given him naught. But if he receives his fellow with a cheerful face, even though he gives him naught, Scripture accounts it to him as though he had given him all the good gifts in the world. (Goldin's [39] translation, p.73. with my qualifications).

We should note the following points of the last tradition and its equivalent in ARNA:

- a) The Arabic tradition can be divided into two units; (a) and (b). Also the ARNA divides into two units; (a) the text of the Talmudic father's tractate, (b) explanation.
- b) The Arabic tradition kept ARNA text; but it brings the explanation first, then the main text of the Talmudic tractate.
- c) The second unit of the Arabic tradition is nearly the same of ARNA's first unit, it has even the same words, i.e. **מקבל = receive. סבר = cheerful. تلقى = receive.**
- d) Abw 'imrān āl-Jawny is one of the transmitters on the authority of Abw āl-Jalad, who was influenced by the Jewish traditions and belonged to Ibn 'Abbās' tradition<sup>47</sup>.

... عن سلمة بن كهيل، عن هزيل بن شرحبيل قال: قال عمر بن الخطاب: 'لو وزن إيمان أبي بكر بإيمان أهل الأرض لرجح بهم' [3 i, H35].

... From Salāma b. Kuhayl, from Huzayl b. šuraḥbyl, from 'Umar b. āl-Ḳaṭṭāb: 'If Abw-Bakr's faith was weight against the faith of the people of the world, his would outweigh them all.

הוא היה אומר אם יהיו כל חכמי ישראל בכף מאזניים ורבי אליעזר בן הורקנום בכף שנייה מכריע את כלם [26, p. 58]

He used to say: if all the sages of Israel were in one scale of the balance and Rabbi Eliezer ben Hyrcanus were in the other scale, he would outweigh them all (Goldin's [39] trans., p. 75).

We should notice here the name of Salāma b. Kuhayl, who transmitted many traditions from Ibn 'Abbās circle<sup>48</sup>, in the Isnād chain. This is an indicator that that tradition was current in the Jewish circle of Ibn 'Abbās.

5. ... عن ثابت، عن أنس، قال: مات ابن لأبي طلحة من أم سليم، فقالت لأهلها: لا تحدثوا أبا طلحة بموت ابنه حتى أكون أنا أحدثه ... قالت: يا أبا طلحة، لو أن أهل بيت أعاروا عاريتهم أهل بيت آخرين، فطلبوا عاريتهم أتري لهم أن يمنعوهم؟ قال لا؟ [3 xii, H9283].

From Ṭābit that Ānas said: 'A son of Abw Ṭalḥa by Umm Salym died, then she said to her family: 'Nobody should tell Abw Ṭalḥa about his son's death except me' ... she said to him: 'O Abw Ṭalḥa, if some people lent others something, and then asked it back, do you think they will be allowed to refuse them?' He said No.'

In ARNA, we have the following advice from the mouth of Rabbi Eleazar to Rabban Johanan after the later had lost his son:

'נכנס וישב לפניו ואמר לו אמשול לך משל למה הדבר דומה לאדם שהפקיד אצלו המלך פקמן . בכל יום ויום היה בוכה וצועק ואומר אוי לי אימתי אצא מן המקדון הזה בשלום. אף אתה רבי היה לך בן קרא תורה כקרא נביאים וכתובים משנה הלכות ואגדות ונסטר מן העולם בלא הטא ויש לקבל עליך תנחומין כשהחזרת סקדונך שלם' [26, p. 59].

Rabbi Eleazar entered, sat down before him, and said to him:

'I shall tell thee a parable: to what may this be likened? To a man with whom the king deposited some object. Every single day the man would weep and cry out, saying: 'Woe unto me! when shall I be quit of this trust in peace?' Thou too, master, thou hadst a son: he studied the *Torah*, the *Prophets*, the *Holy Writings*, he studied *Mišnah*, *Halakah*, 'Aggadah, and he departed from the world without sin. And thou shouldst be comforted when thou hast returned thy trust unimpaired' (Goldin's [39] trans., p. 77).

We should note in the last tradition the name of Ṭābit āl-Bunany (d.123/741) in the chain of the 'Isnād. He has Yemenite roots [10 iv, p. 342], and Yemen was the principal supply for this early translation movement; he is also reported to have been a storyteller (*qāṣṣ*) [*ibid.*, pp. 346-47].

6. عن عبد الله بن عمرو، قال: قال رسول الله: ما من مسلم يموت يوم الجمعة أو ليلة الجمعة إلا وقاه الله فتنة القبر [17 ii, H1074].

From ‘Abdallā b. ‘Amr that the messenger said: If a Muslim dies on Friday or the night of Friday, God will protect him from the grave’s suffering.

מת בערב שבת סימן יפה לו.

If one dies on the Sabbath eve, it is a good sign for him (Goldin’s [39] trans., p. 107)

We should notice in this tradition the following:

- a) The parallelism between the Sabbath eve שבת בערב and the night of Friday ليلة الجمعة.
- b) The Arabic tradition is attributed to the prophet on the authority of ‘Abdallāh b. ‘Amr (d.683), who was known for his reading of the *Torah* books<sup>49</sup>, his acquaintance with Ka‘b<sup>50</sup>, his relationship to Ibn ‘Abbās’ circle<sup>51</sup> (i.e. the translation movement) and the distinction between the written and oral (*Mišnah*) *Torah*<sup>52</sup>.

### 3.2.3. Transmitting Themes and the Rabbinic Sequence

The two most important themes of *The Fathers according to Rabbi Nathan* are the number seven and the hermeneutical theme as we shall see, but before displaying them I shall display another one as more evidence to translating *ARNA* and its influence on the Arabic intellectuals.

In *ARNA*, there is a theme in the chapters 1 to 14 about the transition of the *Torah* from Moses to Joshua to the elders to the Judges to the prophets to the men of great assembly to students of the *Torah*<sup>53</sup>, and after chapter 14 we read mainly the sayings of these students. This theme Ka‘b transmitted to his colleague Abw āl-Dardā<sup>54</sup> and the later put it on the tongue of the prophet as ‘...Scholars are heirs of the prophets / إن العلماء لهم ورثة الأنبياء / [8 i, p. 105]. A second variant of this tradition is the first clause of Ānas’ marfw’ report: ‘العلماء أمناء الرسل / Scholars are secretaries of the messengers’ [16 i, p. 219], which we referred to before. However, it should be noted here that in the chain of the transmitters of the first *ḥadyt* there was one of the members of Ibn ‘Abbās’ Jewish tradition, i.e. ‘Atā’ Ibn Aby Muslim āl-Ḳurāsāny (d.752) [*ibid.*]<sup>55</sup>. It should be noted also that Ka‘b was interested<sup>56</sup> in the Qur’ānic verse which talked about bequeathing the book to the worshipers<sup>57</sup>, and his interest is mentioned in the context of his replying to the Rabbis who blamed him for his conversion to Islam. Thus, he was establishing a new generation of scholars by his contribution in ‘Umar’s translation movement, following *ARNA* steps.

In *ARNA* there is a complete chapter (Goldin’s [39] trans. Ch. 37, pp. 152 – 157) about number 7, this I shall call the seven theme. This theme talks about how many things are arranged in seven levels. Thus, ‘there are seven created things;’ ‘seven types of Pharisee;’ seven things God created the world with; ‘seven heavens;’ seven characteristics for the righteous man, clod and wise men... etc..., we find this theme also with Ibn ‘Abbās and his circle. Our claim here is in opposite to Goldfeld’s opinion that the seven theme (especially in exegesis) only founded at the beginning of the second century A.H. [38, p. 20] by Ibn ‘Abbās’ disciples via introducing it on the mouth of Ibn Mas‘wd [*ibid.*, p. 21]. But as I have referred before, we can assume that many of Ibn ‘Abbās’ traditions, not necessarily literally, probably go back to him, and Goldfeld believes in this too [*ibid.*, p. 8]. In addition, we have a tradition (see below) that goes back to Ibn ‘Abbās himself concerning the number seven, therefore why would Ibn ‘Abbās’ disciples fabricate a tradition on the authority of Ibn Mas‘wd while they have already at their disposal a tradition that goes back to their own master? Moreover, we find also the seven theme in ‘Abdallāh b. ‘Amr’s traditions, which means it was so spread in early Islam that we can be sure that it were current due to ‘Umar’s translation movement. However, the tradition which transmits clearly the seven theme is running as follows: On the authority of Sa‘yd b. Jubayr, ‘Umar asked Ibn ‘Abbās, while they were being amongst the immigrants, about determining the time of *laylat āl-Qadr*, then Ibn ‘Abbās replied:

God is an odd number and loves odd numbers, among his creation he has created seven heavens..., and he has created the earth in seven parts, and he has created the days to be seven in number, he has ordered the circling around the Ka'ba to be seven, throwing the stones to be seven, going and coming to Şafā and Marwā to be seven, he has created the human being from seven and, he has made his daily sustenance from seven.

الله وتر يحب الوتر، خلق من خلقه سبع سماوات... وخلق الارض سبعا، وخلق عدة الأيام سبعا وجعل طوافاً بالبيت سبعا، ورمى الجمار سبعا، وبين الصفا والمروة سبعا، وخلق الإنسان من سبع، وجعل رزقه من سبع [61 vi, p. 328].

After this, Ibn 'Abbās is going to interpret some *Qur'ānic* verses according to that [*ibid.*, p. 329]. In the *Musnad* of 'Abdallāh b. 'Amr as transmitted in āl-Ṭabarāny's *Mu'jam* we find much more application for that theme (for example: [18 *xiii*, Ḥ14172; Ḥ14173; Ḥ14195; Ḥ14248; Ḥ14260; Ḥ14299; Ḥ14358]). In some of these traditions, we have to notice the names of Ibn 'Abbās' disciples in the chain of Isnād, such as Ḥ14173; Ḥ14282; Ḥ14299 (Mujāhid), Ḥ14260 ('Atā'), Or the name of the Yemenite Wahb b. Munabbih Ḥ14358354. Other traditions do not contain Ibn 'Abbās disciples' names such as Ḥ14264, this fact confirms the authenticity of all these traditions as an expression of 'Abdallāh b. 'Amr and Ibn 'Abbās' opinion which both of them learnt from *ARNA* against their fabrications by Ibn 'Abbās' disciples as Goldfeld would have claimed.

The third thesis relates to the interpretation and understanding of scripture. However, *ARNA* 'is entirely devoted to the 'Aggadāh' (Goldin's [39] introduction, p. xviii), it is a book in and about interpretation'<sup>58</sup>. By Ka'b's translation of *ARNA*, he also transmitted the importance of interpreting the *Qur'ān*. Therefore, it is not strange to find Ibn 'Abbās' concentration to have been in exegesis, and to have had a great reputation as interpreter to the *Qur'ān* (cf. [29, pp. 129 – 131]). Thus, Muqātil Ibn Sulaymān reports on the authority of Ibn Jubayr that Ibn 'Abbās said 'Learn interpretation (*tā'wyl*) before some people come and interpret it falsely / تعلموا التأويل قبل أن يجي أقوام يتأولونه على غير تأويله [73 *i*, p. 26]. This exegetical attitude was surely a result of the influence of *ARNA* on Ibn 'Abbās because he saw that 'God did not send down a book without his wanting that its interpretation should be known / ما أنزل الله كتاباً إلا أحب أن يعلم تأويله [*ibid.*]. This saying is in harmony with *ARNA* which is an invitation to interpretation. Also we have a fabricated *ḥadyt* on the authority of 'Ikrima that the prophet said 'O God, give Ibn 'Abbās wisdom and teach him interpretation' [61 *vi*, p. 322]<sup>59</sup>. Thus, Ibn 'Abbās interprets Q3:79 'Be Rabbis,' as be 'wise and jurists,' [19 *vi*, 7313], and his disciples kept the same interpretation [*ibid.*, 7306 – 7312] as a continuation for the master's tradition. Ibn 'Abbās also was known as 'the Rabbi of this community / رباني هذه الأمة / [61 *vi*, p. 347]. This identification of interpretation, wisdom and jurisprudence on the one hand, and the interpreter, Rabbi, jurist and scholar on the other hand is a sign of extending the Rabbinic tradition in the Arabic environment by the translation movement and evidence of an oral translation of *ARNA* which bears all these features. This supports my claim that the transition of informal logic to the Arabs was through *ARNA*, especially if we recognized that *ARNA* puts down the rules of interpretation of Scripture in ch. 37, and connects them with the number seven which also was adopted by Ibn 'Abbās.

If we have a look at Ibn 'Abbās' method of interpretation we find it in harmony with these rules. In a recent study on the early interpretation of the *Qur'ān*, its author defines the method of Ibn 'Abbās (and others) and his school in interpretation as follows: 'Semantic similarity, that is, synonymy (*āl-'āšbāh*): In this technique, the exegete makes a semantic analogy between two *ayahs* through synonymy that exists between them either at the word level or at the thematic level.' [2, p. 157]. This corresponds to RS: 2, 3, 6. The Method of Ibn 'Abbās contains also 'Explaining the generic by the specific,' [*ibid.*, p. 158]. This corresponds to RS: 4 – 5. But what about RS:1? Here, we have to return to the history of early Islamic law. Ibn 'Abbās was not only interested in the *Qur'ānic* narrative's, but also in legal matters in it [38, pp. 15 – 16] [71, p. 287]. Thus, 'Ibn 'Abbās, encouraged his students, such as Mujāhid and 'Ikrima, to critically debate *Qur'ānic* matters and

provide their exegetical personal opinions, that is, to practise *'ijtihād* and *'istinbāt* in *Qur'ānic* exegesis' [2, p. 148]. This *'ijtihād* (independent reasoning) is nothing other than *Rā'y* (opinion) which prevailed in early Islamic Law [31, pp. 177 – 178]. However, this *Rā'y* contains many kinds of reasoning [*ibid.*, p. 193] including of course the *a fortiori* or RS:1. And according to Bravmann [*ibid.*, pp. 178 – 185] 'Umar I himself was practicing *Rā'y*. This brings us back again to 'Umar's letter where he talks about the likes and similes as mental tools to the judge. Thus, 'Umar I himself (and the earlier judges alongside with him) the sponsor of the translation movement seems to have been influenced by RS<sup>60</sup>.

Accordingly, the Hebrew informal logical tradition was transmitted to the Arabs within their legal activity and hermeneutics or exegesis of the *Qur'ān* through ARNA thanks to 'Umar's translation movement. And the informal logical rules of that tradition continued especially with Ibn 'Abbās' school and his disciples<sup>61</sup> until they were delivered to āl-Šāfi'y who articulated them by the instruments of Aristotele's *On Rhetoric*. In the next section I shall show how this happened.

#### 4. The Influence of the Rabbinic Sequence and of Aristotle's *On Rhetoric* on āl-Šāfi'y

Ibn 'Abbās' tradition (in law and exegesis) was prominent in two centers, Mecca and Yemen. It concentrated on exegesis, law and translation. In Mecca there were 'Atā' Ibn Abw Rabāḥ (d. 733), Mujāhid (d. 722), 'Ikrima (d. 723) and Ibn Abw Mulayka (d. 735) [71, p. 287] and others. In Yemen there were Ṭawws (d.724), Salam āl-Šan'āny (d.770) who were telling on the authority of Ṭawws [61 viii, 2592] and Yuswf Ibn Ya'qwb, [*ibid.*, 2595], Hishām Ibn Yuswf<sup>62</sup> (d. 197) [*ibid.*, 2600] 'Abd āl-Razzāq (d.826) and his father [*ibid.*, 2601]. Also, there were who followed up Ka'b's translations or rather 'Umar's translation movement such as Munabbih's family (Wahb [d. 728]<sup>63</sup>, Hammām (d. 132)<sup>64</sup>, Ma'qil, and 'Umar) [*ibid.*, pp. 103 – 107] and Wahb āl-Zzimāry who 'read the books' [*ibid.*, 2579].

The first center was the place where āl-Šāfi'y studied [34, p. 182] and the other where he worked as an officer (including judgment) [4 i, p. 106] [34, p. 182]. Being in these two centers, which kept the Hebraic informal logic tradition, increases the probability of his being influenced by RS. However, in Mecca Ibn 'Abbās' tradition continued up to Sufyān Ibn 'Uyayna [71, p. 289], āl-Šāfi'y's teacher [37, p. 43] [34, p. 182]. Ibn 'Uyaynah kept 'Umar's tradition in informal logic, he was one of the chain of the transmitters of 'Umar's letter to Abw Mwsā āl-Ash'ary about how an officer should judge [8 i, 535], which has in it RS: 2, 3, 6. Also, he is reported to have said on the authority of 'Ubaydallāh Ibn Abw Yazyd 'whenever Ibn 'Abbās was being asked about something, then if it was in the *Qur'ān* he told it and if it was not but reported from the messenger of God then he told it, and if it was not in the *Qur'ān* and was not reported from the messenger of God he formulated his own judgment based on his own opinion / كان ابن عباس إذا سئل عن الأمر فإن كان في القرآن كان ابن عباس إذا سئل عن الأمر فإن كان في القرآن ولا عن رسول الله اجتهد رأيه [61 vi, pp.33-34]. The last clause in this tradition 'he formulated his own judgment based on his own opinion *lijtahada rā'yuhu*' is nothing but RS: 1-3; 6. Of course Ibn 'Uyayna transmitted also to āl-Šāfi'y the RS: 4-5. But we notice here two things: (a) that āl-Šāfi'y uses the two terms 'general and particular' ('*āmm wa kāṣṣ*) for the RS 4-5 which did not happen in Ibn 'Abbās' tradition and Ka'b's translations, (B) Also he uses the term *qiyās* for RS 1-3; 6. This can be explained as follows:

RS:4-5, was already articulated with Muqātil by giving them their names: 'in the *Qur'ān* there are particular and general / في القرآن خاص وعام [73 i, p. 27]. And we know that āl-Šāfi'y said 'People are dependent on Muqātil in interpretation' [24 iv, p. 173]. This is an indicator about his borrowing Ibn Muqātil's terminology for general and particular.

āl-Šāfi'y studied also at Medina<sup>65</sup> which had a linguistic school influenced by Iraqi schools [89, p. 228] where the term *qiyās* was being used for analogy [95, p. 35]<sup>66</sup>. And we know how āl-Šāfi'y was interested in the linguistic analysis of the *Qur'ān* [*Risāla* K 133-178], and his estimation of āl-Kisā'y (d. 799), one of the champions of grammatical *qiyās*<sup>67</sup>, is well known<sup>68</sup>. Thus, āl-Šāfi'y joint this term for RS: 1-3; 6.

But after his confrontation with Iraqis Jurists<sup>69</sup>, who we do not have any exact formulae for their methods, he felt that he needed to articulate his informal logical techniques (RS: 1-3; 6) which he inherited from Ibn ‘Abbās’ tradition. It seems that he found he could supersede the Iraqis by doing this, thus he says: ‘who has no instrument at his disposal, has no permission to say anything in scholarship / فأما من لا آلة فيه فلا يحل له أن يقول في العلم شيئاً [15 ix, p. 17]. Somehow, when he was in Iraq<sup>70</sup> he had Aristotle’s *On Rhetoric*, which was already translated from Syriac into Arabic, at his disposal<sup>71</sup>. This is what I shall prove now by analyzing his logical passages in his *Risāla* and their counterparts in Aristotle’s *On Rhetoric*. And for the convenience, I shall abbreviate the Arabic translation of Aristotle’s *On Rhetoric* as *TAR*, and when I quote from Badawi’s 1979 edition [28] for this translation I shall abbreviate it as *TAR B*, while quoting from Lyons’ 1982a [65] edition for the same translation will be abbreviated as *TAR L*. Also, I shall abbreviate the translated Aristotle as *TA*.

Along his writings, āl-Šāfi‘y had only five explicit informal logical rules, three of them for the *a fortiori* argument, and the remaining two for analogy<sup>72</sup>.

#### 4.1. āl-Šāfi‘y’s Three Rules of the *a Fortiori*

As we have said above, āl-Šāfi‘y had three rules for the *a fortiori*, these rules are the same as in *TAR*. āl-Šāfi‘y even cites them in the same order as in *TAR*, though he breaks Aristotle’s first rule into two parts (Aristotle has only two rules for the *a fortiori* in his *On Rhetoric*: [24, 1397b12-25]). However, I shall prove that by citing first *TAR*’s rule then citing its counterpart in āl-Šāfi‘y’s *Risāla* showing how the later articulated his rules through *TAR*.

*TAR*’s first rule = The first and second of āl-Šāfi‘y’s rules (the *argumentum a minore ad maius*).

**TAR1.** فإما أن يثبت أنه إن كان الذي هو أقل، كان الذي هو أكثر / [E]ither to demonstrate that if it was the less then it would be the more’ [*TAR B*, p. 155; *TAR L*, p. 149].

āl-Šāfi‘y’s first two rules are as follows:

**Sh1.** فأقوى القياس أن يحرم الله في كتابه أو يحرم رسول الله القليل من الشيء، فيعلم أن قليله إذا حرم كان كثيره. مثل قليله في التحريم أو أكثر، بفضل الكثرة على القلة / The strongest kind of *qiyās* is when God, in his book, or God’s messenger, forbids a little of something, It is understood that since a little of it is forbidden, then a lot of it would be like a little of it in respect of its being forbidden, or even more so, because of a great quantity is better than a lesser one [*Risāla* K: 1483; Lowry’s [64] trans., p. 153, except the underlined clause].

**Sh2.** وكذلك إذا حُمد على يسير من الطاعة، كان ما هو أكثر منها أولى أن يحمد عليه. / Similarly, if it were praiseworthy to be obedient in a small way, then to do so in a greater way would be even more appropriately praise’ [*Risāla* K: 1484; Lowry’s [64] trans. p. 153].

We should here notice the following remarks:

1. āl-Šāfi‘y has retained some of the very words in *TAR*’s text in his wording, i.e. *āqall* and *ākthar* in *TAR* and *katyr*, *ākṭar*, *āl-kaṭra*, *qalyl* and *āl-qilla* in āl-Šāfi‘y’s wording.
2. āl-Šāfi‘y’s second rule (*idā ḥumida ‘alā yasyr...*) is not valid<sup>73</sup>, It is valid only for prohibition. But āl-Šāfi‘y as a faithful follower to *TAR* (as I shall show below) introduced it for both prohibition and permission.
3. In āl-Šāfi‘y’s formulation, there is no mention to subjects and predicates. This is because *TAR* has none of these terms. That means that āl-Šāfi‘y’s source was Aristotle’s *On Rhetoric* not *Topics* as Abdel-Rahman [1] has thought. That also explains why āl-Šāfi‘y did not adopt the subject-predicate scheme.

4. That the mentioned principle of *bi faḍl āl-kaṭra 'alā āl-qilla* is an Aristotelian principle; we have two places in which TA speaks about that principle. In [TAR B, p. 32; TAR L, p. 35] he says: 'إن السعة أفضل من القلة / large amount is better than little one.' Again, in [TAR B, p. 28; TAR L, p. 29] he says: 'لأن الأفضل أعظم من الأخص / because the best is greater than the least.' The synonymy of *āl-āfḍal*, *āl-si'a* and *āl-kaṭra* on the one hand, and the synonymy of *qilla* and *āl-ākāṣṣ* on the other hand can be deduced from a later passage of TAR [TAR B, p. 137; TAR L, p. 133]:

فأما الكبير والصغر في الأمور ومعنى الأكبر والأقل وما هو خسيس البتة، أو كبير أو صغير البتة، فمعلوم مما تقدم من قولنا. فقد بينا في ذكر المشورات عن عظم الخيرات، وعن الأفضل والأخص / Concerning the greatness and smallness in things, the meaning of the greatest and the less, and the least, the very great or the very small, all of these are known from what we said before. When we talked about deliberative advice we explained what is the greatness of the good things, the best and the least.

This is why I evaded Lowry's translation of *bi faḍl āl-kaṭra 'alā āl-qilla* as 'because of the [implied inferential] relationship of the greater to the lesser amount' [64, p.153]. The expression 'the implied inferential relationship' in Lowry's translation is not in *āl-Šāfi'y's* text. It is formal while *āl-Šāfi'y's* principle is rhetorical, religious, ethical and informal as in TAR (we should note here how the Syriac translator translated 'the least' as *āl-ākāṣ* which can mean also the vilest. Thus, there is an ethical connotation in the principle.)<sup>74</sup>

5. However, we find alongside every formulation of this (ethical) principle in TAR a justification for using it from the lesser (good) to the greater (good), thus the full sentence of TAR's first sentence is as follows:

أن السعة أفضل من القلة، لأن منفعتها أعظم، فإن التي تكون كثيراً أعظم من التي قليلاً ما تكون / large amount is better than little one because its benefit is much more, i.e. the more is the better [TAR B, p.32; TAR L, p. 35].

The full second sentence is as follows:

فمن الاضطرار أن تكون استفادة الخيرات خيراً...فإن [وان]<sup>75</sup> يستفيد مكان الخير القليل فائدة كثيرة [كبيرة]... / It necessarily follows that acquisition of the goods is good...and the necessity of acquisition of much good instead of a little one... because the best is greater than the least [TAR B, pp. 27-28; TAR L, p.29].

Thus, each citing of the very principle is supplemented or preceded with justification which could be understood as a a justification for using the *argumentum a minore ad maius* in case of permission, and this is what *āl-Šāfi'y* did as a result of his reading of TAR; he put his invalid second rule of his informal logic immediately after his citing the principle.

6. It is clear now that *āl-Šāfi'y* understood that principle literally, which gave him justification to extend the *argumentum a minore ad maius* to apply on permissions cases too, and in this way he divided TAR.1's rule into two. Of course, if he had read *Topics* he would not have done this. That means more evidence that *āl-Šāfi'y's* source was TAR.

The third rule is the *argumentum a majori ad minus*, and we find it also at the same page in which TA speaks about the more and the less topic. Thus, TA says:

وهذا الموضوع هو أنه إن لم يكن ذلك الأمر للذي هو أحرى أن يكون، فواضح أنه ليس للذي هو أقل أو أنقص، **TAR.2** / This topic is if it was not the case for what is more likely to be, then it is obvious that it cannot be the case for what is less or from what something is missing' [TAR B, p. 155; TAR L, p. 149].

Somewhat later, we read:

فإما أن يُثبت أنه إن كان الذي هو أقل، كان الذي هو أكثر؛ وإما أن يُثبت أنه إن لم يكن كذا فلا كذا، فإنما يثبت واحدة

الأقل هو الذي هو زيادة، فلم الذي هو أقل / either to demonstrate that if it was the less then it would be the more or to demonstrate that if it was not this then it would not be that, by doing so he is demonstrating one of two: either it is, or it is not because whenever what is more was not the case then it would not be what is less.

āl-Šāfi‘y reformulates this rule in a positive formulation. In fact, he gives us a valid converse for the *argumentum a majori ad minus* as follows:

**Sh.3** /Also, if He permitted a large amount of something, then a lesser amount of it would be even more appropriately permissible’ [Risāla K: 1485; Lowry’s [64] trans. P. 153].

As noted above, āl-Šāfi‘y’s converse formulation is valid. And he seems to have preferred the positive mood of the rule for his purposes.

#### 4.2. āl-Šāfi‘y’s Two Rules of Analogy

First of all, Aristotle and TA have two definitions for Analogy or παράδειγμα [TAR B, pp.11; 14-15; TARL, pp. 10, 14]. āl-Šāfi‘y also has two definitions for analogy, thus he says: ‘ وموافقته [القياس] تكون / من وجهين / its conformity [i.e. qiyās/analogy] is to be based on two aspects’ [Risāla K: 123]<sup>76</sup>. And he says in another passage: ‘ والقياس من وجهين / qiyās [analogy] has two aspects’ [Risāla K: 1334]. Also, we can easily recognize that the content of TAR’s two definitions is the same as āl-Šāfi‘y’s two definitions.

TAR introduces the first definition of παράδειγμα as following:

**TAR.3** أما البرهان... فإنه... كالجاء إلى الجزء والشبيه إلى الشبيه إذا كانا جميعاً يمكنان تحت ذلك الجنس بعينه / concerning paradeigma... it is ... like part to part, like similar to similar, on the condition that both of them could be fallen under the very same genus and that not one of them is an example for the other [TAR B, pp. 14-15; TAR L, p. 14].

We should notice here that the word ‘yumkinnān’ can be read as ‘could be’ or ‘to fall under,’ i.e. ‘yakmunnān’. I put both readings in the translation until the text to be understandable. I think that āl-Šāfi‘y also read both readings as it is clear from his wording of this rule below. However, the meaning of TAR’s rule is:

1. παράδειγμα is reasoning from part to part, and from like to like.
2. This happens when (a) The similar things *could be* fallen under the same genus or meaning, and (b) there is obscurity about their similarity.

Accordingly; we have āl-Šāfi‘y’s definition of analogy which is dependent on the TAR as follows:

**Sh.4** وموافقته [القياس] تكون من وجهين: أحدهما: أن يكون الله أو رسوله حرم الشيء منصوصاً أو أحله لمعنى فإذا وجدنا ما في مثل ذلك المعنى فيم لم ينص فيه بعينه كتاب ولا سنة، أحلناه أو حرمانه، لأنه في معنى الحلال أو الحرام / its conformity [i.e. qiyās] is to be based on two aspects: the first of them is that God or His messenger have either forbidden a certain thing by a text or permitted it by a meaning. If we find such a meaning in something neither the book nor a sunna has a text about it itself, then we shall permit or prohibit it, because it is in such a meaning of permission or prohibition [Risāla K: 123-24].

Khadurri [62, p. 79] and Lowry [64, pp. 149-50] translated the word *ma'nā* as reason. But this misses the point. Firstly, the exact English equivalent of the word *ma'nā* is meaning not reason. Secondly, *āl-Šāfi'y*'s intention is to search for a meaning not a reason, this is clear from the adjective 'such' in 'if we find such.' Thirdly, if we agreed that he was indirectly influenced by *RS*, it would naturally be that he intended a meaning not a reason. That is because *RS:3* is related to searching for genus, a common meaning, or *binyan av* (establishing a principle) which is equivalent to the Arabic *binā' aṣl*. *āl-Šāfi'y* himself used the word 'أصل / principle or element' in another wording for his rule: 'والقياس من وجهين: أحدهما أن يكون الشيء في معنى الأصل' [Risāla K: 1334].<sup>77</sup>

W. Hallaq [45] considered this rule as *ratio legis*, i.e. 'If the new case has the same *ratio legis* (*ma'nā*, lit. meaning) as that given to the parallel textual case, the ruling in the text must be transferred to the new case' [*ibid.*, p.23]. Therefore, a jurist has to search for 'the 'purpose of a statute' [99, p. 310] according to the *ratio legis*. But *āl-Šāfi'y* did not mean that<sup>78</sup>, what he meant is that searching for a meaning covers both the known and the unknown cases. What confirms this is the example which *āl-Šāfi'y* gives for his **Sh.4**:

since the child is [an issue] of the father, he [the father] is under an obligation to provide for the child's support while [the child] is unable to do that for himself. So I hold by analogical deduction when the father becomes *incapable of providing for himself* by his earnings-or from what he owns-then it is an obligation on his children to support him by paying for his expenses and clothing. Since the child is from the father, he [the child] should not cause him from whom he comes to lose anything, just as the child should not lose anything belonging to his children, because the child is from the father. So the forefathers, even if they are distant, and the children, even if they are remote descendants, *fall into this category* [*Risāla M*, p. 310. My italics].

Here what *āl-Shafi'i* calls '*fall into this category*' is nothing but the meaning, not the purpose, of '*incapability of providing for himself*' which both the father and the child *fall under it*. Thus, *āl-Šāfi'y* is building a principle or genus or *binyan av*.

The other *TAR* definition of παράδειγμα is as follows:

**TAR.4.** 'فالنحو الذي يكون بإثبات أن هذا في شئين متشابهين... هو... برهان' / The way of demonstrating that this is in two like things is paradeigma' [*TAR B*, p. 11; *TAR L*, p. 10].

With the helping of the auxiliary 'could' of the first definition (as a result of *āl-Šāfi'y*'s reading of *يمكنان*), which means that a thing may have many likes, *āl-Šāfi'y* gives his other definition.

**Sh. 5.** أو نجد الشيء يشبه الشيء منه والشيء من غيره، ولانجد شيئاً أقرب به شبيهاً من أحدهما، فلنحقه بأولى به / or we find the thing to resemble one thing or another, and if we find nothing closer to it in resemblance than one of them, then we should relate it to the most closer to it in resemblance [*Risāla K*: 125].

We should note here that this definition contains the term *šabah*, which I translated as resemblance and its derivatives, so also *TAR* contains the term *mutashābih*, one of the derivatives of the term *šabah*.

This rule has another variant which connects it with the previous rule. *āl-Šāfi'y* says that the resemblance between two things is at the surface [*Risāla K*: 118; 119; 125], but in his variant rule he introduces the resemblance as if it is in meaning. Thus, he says about resolving contradictory analogies:

بأن تنظر إلى النازلة، فإن كانت تشبه أحد الأصلين في معنى والآخر في اثنين، صرفت إلى الذي أشبهته في

دون الذى أشبهته فى واحد / you have to look at the case, if it resembles one of the two known cases in a meaning but resembles the other known in two meanings, then you should relate it to the one which resembles it in two meanings not the one which it resembles in one meaning [15 ix, p. 80].

Lowry considered this as a confusion between **Sh. 4** and **Sh.5** [64, p. 151, n. 134]. But it seems to be a result of the influence of *TAR* and *RS:2-3* on *āl-Šāfi'y*.

Also, our previous critique of Hallaq's reading to **Sh.4** applies on his reading to **Sh.5** where he considers **Sh.5** as argument of *a similitude* [46, p. 23], but the *argumentum of a similitude* is 'concerning the purposes of the 'lawgiver'' [99, p. 313] while *āl-Šāfi'y*'s intention is meaning<sup>79</sup>.

## 5. *āl-Šāfi'y*'s Argumentative Rationality

Even if we accept the above reconstruction, there might still be doubts concerning the influence of *TAR* upon *āl-Šāfi'y*'s logic. One might argue that the resemblance of words and the logical structure of the rules do not provide inclusive evidence. However, *āl-Šāfi'y* did not only articulate *RS* by *TAR* but he even borrowed from the later a theory of argumentative rationality. To prove this, I shall first reconstruct *TA*'s theory of argumentative rationality in *TAR*, and after this I shall reconstruct *āl-Šāfi'y*'s theory.

### 5.1. *The Theory of Argumentative Rationality in the Arabic Translation of Aristotle's On Rhetoric*

According to *TA* humans have several modes of speech. These modes lead to truthfulness or *āl-taṣḍīq*, or as *TA* says: 'فكل الناس...يستعملون الفحص وتقليد الكلام والاعتداد [الاعتذار] والشكايه فيصدقون' / All humans are using investigation, speak according to habit, trust [apology], and complaint to consider truthful' [*TRA B*, p. 4; *TRA L*, p. 1]. Also, there are two kinds of art and therefore truthfulness or *āl-taṣḍīq*<sup>80</sup> in respect of their aim; the aim of the first one is that 'إذا المتكلم تكلم [بغير العدل] أن ننقض عليه' / if the speaker spoke [without justice], then we would refute him' [*TAR B*, p. 8; *TAR L*, p. 6]. The art which deals with this kind of truthfulness is dialectics or *āl-dyalīqṭya* [*ibid.*]. Thus, this art has dialectical truthfulness. The other aim is 'أن تعرف المقنعات فى كل أمر من الأمور' / to recognize the persuasive things in every matter' [*TAR B*, p. 8; *TAR L*, p. 6]. The art which deals with this kind of truthfulness is Rhetoric or *āl-rūṭūrīa* [*ibid.*]. Thus, this art has rhetorical or persuasive truthfulness. This last kind of truthfulness is divided into two types: the first one is artificial and the other is non-artificial, 'فأما التصديقات فمنها بصناعة ومنها بغير صناعة' / the truthful things are either artificial or non-artificial' [*TAR B*, p. 9; *TAR L*, p. 7]. The non-artificial truthful things are 'ليست تكون بحيلة منا' / without our interference' [*TAR B*, p. 9; *TAR L*, p. 7]. *TA* defines five kinds of the non-artificial things; these are 'السنن، والشهود، والعقد، والعذاب، والأيمان' / *Sunan* (customs or laws), testimony, contract, punishment and oaths' [*TAR B*, p. 71; *TAR L*, p. 73].

Artificial truthfulness may be reached by demonstration: 'والتصديق إنما يكون بالثبوت' / And truthfulness have to be by demonstration' [*TAR B*, p. 6; *TAR L*, p.4]<sup>81</sup>. There are two kinds of demonstration in every Art, in dialectics there are consideration or '*i'tibār*'<sup>82</sup> and *saljasa*<sup>83</sup>; their counterparts in rhetoric are proof or *paradeigma* or *burhān*<sup>84</sup> and thinking or *tafkyr*<sup>85</sup> respectively.

In addition to the two kinds of demonstration there are also pseudo-consideration and pseudo *saljasa* in dialectics, pseudo-proof and pseudo-thinking in rhetoric<sup>86</sup>. Most rhetorical demonstrations are proofs, but the most powerful are thinkings or *tafkyrāt*<sup>87</sup>. The premises of thinking are either truths or signs<sup>88</sup>, and the latter is either mappings or signs<sup>89</sup>. We should note here the following: (1) the obscurity of *TA* about *Analytcs*, (2) that Aristotle's Theory of argumentative rationality has been modified.

Concerning the first point, the (ancient) reader of *TAR* either believes (a) that there is nothing new in *Analytcs*, or (b) he may understand that *On Rhetoric* contains *Analytcs*.

Concerning (a); *TA* says after talking about the ways of demonstration in dialectics and rhetoric ‘وهذا بين واضح فى كتاب أنولوطيقى / this is obvious and clear in the *Analytics*’ [TAR B, p. 11; TAR L, p.10] without any more clarification. And he says after talking about the first kind of the rhetorical premises, i.e. ‘the truths or the necessities,’ ‘وهذا بين واضح فى / فأمّا الاضطرابية فمن الاضطرابات، وهذا بين واضح فى / كتاب أنولوطيقى / The necessary premise is from the necessities, and this obvious and clear in *Analytics*’ [TAR B, p. 13; TAR L, p. 12] without any more clarification too. Again, after talking about the true, mapping (*rāsīm*) and sign, he says ‘/ أما كنه البيان وحقيقته ففى أنولوطيقى / but the essence of the account and its truth is in *Analytics*’ [TAR B, p.14; TAR L, pp. 13 – 14]. This clause does not mean that there would be something different in *Analytics*, this is because before it directly *TA* said that he had showed the differences between them, thus he says: ‘/ أما ما الصادق، وما الرواسم، وما الدلالة، وما / concerning What are the true, mapping (*rāsīm*), and sign, and what is the difference between them, we have clarified this here too’ [TAR B, p.14; TAR L, p.13]. Even after his saying ‘but the essence... etc.,’ he tells us about this essence, thus he continues

/ وأخبرنا أن من هذه أيضاً ما هو لعة من العلل، غير ذى سلوجسموس، ومنها ما هو مسلجس، وحددنا ذلك وبيناه / And we said that there are also, for a cause among many causes, amongst those; what is not syllogistic and what is syllogistic, and we defined that and made it clear [TAR B, p. 14; TAR L, p. 14]<sup>90</sup>.

*TA* already spoke about non-syllogistic mappings (*rawāsīm*)<sup>91</sup>. Moreover, he talks about the cause of the non-syllogistic when he talks about false signs:

ونحو آخر من قبل العلامة، فإن هذا أيضاً بلا سلجسة... إن قال قائل إن ديانوسوس <كان لصاً> لأنه شرير؛ فهذا / and there is another topic from sign; this is not syllogism either...if one said that Dionysus <was a thief> because he was wicked, then this would not be syllogism because not every wicked man is a thief, while every thief is a wicked man><sup>92</sup>.

Moreover, the reader who is interested in *On Rhetoric*, like *āl-Šāfi’y*, will not be interested to go back to *Analytics*, because syllogism is specific to dialectics not rhetoric.

Concerning (b); *TA* says ‘أعنى قولنا إن الريطورية مركبة من العلم الأنالوطيقى ومن الفوليطية التى فى الأخلاق / I mean our saying that rhetoric is composed of analytics and politics which is a part of ethics’ [TAR B, p. 19; TAR L, p. 19].

Concerning the second point, i.e. the modification of Aristotle’s Theory of argumentative rationality, this happened as follows: first, in *TAR* there are only two kinds of syllogisms (or *saljasa*) not three<sup>93</sup>, i.e. dialectical and rhetorical. Over all *TAR* there is no mention of analytical syllogisms, only the dialectical and rhetorical ones. Moreover, *TA* was always connecting the two later ones so that he gives the impression that there is no a third one<sup>94</sup>. This is being entrenched in the (ancient) reader’s mind by the obscurity of *TA*’s hints to *Analytics* already mentioned. Accordingly, there are only two types of argumentative rationality, i.e. dialectical and rhetorical (and the last one leads to truthfulness). Second, the concept of demonstration became very different from Aristotle’s<sup>95</sup>. It is now aiming to persuasion<sup>96</sup> without qualification, i.e. ‘/ والتصديق إنما يكون بالتثبيت / the truthfulness has to be by demonstration.’ Thus, in *TAR* there is no room for scientific deduction, there is only demonstration aiming at truthfulness. If the aim of the truthfulness, on the one hand, is refutation then the demonstration will be dialectical, and if the aim, on the other hand, is persuasive then the demonstration will be rhetorical. Rhetorical demonstration is of two kinds: (1) analogy or proof, and (2) syllogism or *saljasa* or thinking or the *a fortiori*. Third, the structure and meaning of syllogism has changed. In *TAR* the only passage about the nature of syllogism is very obscure and does not explain its very essence:

والنحو الذى يكون بأن يكون شىء موضوع يحدث من أجل شىء آخر سوى ذلك الموضوع بذلك الموضوع نفسه: / and the way which being that something posited

happens because of another thing other than that posited thing but by that very posited thing, either universally or all the more is syllogism there [TAR B, p. 11; TAR L, p.10]<sup>97</sup>.

Thus, in *TAR* there is no mention of the major, middle and minor terms, therefore syllogism in *TAR* is just reasoning.

## 5.2. *āl-Šāfi‘y’s Theory of Argumentative Rationality*

I shall try now to reconstruct *āl-Šāfi‘y’s* theory of argumentative rationality showing how he followed *TA*.

### 5.2.1. *The General Framework*

First of all, *āl-Šāfi‘y*, like *TA*, recognizes two kinds of argumentation. The first kind, like *TAR*, is dialectics or *āl-jadal* or *āl-kalām* which he rejects (there is no dialectics in *TAR*) because ‘لو علم الناس / ما في الكلام في الأهواء، لفروا منه / if people know what inclination is in *Kalām*, then they will escape from it’ [57, 203]. This underestimation stems from *TAR’s* description of dialectics goal as just attacking [TAR B, p.8; TAR L, p.6] and that in dialectics we are pronouncing what we wanted and are inclined to ‘بما شئنا وهوينا’ [TAR L, p.11]. In this last clause we have the verb *hawā*, while in *āl-Šāfi‘y’s* we have its nominal plural *āhwā*. On the other hand, there is rhetorical argumentation or what *āl-Šāfi‘y* calls *bayān* or perspicuous declaration as M. Khadduri translates it<sup>98</sup>. This *bayān*, in addition to its being God and his messenger’s way of argumentation<sup>99</sup>, is also the way of muftis and judges for knowing what shall be acted if God and his messenger did not say anything about some case<sup>100</sup>, and that is by reasoning or *‘istidlāl* [Risāla K: 70]. This reasoning is nothing but rhetorical *qiyās* [Risāla K: 121], which even God uses it in his argumentation<sup>101</sup>. Thus, *āl-Šāfi‘y* borrows *TAR’s* general framework for argumentation.

To *āl-Šāfi‘y* the first task for a *muftahid* or a jurist is to judge; ‘فاعلم أن للحاكم الاجتهاد، والمفتيين في / فاعلم أن للحاكم الاجتهاد، والمفتيين في / know that *‘ijtihād* is to judge, and muftis in the position of judging’ [15 viii, p. 73]. This judgment is the equivalent of *TA’s* ‘truthfulness or *āl-tašdyq*’. Also, like *TAR*, there is no truthfulness without demonstration or *taṭbyṭ*. Judges and muftis have to demonstrate their judgment. *āl-Šāfi‘y* is using here the same term and its derivatives in *TAR* for demonstration, i.e. *yuṭbit*, *‘iṭbāt*, *taṭbyṭ* and *taṭabbūt*. Thus, he says

أمر رسول الله في الحكم خاصة ألا يحكم الحاكم وهو غضبان؛ لأن الغضبان مخوف على أمرين: أحدهما قلة التثبيت / the messenger of God commanded with respect to the judgment especially that no judge should give judgment while angry, because the angry man may fall in two faults; one of them is lack of demonstration... [15 viii, p. 211]<sup>102</sup>.

*āl-Šāfi‘y* is even using that term (*taṭbyṭ*) for demonstrating the prophet’s sayings or *ḥadyṭ*. Thus, he says: ‘تفرق أهل الكلام في تثبيت الخبر عن رسول الله / تفرق أهل الكلام في تثبيت الخبر عن رسول الله’ [15 ix, p. 5]<sup>103</sup>. And he is also using the same term for demonstrating the sayings of the companions or *Ṣaḥabā*:

وذكر له رجل يوماً مسألة، فأجاب فيها، فقال له: ‘خالفت على بن أبي طالب، فقال له: ‘ثبت لي هذا عن علي بن / someone asked him someday a question, and he replied, then that man told him ‘you disagreed with ‘Aly Ibn Abw Ṭālib’, then he said to him demonstrate this to me from ‘Aly Ibn Abw Ṭālib’... [54 iii, p. 38].

### 5.2.2. *The Ways of Demonstration*

Following *TA* in saying that there is artificial and non-artificial truthfulness, *āl-Šāfi‘y* defines (a) the latter as only the book and *sunan* / سنن , while he defines (b) the former as only analogy or the *a*

*fortiori* which (c) has reasoning by sign as a sub-category. This schema is matching with *TAR* as I shall show below.

#### 5.2.2.1. 'Uswl/Elements (Sunan Theory)

*TA* divides customs or 'sunan' into two kinds, i.e. general and particular<sup>104</sup>. The particular one is specific for one man, while the general is absolute<sup>105</sup>. Both of them are binding for people<sup>106</sup>. The general *sunna* cannot be modified or changed, because 'ليست تكون بحيلة منا لكن بأمر متقدمة' / we are not interfere in it because it is a priori' [*TAR* B, p. 9; *TAR* L, p.7] as *TA* says about non-artificial truthfulness. If the particular *sunna* contradicts with the general one, people have to obey to the general one<sup>107</sup>, therefore the general *sunna* is working as duty, while the particular one is working like *derivative duty*. In addition, the one who writes down *sunan* has to be a wise man, thus *TA* says: 'وينبغي أن يكون في السنة وأفعال السنة حكيماً ما هو أحداً، أعني أنه قد يرذل من لم يكن حكيماً في السنن المحمودة' / it should be in *sunna* and its actions some wise man who is unique, I mean that he who is not wise in the praised *sunan*, may be getting bad'<sup>108</sup>.

Following *TA* āl-Šāfi'y calls both of *TA*'s *sunan* 'usūl / elements'<sup>109</sup>, because they are non-artificial according *TAR*. These *usūl / elements*, as *TA* did, āl-Šāfi'y divides into two: the *Qur'ān* (the general *sunna*), and the messenger's *sunna* (the particular *sunna*)<sup>110</sup>. Thus, he says

لم أعلم مخالفاً في أن من مضى من سلفنا والقرون بعدهم إلى يوم كنا قد حكم حاكمهم وأفتى مفتيهم في أمور ليس  
 I did not know about anyone who objected that the people, who  
 preceded us and their successors up to our day, had a judge who has judged and a mufti  
 who has issued a fatwa in things had had not a book or a *sunna* [15 ix, p. 19].

This sentence proves that āl-Šāfi'y read Aristotle and how he read him.

Before leaving this subsection I must refer to two remarks: the first one is related to the concept of *sunna* in āl-Šāfi'y's works which matches with *TA*'s concept and attests my reconstruction. It is known that the concept of *sunna*, in its early developing phase 'as the traditional usage of the community' [82, p. 3; (cf. also, [23, p. 28]) up to āl-Šāfi'y's time when, with him, it became to signify mainly to 'the model behavior of the prophet' [82, p.2], was including the customs, practices, sayings...etc. of the messenger<sup>111</sup>. But there is also another meaning of āl-Šāfi'y's usage; that is *sunna* as a law or a legal rule. Thus, he says explaining one of the meanings of *bayān*: 'ما سن رسول الله مما ليس الله فيه نص محكم' / what the messenger of God legitimated / *sann* in what God has no a concise text' [Risāla K: 85; also 96; 292; 301 – 302]. Here, āl-Šāfi'y is using the verb 'sann' in the meaning of legitimating a law or a legal rule. This usage of 'sunna' is matching *TA*'s meaning where the Syriac translator of Aristotle's *On Rhetoric* rendered νομός (law) as *sunna* (compare [64, p. 102]).

The second remark is related to āl-Šāfi'y's insistence on the wisdom or *ḥikma* of the prophet<sup>112</sup>. As Lowry noticed, 'Shāfi'ī offers several arguments in support of the authority of Muḥammad's *Sunna*, all of which depend on passages in the *Qur'ān*. ... The second concerns a number of passages in the *Qur'ān* in which the word *ḥikma*, 'wisdom,' is paired with the phrase 'God's Book' or an equivalent. In these passages, Shāfi'ī tells us, *Ḥikma* means 'Sunna,' so that the passages may all be understood to refer to the complementary pair of the *Qur'ān* and the *Sunna* [64, p. 170]. But Lowry believed that this equivalence between *Sunna* and *Ḥikma* is a result to āl-Šāfi'y's inventiveness [*ibid.*, p. 186], and his using to a primitive Basran concept of equivalence between *Sunna* and *Ḥikma* [*ibid.*, pp. 184-85]. But if my reconstruction is right, it will be more reasonable to believe that āl-Šāfi'y paired *ḥikma* with *sunna* because *TAR* insists on the necessity of the giver of *sunna* being a wise man.

The real inventiveness of āl-Šāfi'y lies not in his usage of the primitive Basran concepts of *ḥikma*, but in (a) using this primitive equivalence for convincing scholars of his own time with his borrowed theory, and in (b) his considering that *sunna* is commanded in the *Qur'ān* itself [Risāla K: 244], thus he connected what *TA* left unconnected, and by doing so he (c) escaped from the

possibility that there could be a contradiction between the general *sunna* and the particular one; between the *Qur'ān* and the messenger's *sunna*, in case of the validity of *sunna*.

Accordingly; we do not need to J. Wegner's hypothesis of the borrowing of the concept of *ḥikma* from the Rabbinic literature [97, pp. 52 – 53], especially as Lowry has shown that the opposite is correct, namely that the *Ge'onic* literature borrowed this concept from Islamic literature [64, pp. 185 – 186].

#### 5.2.2.2. The Artificial Demonstrating (*qiyās*)

As I have shown before, *āl-Šāfi'y* considered *qiyās* to consist of two main mental activities, i.e. analogy and the *a fortiori*. By doing so he is following TA's argumentative rationality concerning the types of argumentation in rhetoric. TA considered that all artificial demonstrating is either by *paradeigma*/proof (analogy) or *enthymeme*/thinking, thus he says: 'فقد يفعلون التصديقات كلها بالثبیت، وذلك / they can fulfill all truthfulness by demonstration, and this is either by bringing proof/*paradeigma* or by thinking/*enthymeme*, there is nothing more than these two' [TAR B, p. 11; TAR L, pp. 9 – 10].

Similarly, *āl-Šāfi'y* paired '*ijtihād* with *qiyās*, 'هما اسمان لمعنى واحد' / they are two names but have the same meaning' [Risāla K: 1324]. '*Ijtihād* is a mental activity special to human beings, 'another one of it [*bayān*] consists of what God commanded His creatures to seek through '*ijtihād* (personal reasoning)' [Risāla K: 59; Risāla M: 68]. This consideration of '*ijtihād* as mental activity goes back to TA's saying that 'وأما اللاتى بالصناعة فما أمكن / concerning those [truthful speech] which are artificial they are what can be prepared and demonstrated by trick and by ourselves as they should be' (TAR B, p. 9). Of course the term '*ijtihād*' had a history before *āl-Šāfi'y*<sup>113</sup>, but *āl-Šāfi'y*'s inventiveness lies in his integration of that history with TAR's theory of argumentative rationality especially as the translator of TAR rendered *enthymeme* as thinking/*تفكير*/*fikr*, and we know how the meaning of *fikr*, '*ijtihād* and *rā'y* are so interrelated to.

My reconstruction can answer some puzzling questions about *āl-Šāfi'y*'s rationality. The first question is relating to *āl-Šāfi'y*'s argumentative rationality: Why did *āl-Šāfi'y* consider the *a fortiori* to be stronger than analogy?<sup>114</sup> This question can be answered easily by citing some texts from TAR which confirm superiority of the *a fortiori* or thinking over analogy or proof. Thus, TA says: 'التثبیت الريطورى هو التفكير، لان هذا فى الجملة هو الأصل المتقدم للتصديقات' / the rhetorical demonstration is thinking, because it is in the main the prior principle of truthfulness' [TAR B, pp. 6 – 7; TAR L, p. 4]. Also: 'عمود التصديق / thinkings/*enthymemes* (which) are the pillar of truthfulness' [TAR B, p.4; TAR L, p.1]. Also,

فقد ينبغى أن نستعمل البرهانات فى التثبیت إذا لم يكن الكلام موضع تفكير [فى التثبیت إذا لم يكن فى الكلام موضع تفكير]، فإنه بهذه يكون التصديق / we should use proofs/analogy in demonstration if the speech was not thinking/*enthymeme*[in demonstration if there were not thinking in speech], because truthfulness is by this (thinking) [TAR B, p.141; TAR L, p.136].

The second question is relating to the relationship between *āl-Šāfi'y*'s argumentative rationality and TA's: why did *āl-Šāfi'y* choose only the *a fortiori* argument from all the kinds of *enthymemes* topics which TA offered? This is for two reasons. Firstly, the Jewish or Hebrew rules of hermeneutics did not recognize any *enthymemic* rules except the *a fortiori*, and *āl-Šāfi'y* was a follower of the RS without following their contents as we have shown before. Secondly, the mistranslation of Aristotle's *On Rhetoric* or TAR. This mistranslation identified the *a fortiori* and the most part premises, and by doing so made the *a fortiori* the most important topic of *enthymeme*. This happened in two passages<sup>115</sup> Aristotle was talking in both of them about the most part premises but the translation rendered them as if Aristotle were talking about the *a fortiori* (and sign) as the most important *enthymemic* topic. I shall discuss here the first passage which was quoted before. In this passage [24, 1356b 15-16], Aristotle talks about how (dialectical) syllogism is the counterpart to

enthymeme, but the translation identifies enthymeme and the *a fortiori* as follows:

والنحو الذى يكون بأن يكون شيء موضوع يحدث من أجله شيء آخر سوى ذلك الموضوع بذلك الموضوع نفسه:  
/ and the way which being that something posited happens because of another thing other than that posited thing but by that very posited thing, either universally or all the more is syllogism there and called thinking here [TAR B, p.11; TAR L, p.10].

If you do not already know what Aristotle means by ‘the most part,’ and of course you do not know in case you read only *TAR*, you will identify it as ‘all the more’, and that is what *āl-Šāfi’y* did. Thus, the topic of the *a fortiori* (and its supplements as we shall see in the next subsection when we shall analyze *āl-Šāfi’y*’s concept of sign) became thinking/enthymeme itself, therefore there were no need for the other topics of enthymeme.

### 5.2.2.3. The Premises of Demonstration and Inference by Sign

In fact, *āl-Šāfi’y* did not borrow only the ‘more and the less’ topic from *TAR*, but he also borrowed ‘sign’ topic<sup>116</sup>. This becomes because *TA*’s talking about the sign relates it to ‘the more and less’ topic. In the previous subsection I have analyzed two mistranslated passages which made Aristotle talks about ‘the more’ topic instead ‘the premises of the most part’. In the Greek original text Aristotle says: ‘it is evident that [the premises] from which enthymemes are spoken are sometimes necessarily true but mostly true [only] for the most part’ [24, 1357a 31-33]. While *TA* says: ‘فهو معلوم / الآن أن من هذه التي تسمى تفكيرات ما هو اضطرارى، فإن كثيراً منها مما يوجد بالأكثر / it is known now that from these which called *thinkings* there is what is necessary, and many of them [i.e. *thinkings*] exist as all the more’ [TAR B, pp.13-14; TAR L, p.12]. After that Aristotle talks immediately about the premises of enthymeme and how they should be either probabilities or signs, but the translator(s) of *On Rhetoric* changed the meaning and made the premises of enthymeme or *āl-tafkyrāt* being the true propositions or *āl-ṣadiqāt* and signs or *āl-dalāl*. This is very interesting because making the premises of enthymeme/*āl-tafkyrāt* as the true propositions gave *āl-Šāfi’y* the justification for considering them as God’s duties. On the other hand, *TA*’s consideration signs/الدلائل as another category of enthymemes or *āl-tafkyrāt* was adopted by *āl-Šāfi’y*. He even borrowed the term *dalyl* (sign) for describing this kind of inference: ‘ومعنى هذا الباب معنى القياس، لأنه يطلب فيه الدليل على صواب القبلة’ / the meaning of this subject is the same as the meaning of *qiyās*, because in it *a sign* is sought for the right direction in prayer’ [Risāla K:121]. He also defines *qiyās* as sign (*dalāla*): ‘القياس ما طلب / بالذلائل / *qiyās* is what was sought by signs’ [Risāla K: 122]. *āl-Šāfi’y* tries to justify *ijtihād* and *qiyās* through finding a justification of inferring by sign from within the *Qur’ān*. Thus, after quoting Q:16-16 he says:

فخلق لهم العلامات، ونصب لهم المسجد الحرام، وأمرهم أن يتوجهوا إليه، وإنما توجههم إليه بالعلامات التي خلق  
/ Thus [God] has created signs / لهم، والعقول التي ركبها فيهم، التي استدلوا بها على معرفة العلامات  
(‘*alāmāt*) [for men to be guided by] and erected the sacred Mosque and ordered them to turn their faces towards it [in prayer]. Their turning in that direction [is determined] by the signs He created for them and by reason which He has implanted in them and by which they are guided to recognize the signs [Risāla K:114].

## 6. Conclusion

In this paper, I have tried to outline a history of the development of informal logic at the Arabic and Islamic culture as it appeared in the first definite formulations for its rules in *āl-Šāfi’y*’s *Risāla*. I have followed this development in the fields of law, exegesis and rhetoric. Contrary to J. Schacht and others, I have argued that, there was no influence on the informal logic of the Arabs by the rhetorical Hellenistic schools of Mesopotamia, or by the Jews of Iraq<sup>117</sup>. The main influence was

from the Rabbis of Yemen who translated *orally the Fathers to Rabbi Nathan* which contained Jewish or Hebrew informal logic rules. This could not have happened without a translation movement which I have called ‘Umar’s translation movement. This is contrary to D. Gutas’ [42] hypothesis that the translations into Arabic before Abbasid times’ were mainly administrative or for communicative purposes. There was indeed a disciplined translation movement before the Abbasid’s. However, the Jewish or Hebrew informal logic spread amongst the scholars of exegesis and law especially in the school of Ibn ‘Abbās (the secretary of the first disciplined movement translation) from which āl-Šāfi‘y learnt these rules. āl-Šāfi‘y also coined the term *qiyās*, which was current in Medina’s linguistic school, to include the *a fortiori* and analogy. Having been confronted with Iraqi scholars, he articulated the Hebrew logic by Aristotle’s *On Rhetoric* from which he borrowed his argumentative rationality. In doing so he returned to the founder of informal logic unlike the Rabbis who learnt informal logic from the Hellenistic rhetorical schools<sup>118</sup>. Accordingly, āl-Šāfi‘y developed the Semitic informal logic even though he partly misunderstood Aristotle because of the mistranslation into Arabic of the latter’s *On Rhetoric*. Thus, my paper brings us to further researches. Firstly, analyzing āl-Šāfi‘y’s informal logic formally and comparing it with its Hebraic counterpart syntactically and semantically. Secondly, tracing ‘Umar’s translation movement, especially that ‘Uṭmān Ibn ‘Affān (d. 35/656) the third caliph permitted Tamym āl-Dāry to continue story telling<sup>119</sup> (translation), and Ka‘b established a new generation of translators, i.e. his sons<sup>120</sup>. And if we can trace this movement, then we may solve partly the methodological problem in Arabic and Islamic scholarship concerning the authenticity of *Hadyt* and the sayings of the companions and the successors. Thirdly, because of the influence of Aristotle on *‘uswl āl-fiqh* as I have proved, there is a need to reexamination of the relationship between *fiqh* or rather *‘uswl āl-fiqh* and rhetoric and philosophy in the Arabic and Islamic systems of knowledge, especially as both Arabic and Islamic philosophy depended on the misunderstanding of Aristotle because of its Arabic translation<sup>121</sup>.

## Acknowledgement

I would like to thank professor Dr. Regula Forster for her helpful notes and critical comments on this paper, and I do not need to say that any mistakes are only mine. Also, I would like to thank Erasmus Mundus foundation for its financial supporting writing this paper.

## References

1. Abdel-Rahman, H. L’argument a maiori et l’argument par analogie dans la logique juridi-que musulmane, *Rivista Internazionale di Filosofia del Diritto*, 98, 1971, pp. 127-148.
2. Abdul-Raof, H. *Schools of Qur’anic Exegesis*, London and New York: Routledge, 2010.
3. āl-Bayhaqy, *āl-Jami‘ li Shu‘ab āl-‘ymān*. Maktabat āl-Rushd: āl-Riyaḍ, 2003.
4. āl-Bayhaqy, *Manāqib āl-Šāfi‘y*. Dār āl-Turāt: Cairo, 1970.
5. āl-Bukāry, *āl-Jāmi‘ āl-Šahyḥ*. Dār Ṭawq āl-Najāḥ: āl-Madyna āl-Munawwara.
6. āl-Hayṭamy, *Kašf āl-Āstār ‘an Zawā‘id āl-Bazzār*. Mw’asasat āl-Risāla: Beirut, 1979.
7. āl-Jahiz, *āl-Bayān wa āl-Tabyyin*. Maktabat āl-ḳānjy: Cairo, seventh edition, 1998.
8. āl-Ḳaṭyb āl-Baḡdādy, *Kitāb āl-Faqyḥ wa āl-Mutafaqqih*. Dār Ibn āl-Jawzy: āl-Riyaḍ, 1996.
9. āl-Ḳaṭyb āl-Baḡdādy, *Tāryḳ Baḡdād*. Dār āl-Ġarb āl-‘Islāmy: Beirut, 2001.
10. āl-Mizzy, *Tahḍyb āl-Kamāl fy Āsmā’ āl-Rijāl*. Mū’asasat āl-Risāla: Beirut, second edition, 1983.
11. Alnashar, A. S. *Manāhij āl-Baḥṭ ‘ind Mufakkiry āl-‘Islām*. Dār āl-Nahḍa āl-‘Arabya: Cairo, 1984.
12. āl-Rāzy, *Kitāb āl-Jurḥ wa āl-Ta’dyl*. Dār āl-Kutub āl-‘Ilmya: Beirut, 1953.
13. āl-Šan‘āny, *āl-Tanwyr Šarḥ āl-Jami‘ āl-Šaḡyr*. Dār āl-Salām: āl-Riyaḍ, 2011.

14. āl-Šāfi'y, *Risāla*. Maktabat Muṣṭafā āl-Ḥalaby: Cairo, second edition, 1983.
15. āl-Šāfi'y, *Umm*. Dār āl-Wafā' lil Ṭibā'a wa āl-Našr: āl-Manswra, 2001.
16. āl-Suywty, *āl-Lā'ly' āl-Maṣnw'a fy āl-Āḥādyyt āl-Mawḍw'a*. Dār āl-Ma'rifa: Beirut, 1975.
17. āl-Tirmidy, *āl-Jāmi' āl-Kabyr*. Dār āl-Ġarb āl-'Islāmī: Beirut, 1996.
18. āl-Ṭabarāny, *āl-Mu'jam āl-Kabyr*. Maktabat Ibn Taymya: Cairo, 2015.
19. āl-Ṭabary, *Jāmi' āl-Bayān 'an Tā'wyl āl-Qur'ān*. Maktabat Ibn Taymya: Cairo, 1953.
20. āl-Ṭabary, *Taryk āl-Rusul wa āl-Mlwk*. Dār āl-Ma'ārif, second edition: Cairo, 1967.
21. āl-Ḍahaby, *Myzān āl-'I'tidāl fy Naqd āl-Rijāl*. Dār āl-Ma'rifa: Beirut, 2009.
22. āl-Ḍahaby, *Siyar Ā'lām āl-Nubalā'*. Mw'asasat āl-Risāla: Beirut, eleventh edition, 1996.
23. Ansari, Z. I. Islamic juristic terminology before Šāfi'ī: a semantic analysis with special reference to Kūfa, *Arabica*, vol. 19, Fasc. 3, 1971, pp. 255-300.
24. Aristotle, *On Rhetoric: A Theory of Civic Discourse*, trans. by G. A. Kennedy, Oxford: Oxford University Press, 2007.
25. Aristotle, Topics, In J. Barnes (ed.), *The Complete Works of Aristotle*, trans. by W. A. Pickard-Cambridge, Princeton: Princeton University Press, 1991.
26. *Avoth de Rabbi Nathan*, Edited from Manuscripts with an Introduction, Notes and Appendices by S. Schechter (Hebrew), Vienna, 1887. (Reprint, Hildesheim; New York: G. Olms Verlag, 1979.)
27. Azzan, Y. *Scripture as logos: Rabbi Ishmael and the origins of Midrash*, Philadelphia: Pennsylvania University Press, 2004.
28. Badawi, A. *Aristuṭālīs: āl-Khiṭaba*. Dar āl-Qalam: Beirut, 1979.
29. Berg, H. *The Development of Exegesis in early Islam*, London and New York: Routledge-Curzon, 2000.
30. Biesen, K. D. *Simple and Bold: Ephrem's Art of Symbolic Thought*, New Jersey: Gorgias Press, 2006.
31. Bravmann, M. M. *The Spiritual Background of Early Islam*, Leiden: Brill, 1972.
32. Brock, S. P. *A Brief Outline of Syriac Literature*, India: Deepka Offset Printers, 1997.
33. Cadler, N. Ikhtilāf and Ijmā' in Shāfi'ī's Risāla, *Studia Islamica*, 58, 1983, pp. 55-81.
34. Chaumont, E. ĀL-ŠHĀFI'Ī, In C. E. Bosworth, E. van Donzel, W. P. Heinrichs and G. Lecomte (eds.), *The Encyclopaedia of Islam*, 85, Leiden: Brill, 1997, pp.181-85.
35. Coulson, N. J. *A History of Islamic Law*, Edinburgh: The University Press, 1964.
36. Danish Pazuh, M.N.T. *Mantiq Ibn āl-Muqaffa'*. Anjuman-i Shahanshahi Falsafah-i Tihiran, Tehran 1978.
37. Faḳr āl-Dyn āl-Rāzy, *Manāqib āl-'Imām āl-Šāfi'y*. Maktabat āl-Kwliyāt āl-Āzhariya: Cairo, 1986.
38. Goldfeld, Y. The Development of Theory on Qur'ānic Exegesis in Islamic Scholarship, *Studia Islamica*, 67, 1988, pp. 5-37.
39. Goldin, J. *The Fathers according to Rabbi Nathan*, New Heaven: Yale University Press, 1955.
40. Goldziher, I. *Introduction to Islamic Theology and Law*, trans. by A. and R. Hamori, Princeton: Princeton University Press, 1910/1981.
41. Goldziher, I. *The Zāhirīs*, trans. and edited by W. Behn, Leiden: Brill, 2008.
42. Gutas, D. *Greek Thought, Arabic Culture*, London: Routledge, 1998.
43. Hallaq, B. W. The Development of Logical Structure in Sunni Legal Theory, *Der Islam*, 64, 1987, pp. 42-67.
44. Hallaq, B. W. Non-Analogical Arguments in Sunni juridical Qiyās, *Arabica*, vol. 36, Fasc. 3, 1989, pp. 286-306.
45. Hallaq, B. W. *A History of Islamic Legal Theory*, Cambridge: Cambridge University Press, 1997.
46. Hallaq, B. W. The Authenticity of Prophetic Ḥadīth: A Pseudo-Problem, *Studia Islamica*, No. 89, 1999, pp. 75-90.
47. Hallaq, B. W. *The Origins and Evolution of Islamic Law*, Cambridge: Cambridge University Press, 2005.
48. Hallaq, B. W. *An Introduction to Islamic Law*, Cambridge: Cambridge University Press, 2009.

49. Hunt, E. J. *Christianity in The Second Century: The Case of Tatian*, London and New York: Routledge, 2003.
50. Ibn Abw Dawwd, *Kitāb āl-Maṣāḥif*. Dār āl-Bašā'ir āl-'islāmiya: Beirut, second edition, 2002.
51. Ibn Abw Ḳaytama, *āl-Tāryḳ āl-Kabyr*. āl-Fārwaḳ āl-Ḥadytā lil Ṭibā'a wa āl-Našr: Cairo, 2004.
52. Ibn Abw Šaybā, *āl-Muṣannaḑ*. Maktabat āl-Ruṣhd: āl-Riyaḑ, 2004.
53. Ibn āl-Mūqaffā', *Risālat āl-Šaḥāba*. In: *Ātār Ibn āl-Mūqaffā'*. Dār āl-Kutub āl-'Ilmiya, Beirut, 1989, pp. 309-24.
54. Ibn āl-Nadym, *āl-Fihrist*. Mu'asasat āl-Furqān lil Turāṭ āl-'Islāmy: London, 2009.
55. Ibn 'Asākir, *Tāryḳ Madynat Dimašq*. Dār āl-Fikr: Beirut, 1995.
56. Ibn Ḥanbal, A. *Musnad*. Bayt āl-Āfkār: āl-Riyaḑ, 1998.
57. Ibn Ḳaṭyr, *Manāqib āl-'Imām āl-Šāfi'y*. Maktabat āl-'Imām āl-Šāfi'y: āl-Riyaḑ, 1992.
58. Ibn Ḳaldwn, *The Muqaddimah*, 3 vol., trans. by F. Rosental, Princeton: Princeton University Press, 1958.
59. Ibn Manẓwr, *Lisān āl-'arab*. Dār Nwbilys: Beirut, 2006.
60. Ibn Muḳallad āl- Šaybāny, *Kitāb āl-Sunna*. āl-Maktab āl-'Islāmy: Beirut, 1980.
61. Ibn Sa'd, *Kitāb āl-Ṭabaqāt āl-Kabyr*. Maktabat āl- Ḳānjy: Cairo, 2001.
62. Khadduri, M. *Islamic Jurisprudence: Shāfi'ī's Risāla*, Translated with an Introduction, Notes, and Appendices, Baltimore: The Johns Hopkins Press, 1961.
63. Lowry, J. E. Does SHĀFI'Ī have a theory of 'four sources' of law? In R. Peters and B. Weiss (eds.), *Studies in Islamic law and society*, Leiden: Brill, 2002.
64. Lowry, J. E. *Early Islamic Legal Theory: The Risāla of Muḥammad ibn Idrīs āl-Šāfi'y*, Leiden: Brill, 2007.
65. Lyons, M. C. *Aristotle's Ars Rhetotica: The Arabic Version*, A new edition with Commentary and Glossary, vol. 1, Text. Cambridge: E. & E. Plumridge Ltd., Linton, 1982.
66. Lyons, M. C. *Aristotle's Ars Rhetotica: The Arabic Version, A new edition with Commentary and Glossary*, Vol. 2, Glossary. Cambridge: E.& E. Plumridge Ltd., Linton, 1982.
67. Margoliouth, D. S. Omar's Instructions to the Kadi, *Journal of the Royal Asiatic Society of Great Britain and Ireland*, 1910, pp. 305-336.
68. Margoliouth, D. S. *The Early Development of Mohammedanism*, London: Williams and Norgate, 1914.
69. Marrou, H. I. *Education in Antiquity*, trans. by G. Lamb, New York: The American Library, 1956.
70. Motzki, H. The Role of Non-Arabs Converts in the Development of Early Islamic Law, *Islamic Law and Society*, vol. 6, no. 3, 1999, pp. 293-317.
71. Motzki, H. *The Origins of Islamic Jurisprudence: Meccan Fiqh before the Classical Schools*, Leiden: Brill, 2002.
72. Moubarez, H. The Development of the Semitic Logical Traditions: 1. The Hebraic Logical Tradition up till the End of third Century (In Arabic), *The Proceedings of the international conference of the oriental languages department*, Cairo: Cairo University Press, 2013, pp. 15-84.
73. Muqāṭil Ibn Sulaymān, *Tafsyr Muqāṭil Ibn Sulaymān*. Mw'asasat āl-Tāryḳ āl-'Araby: Beirut, 2002.
74. Muslim, *Saḥiḥ Muslim*. Dār āl-Kutub āl-'Ilmya: Beirut, 1991.
75. Neusner, J. *A History of The Jews in Babylonia*. vol. I. second edition. Brill: Leiden, 1969.
76. Neusner, J. *The Rabbinic Traditions about the Pharisees before 70: Part I The Masters*, Leiden: Brill, 1971.
77. Neusner, J. *The Fathers According to Rabbi Nathan: An Analytical Translation and Explanation*, Atlanta: Scholars Press, 1986.
78. Rippin, A. Literary Analysis of Qur'ān, tafsīr, and sīra: the Methodologies of John Wansbrough, In R. C. Martin (ed.), *Approaches to Islam in Religious Studies*, Tucson: The University of Arizona Press, 1985, pp. 151-163.
79. Rubin, U. Exegesis and *Hadyt*: the Case of the Seven *mathānī*, In G. R. Hawting and Abdul-Kader A. Shareef (eds.), *Approaches to the Qur'ān*, London: Routledge, 1993, pp. 141-156.

80. Saldarini, A. I. *The Fathers According to Rabbi Nathan version B: A Translation and Commentary*, Leiden: Brill, 1975.
81. Schacht, J. A. Revaluation of Islamic Traditions, *Journal of the Royal Asiatic Society of Great Britain and Ireland*, 2, 1949, pp. 143-154.
82. Schacht, J. *The Origins of Muhammadan Jurisprudence*, Oxford: The Clarendon Press, 1950a.
83. Schacht, J. Foreign Elements in Ancient Islamic Law, *Journal of Comparative Legislation and International Law*, Third Series, vol. 32, no. 3/4, 1950b, pp. 9-17.
84. Schacht, J. *An Introduction to Islamic Law*, Oxford: Clarendon Press, 1982.
85. Schumann, A. *Talmudic Logic*. UK: Lightning Source, Milton Keynes, 2012.
86. *Sifra*, trans. and commentary by M. Ginsberg, Atlanta: Scholars Press, 1999.
87. Sion, A. *Judaic Logic: A Formal Analysis of Biblical, Talmudic and Rabbinic Logic*, Geneva: Slatkine, 1995.
88. Street, T. Arabic Logic, In D .M. Gabbay and J. Woods (eds.), *Handbook of History of Logic, vol.1: Greek, Indian and Arabic Logic*, North-Holland: Elsevier, 2004, pp. 523-596.
89. Talmon, R. On An Eighth-Century Grammatical School in Medina: The Collection and Evaluation of the Available Material, *Bulletin of the School of Oriental and African Studies*, University of London, vol. 48, 2, 1985, pp. 224-236.
90. Tatian, Address to the Greeks, In *The Writings of Tatian and Theophilus; and The Clementine Recognitions*, transl. by B. P. Pratten, M. Dods and Thomas Smith D. D., Edinburgh: T&T Clark, 1967, pp. 1-45.
91. *The Jursalem Talmud: Second Order: Mo'ed; Tractates Pesahem and Yoma*, trans. And commentary by H. W. Guggenheimer, Berlin: Guyter, 2013.
92. *The Tosefta*, trans. by J. Neusner, vol. 2, Massachusetts: Henrickson Publishers, 2002.
93. Triyanta, A. Greek Philosophy And Islamic Law (The Influence of Aristotle's Logic on Analogical Qiyas in Shafi'i's Risala), *Logika*, 5, 2001, pp. 11-33.
94. Vagelophil, U. *The Syriac and Arabic Translation and Commentary Tradition*, Leiden, Brill, 2008.
95. Versteegh, K. *Landmarks in Linguistic Thought III: The Arabic Linguistic Tradition*, London and New York: Routledge, 1997.
96. Wansbrough, J. *Quranic Studies: Sources and Methods of Scriptural Interpretation*, Oxford: Oxford University Press, 1977.
97. Wegner, J. R. Islamic and Talmudic Jurisprudence: The Four Roots of Islamic Law and Their Talmudic Counterparts, *The American Journal of Legal History*, vol. 26, no. 1, 1982, pp. 25-71.
98. Wymann-Landgraf, U. F. A. *Malik and Medina: Islamic Legal Reasoning in the Formative Period*, Leiden: Brill, 2013.
99. Ziembinski, Z. *Practical Logic*, Dordrecht: Reidel, 1976.

## Notes

- 
1. The analysis of the Arabic informal logic, in a formal way, unlike the Hebrew one has not received attention. However, we have tentative attempts in [1] [43] [44].
  2. Schacht [82] wrote a whole chapter about the earlier Islamic logical techniques in law such as analogy, but to integrate it in his history of Islamic legislation. So did Coulson [35], although his address for analogy is more limited [*ibid.*, pp. 40; 72-3; 59-60]. Hallaq in his history [45] is not interested in the development of such techniques but rather in introducing an outline of the logical structure for the earlier Islamic legislation and beyond. But in his *Origins and Evolution of Islamic Law* [47 ch. 5.3] [cf. Also his 48, pp. 19-27] he avoids this fault by displaying an excellent brief history of Islamic legal logical techniques. Although Wymann-Landgraf [98] has 'Islamic Legal Reasoning in the Formative Period' as a subtitle, only half of its first part addresses the informal logic [*ibid.*, pp. 85-182], while its main concern is not a history of Arabic informal logic, but is 'fundamentally concerned with Medinese praxis ('amal), a distinctive non-textual source of law which lay at the foundation of Medinese and subsequent Maliki legal reasoning' [*ibid.*, p. 3].
  3. Thus, Margoliouth [67, p. 320] and Schacht [82, pp. 99-100] insisted on the Jewish influence upon the Islamic logical toolkit. Hallaq accepts only the existence of some Semitic (including Jewish) laws in Islamic law [47, pp. 4; 27-

- 28; 194] while he rejects in his presentation of the Islamic legal and logical thinking any Hebrew influence [*ibid.*, pp. 113-18] [also, 48, pp. 19-27]. Wymann-Landgraf [98] is entirely silent about this.
4. Some call it 'Judaic Logic' [87], others 'Talmudic Logic' [85]. But we prefer to call it Hebrew in order to be compatible with the other branches of Semitic logics, i.e. 'Arabic Logic' and 'Syriac Logic'. To wit: Logic for every Semitic language.
5. For the division of *Tann'ayitic* traditions into two schools [75, pp. 156-77]. For the division of the *Tann'ayitic* methods of interpretation into two traditions ('Akiva and Yišm'a'el), (see Ginsberg's [86] introduction to his translation of Sifra, pp. lvi-lx). And for the division of Hebrew informal logic into two traditions [72, pp. 69-73].
6. See section 3 below.
7. Tatian was an Assyrian orator and theologian who had a great influence on Syriac Christianity through his gospel harmony *Diattessaron* [49, pp. 144-75]. He was educated in a Hellenistic system [*ibid.*, p. 1] which included Greek rhetoric which, in turn, included informal logic [69, pp. 148, 238-42]. Thus, in his oration to the Greeks, he uses these informal logical techniques such as analogy for proving resurrection [90, pp. 10-11].
8. Ephrem uses many informal logic techniques such as analogy [30, p. 67].
9. The *Jerusalem Talmud*. Pes. 6:1, fol. 33a says: 'From *heqqeš*: Since the continual offering is a community sacrifice and the *pesah* is a community sacrifice, just as the continual offering, a community sacrifice, overrides [the] Sabbath, so the *pesah*, a community sacrifice, overrides the Sabbath' (Neusner's [76] trans. P. 247). This inference has the following structure: A is C, B is C, C has D; then A has D and B has D. The common element is C (which has D).
10. In this paper, I shall use two editions of *āl-Šāfi'y's Risāla*. The first one is M.S.Kilani's edition [14] and I shall refer to it as '*Risāla K*'. The other one is M. Khadduri's translation of the *Risāla* [62] and I shall refer to it as '*Risāla M*'.
11. Triyanta did not decide upon which text *āl-Šāfi'y* depended in his identification of *qiyās* as syllogism. He just made an abstract comparison between *āl-Šāfi'y's qiyās* and Aristotle's syllogism. Thus, he says that his 'thesis only tries to compare Aristotle's syllogism to analogical *qiyās*' [93, p. 15].
12. Ibn *āl-Muqaffā'*'s treatment of *qiyās* comes during his discussion of the difference between the judgments. Thus, he saw that that difference was due to the difference between the ancestors' opinions or was a result to 'an opinion made by its people by *qiyās* which differed and spread because of a mistake in the principle of commensurability and initiated an issue on its wrong example / رأى أجراء أهله على القياس فاختلف وانتشر بغلط في أصل المقايسة وابتدأ أمر على غير مثاله' [53, p. 317]. It is clear here that *ibn āl-Muqaffā'*: (a) understands *qiyās* as analogy not syllogism, (b) this understanding is different from Ishmael's school in Babylonia.
13. There are many copies of this letter beginning from the one which is in *āl-Jāhiz' āl-Bayān wa āl-Tabayyn* [7] up to the one which is in *Ibn Kaldwn's Muqaddimah* [67, p. 307].
14. It was reported that he had a copy of the Bible or some religious book [60, H50] [52, H26828] [56, H15223].
15. '... the prophet said that 'Umar had come to him and said 'we like sayings we hear from Jews, do you think we should write some of them?' / 'إنا نسمع أحاديث من اليهود تعجبنا أفترى أن نكتب بعضها؟' [5, H174]. (The three points before the quoted text refer to an omitted ascription chain).
16. 'Jabir said that 'Umar had copied a book from the Torah into Arabic' [6 i, H124. cf. also, H125-126].
17. 'Zūhary said *āl-Sa'yb b. yazyd* had said that the first one to have told stories had been Tamym *āl-Dāry*; the later asked 'Umar for that and the later permitted him' [22 ii, p. 443] [cf. also, 55 xi, p.80].
18. 'When 'Umar had consulted people he [Ka'b] preceded them' [55 l, p. 158].
19. '... Ya'qwb Ibn Zayd said that 'Umar Ibn *āl-Kaṭṭāb* was consulting 'Abdallāh Ibn 'Abbās in the things things / يعقوب كان أناس من المهاجرين قد وجدوا على عمر في إيدانته ابن عباس دونهم / كان أناس من المهاجرين قد وجدوا على عمر في إيدانته ابن عباس دونهم' [61 vi, p.329]. It is also reported that 'some imigrators/Muhājirīn raged on 'Umar's his bringing Ibn 'Abbās closer to him than them / كان أناس من المهاجرين قد وجدوا على عمر في إيدانته ابن عباس دونهم' [*ibid.*, p.328] [ cf. also, 29, p. 130]. For his influence by the Jews see [2, p. 149].
20. Thus, we should stand with those scholars (for example: H. Birkeland, H. Gätje, C.H.M. Versteegh, F. Leemhuis and C. Gilliot) who insisted on existing of interesting in exegesis of the *Qur'ān* amongst the companions against those scholars (I.Godziher, A. Rippin and J. Wansbrough) who insisted on existing opposition of that interest. See [2, pp. 8-9] for more details and literature.
21. For the debate about dating of the collection of the *Qur'ān*, see Motzki, H. 'The collection of the Qur'ān: A reconsideration of Western views in light of recent methodological developments,' in: *Der Islam*, 78, pp. 1-34, 2001.
22. In all the reports we have previously quoted, Muḥammad was denying 'Umar's behavior, for example he said having seen 'Umar's copying a paper from the Torah 'do not ask the people of the book about anything / لا تسألوا أهل الكتاب عن شيء' [6 i, H125].
23. It was reported that there were oral translation of the *Torah* during Muḥammad's life: '... Abw Hurayra said that the people of the book was reading the *Torah* in Hebrew and explaining it in Arabic for the Muslims' [5 ix, H7542].
24. It can be said that the movement of translation had its roots in Muḥammad's era whereas it was reported that he had asked Zayd Ibn Tābit to have learnt Hebrew or Syriac [61 ii, p.30]. Thus, we can say that there were two persuasive traditions; one confirmed translation and borrowing from the ancient books and the other denied this. 'Umar I have chosen the first.
25. '...Ka'b was telling stories / كعب كان يقص' [55 l, p. 170].
26. 'Umar I was not trusting in foreign scribes, therefore he appointed Ibn 'Abbās as a secretary of what was being transmitted from the ancient books. There are many reports support this hypothesis; once Tamym said, while telling stories and 'Umar I and Ibn 'Abbās was attending, 'Fear the scholar's err... then 'Umar said to Ibn 'Abbās when



51. On the authority of 'Ikrima (one of Ibn 'Abbās' disciples) that he heard 'Abdallāh b. 'Amr says that 'Ibn 'Abbās is the best one in knowing the past and explaining the revelation.... 'Ikrima said, I told Ibn 'Abbās his speech, then Ibn 'Abbās said he had knowledge / ابن عباس أعلمنا بما مضى، وأفقهنا فيما نزل... قال عكرمة: فأخبرت ابن عباس بقوله فقال: إن عنده لعلماً / [ibid. xxxi, p. 263].
52. We are told, on the authority of 'Amr b. Qays that 'Abdallāh b. 'Amr said 'it is a sign of the doomsday... that *Miṭnā* (*Miṣnah*) is being read among people but nobody interprets it, then he was asked what *Miṭnā* is? He replied it is what was written but other than God's book / من أشرط الساعة... أن تقرأ المثناة في القوم ليس فيهم أحد يعبرها قيل له: ما المثناة؟ قال: ما كتب سوى / ما كتب سوى / كتاب الله [ibid. xlvi, p. 313]. It should be noted here that that the speech of 'Abdallāh b. 'Amr has another wording which can contradict the above one. Thus, in [18 xiii, H14559] we have on the authority of 'Amr b. Qays, on the authority of 'Abdallāh b. 'Amr also, but on the mouth of the prophet that 'it is a sign of the doomsday ... that the *Miṭnā* is being read among people / من أشرط الساعة... يُقرأ في القوم المثناة.' This means, on the contrary of Ibn 'Asākir's text, that reading the *Miṭnā* itself is a sign of the doomsday not the non-explaining it. But this second wording is not possible because of 'Abdallāh b. 'Amr's respecting of Jewish culture (There is another wording close to the second one in [3 vii, H4834]).
53. 'Moses...received the *Torah* at Sinai [ARNA, Goldin's [39] trans., ch. i, p. 3] ... Joshua took over from Moses [ibid., p.4] ... The Elders took over from Joshua [ibid.] ... The Judges took over from the Elders [ibid.] ... The Prophets took over from the judges [ibid.] ... Haggai, Zechariah, and Malachi took over from the Prophets. The Men of the Great Assembly took over from Haggai, Zechariah, and Malachi (ibid.) ... Antigonus of Soko took over from Simeon the righteous [ibid., ch.5, p. 39] ...etc. Finally, Rabban Johanan ben Zakkai took over from Hillel and Shammai' [ibid., ch. 14, p. 74].
54. The relationship between Abw-āl-Dardā' and Ka'b was so closed that the former's wife was telling from Ka'b [51 i, 343], she also called Ka'b as Abw-āl-Dardā's brother [22 iii, p. 493]. Also, Abw-āl-Dardā' said about Ka'b that he 'had great knowledge' [61 ix, p. 449].
55. For a biography which shows how 'Atā' was one of the adherents of Ibn 'Abbās' tradition and influenced with Jewish traditions see [10 xx, 3941].
56. [55 l, pp. 164-65].
57. 'Then we bequeathed the book to whom we chose from our worshippers / ثم أورشنا الكتاب الذين اصطفينا من عبادنا Q.35:32.
58. Concerning interpretation in ARNA by just mention the rules of interpretation without any details, see [Goldin's [39] trans., p. 74, and with citing RS, see: ibid., P. 154]. Concerning indicating to the importance of interpretation, see [ibid., p. 5, 91].
59. It should be noted that Abw-āl-Dardā' also, one of the translation movement supporters said on the authority of Ibn Abw Qilāba 'you will not understand the *Qur'ān* entirely until you can see aspects for it / لن تفقه القرآن كل الفقه حتى ترى للقرآن / وجوهاً [61 ii, p. 308].
60. Bravmann [31, p. 185] sees that 'certainly, the principles of *ra'y* and *'ilm* cannot be considered as having been suddenly introduced by 'Umar (or his immediate predecessors), rather it *may be assumed* that the Arab mind had been familiar with these principles in a considerably earlier period' (Italics are mine). But this is just an assumption, while our reconstruction is based on facts and parallel texts.
61. For a serious study about the jurisprudence of Ibn 'Abbās' students, see [71].
62. Hishām Ibn Yūsuf the judge was one of āl-Šāfi'y's teachers in Yemen [37, p. 44].
63. 'He obtained (knowledge) from Ibn 'Abbās, Abw Hurayra... 'Abdallāh Ibn 'Amr... and Ṭāwws', 'The Abundance of his knowledge was from the scripts of the people of the book', 'he was a judge on Ṣan'ā' [22 iv, p. 545].
64. 'He memorized from ... Ibn 'Abbās', 'and he was buying books for his brother' [22 v, 311-12].
65. Most Islamic law scholars concentrated on the influence of Medina school of *fiqh* on āl-Šāfi'ī, or as Motzki puts it 'The proportion and the importance of Meccan *fiqh* in the work of āl-Šāfi'y has not yet been properly appreciated by research. Until now it has always been assumed that the decisive influence on āl-Šāfi'y emanated from Malik and Medinan jurisprudence. One of the reasons for this assessment is probably to be sought in the fact that almost nothing was known of Meccan *fiqh*' [71, p. 292]. In the present paper, I did not commit to this mistake. Instead, I concentrated on Medina's linguistics as it will be shown below. Moreover, I have to refer that *ra'y* techniques was also prevailed in Medina (see for the nature of these techniques; [82, pp. 113-119] [98, pp. 145-182], which means (in addition of influence of 'Umar's translation movement on Medina scholars and transmission of RS 1-3; 6 rules to the Medina traditions) More influence of RS on āl-Šāfi'ī's informal logic.
66. I say that āl-Šāfi'y borrowed only the term *qiyās* of the Iraqis grammarians not its content, that because there is a difference between the grammarians *qiyās* and the jurists one, or as Versteegh explains: 'the *qiyās* of the Arabic grammarians represents a totally different concept: it is a method to explain apparent deviations from the rules in certain phenomena by referring to their resemblance to other phenomena. The result is an increased regularity because the rules are applied to as many phenomena as possible. This kind of analogical reasoning is different from the concept of 'analogy' in Western linguistics, which serves as an instrument to explain irregularities by showing how they developed by interference from other phenomena' [95, p. 35]. And it is a known fact the borrowing of terms amongst sciences.
67. He is reported in many sources to have made a poem which started by saying 'Grammar is nothing but *qiyās* which is followed / إنما النحو قياس يُتبع / [9 xiii, p. 355].
68. āl-Šāfi'y is reported to have said that 'he who would like to be great in grammar should depend on āl-Kisā'y / من أراد أن يتبحر في النحو فهو عيال على الكسائي' [55 lx, 116-17].

69. This is reported by [3, p. 107 ff.]. In addition, āl-Šāfi'y wrote many polemical essays against Iraqis jurists, for example; *Kitāb āl-Radd 'ala Muḥammad Ibn āl-Ḥasan*, in [15 ix, pp. 85-170]. Cf. also [34, p. 182].
70. āl-Šāfi'y has been to Iraq twice, the first time for a trial in which he learnt from the Iraqis (around 796), and the second one for teaching (813) [34, p. 182].
71. There are here two problems/questions; (1) did Aristotle's *On Rhetoric* was translated before the end of the second century A.H., the time of āl-Šāfi'y's activities? (2) Did āl-Šāfi'y has knowledge of the Hellenistic tradition? Concerning the first question, most scholars who wrote on the ancient Arabic translation of Aristotle's *On Rhetoric* believed that it was translated about the end of the second century A.H. (for example, Badawi's [28] introduction to his publication of the translation, p. 3; Lyons' [65] introduction for his edition, p.i, where he puts its date (p. vi) at 731). Only U.Vagelophl [94] believed that it was translated later at āl-Kindy's (805-873) circle [*ibid.*, pp.130; 165; 180] based mainly on terminology, but this is not acceptable, because the most important terms are not kindian, such as παράδειγμα which was rendered as proof or *burhān* [66, p.110] while āl-Kindy kept this term, i.e. *burhān* for ἀπόδειξις [Rescher, N. *Studies in the History of Arabic Logic*. University of Bitsburgh Press, 1963, p. 14]. Concerning the second question, we have in āl-Bayhaqy's book about āl-Šāfi'y a report about āl-Šāfi'y, although says that āl-Šāfi'y had read Aristotle's books in medicine [4 i, p. 133] which is absurd, but reflects his knowing of Aristotle.
72. Lowry sees that there are only four rules, or as he puts it: 'in any event, Šāfi'ī views the permissible forms of *qiyās* as three: the *argumentum a fortiori*, *ma'nā*-based *qiyās*, and *shabah*-based *qiyās*,' [64, p. 154], again the *argumentum a fortiori* divides into two; 'the *argumentum a maiore ad minus* and a *minore ad maius*,' [*ibid.*, p. 153]. This is also Hallaq's view [45, pp. 23, 29]. But, in fact, the *argumentum a fortiori* has three forms not two as we shall show.
73. If it is permissible for you to eat three apples that does not mean it is permissible for you to eat more.
74. We may connect this with Schacht's observation about the religious and ethical nature of Islamic law and jurisprudence [82, p. v].
75. What is between the brackets is TAR L's reading.
76. Cf. Khadduri's [62, p. 79] trans. '[Analogy's] conformity [to precedent] should be based on two conditions.'
77. Khadduri translates '*ma'nā*' here as meaning not reason (*Risāla M*, p. 290)
78. Lowry also criticizes Hallaq but because the *ratio legis* is a lawful technique for resolving ambiguities while 'in Islamic law, the immediate purpose of the *ma'nā/illā* is not to resolve ambiguities in the law, but to extend a statute of known meaning to a case of first impression.' [64, pp. 150 – 151, n.132].
79. Lowry criticized Hallaq for his confusing the *a simili* with **Sh.5** as 'the *argumentum a simili* thus seems closer to Šāfi'ī's concept of *ma'nā*-based *qiyās* [**Sh.4**]' [64, p. 152, n. 133]. Thus, Lowry seems to have fallen at the same mistake by regarding āl-Šāfi'ī's aim was the purpose not meaning.
80. The Syriac translator rendered the Greek word πίστις as *tašdyq*. For more details, see [66, p. 115].
81. We should note here that the Syriac translator(s) rendered the Greek word ἀπόδειξις / demonstration by the Arabic word *tathbyt* or *tatabut*. Cf. [66, p. 21. And p. 173, for more details].
82. The Syriac translator rendered the Greek word ἐπαγωγή /induction as *i'tibār*. See for more details [66, pp. 58, 239].
83. The Syriac translator rendered the Greek word συλλογισμός / syllogism as سلوجسموس, سلوجسموس, سلوجسموس. See for more details [66, pp. 132, 213].
84. The Syriac translator(s) rendered the word παράδειγμα as *burhān* or proof in most of the places. See for more details [66, pp.110, 167].
85. The Syriac translator(s) rendered the Greek word ἐνθύμημα as *tafkyr*. See for more details [66, pp.56, 259].
86. 'ونحن قائلون الآن في التثبيت وما يرى تثبيته. فالتثبيت كما هو في الديالكتيكية منه: الإيفاعوغي-وهو الاعتبار-ومنه ما نرى [يرى] اعتباراً ومنه السلجسة. ومنه ما نرى [يرى] سلجسة. وبهذه الحال [يوجد هنا أيضاً] فإن البرهان شيء من الاعتبار، والتفكير شيء من السلجسة يوجد هنا أيضاً، السلجسة. [تأري] 'التفكير الذي يرى: سلجسة يرى [تأري]. وقد أعنى بالتفكير: السلوجسموس الريطوري، وبالبرهان الاعتبار الريطوري [TARB, p.11; TARL, p. 9].
87. 'وأما الإقناع خاصة فقد يكون فيه من الكلام على جهة البرهان غير قليل. وإنما يكون الشعب الأكثر في تلك التفكيرات' [TARB, p. 12; TARL, p. 10]
88. 'وقد يؤتى بالتفكيرات من الصادقات ومن الدلائل' [TAR B, p. 14; TAR L, p. 12].
89. 'فالدلائل والصدق والرواسم هن مقدمات الريطورية' [TAR B, p. 18; TAR L, p. 17].
90. Also, he says at [TAR B, p. 178; TAR L, p. 169] 'فأما أن يكون كل شيء من الرسوم غير ذي سلوجسموس فقد تبين لنا في أنالوطيقي' without any clarification.
91. 'ومن الرواسم كالجزئي [كالجزوي]، ومنها كالكلي. فلتكن الرواسم ها هنا كما لو قال قائل: إن الحكماء عدول، لأن سقراطس كان حكيماً وعدلاً. فهذا' [TAR B, p. 14; TAR L, p. 13].
92. What are between < and > is Badawi's additions, and it seems to be reasonable. Lyons edited the text as following: 'ونحو آخر من قبل العلامة، فان هذا ايضاً بلا سلجسة... او لو قال قائل ان ديانوسوس \* \* لانه شيرير، فهذا غير ذي سلوجسموس \* \* شيرير' [TAR L, p. 164]. What are between two asterisks is lacunae in the original ms.
93. The *apodeixis* syllogism is inferred from [24, 1357a: 29-30].
94. [TAR B, pp. 6-7; 11; 15].
95. The word ἀπόδειξις or demonstration even was rendered as *tathbyt* as we said before.
96. Demonstration does not aim to persuasion at Aristotle.
97. My translation seems to be incomprehensible, that because the Arabic passage is also so. I tried to render this incomprehensibility in the English translation too. It should be noted that I did not translate *bi āl-ākṭar* as at the most part, as it would be expected. The reason will be clear at the next few pages.
98. Khdduri's note n. 1, p. 67 in: *Risāla M*.

99. For God's *Bayān* see [Risāla K: 53; 54], for the messenger's *Bayān* see [Risāla K 58]. Cf. also, [64, p. 23 ff].
100. *Bayān* / one of it [Bayān] consists of what God commanded his creatures to seek through 'ijtihād' [Risāla K: 59] [Risāla M, p. 68]. Cf. [64, p. 23 ff].
101. *Bayān* is including also (1) linguistic manners and styles [Risāla K: 174-176]; cf. [TAR's third treatise on Style], (2) RS: 4-5 or the general/عام and the particular/خاص [Risāla K: 173, and passim].
102. Cf. Also, [15 ix, p. 77], where he provides an example for a blind that needs for demonstration.
103. Cf. Also, [ibid., pp. 8; 11; 19-20; 32; 33; 34; 35].
104. Cf. Also, [ibid., p. 46]. Cf. also p. 64 [TAR L, p. 50. Cf. also p. 67]
105. 'فالخاصة منها هي المحدودة في أناس، أعنى عند كل واحد منهم... وأعنى بالعامية تلك التي هي في الطبيعة.' [TAR B, p. 64. Cf. also p. 70] [TAR L, p. 67. Cf. also p.73].
106. This is the concept of *sunna* in TAR. But it has other ramifications which will seem to be in opposition to āl-Šāfi'y's concept. For TA the general *sunna* is not written, while the particular *sunna* is written (some of it in reality) [TAR B, p. 46; 64] [TAR L, p. 50; 67]. This seems to be in opposition to āl-Šāfi'y's concept, because, for him, the *Qur'ān* is the book (written) in which there are 'المنصوصة الفرائض' / the texted duties' [Risāla K: 97] while the prophet's *sunna* is his practice which is 'بلا نص كتاب' / without a texted book' [Risāla K: 100]. But if we contemplate a little, we shall discover that there is no opposition, Because TA's non-written general *sunna* expresses absolute laws like the *Qur'ān*'s: 'هو الشيء الذي يركبه [يزكته] الكل بالطباع' / it is the thing which everyone approves [appealed to] it naturally' [TAR B, p. 64; TAR L, p.67], while his particular *sunna* expresses laws which should not contradict the general one 'إن كانت السنة العامة المكتوبة مضادة للأمر، قد ينبغي أن نستعمل السنة العامة' / if the written *sunna* was in contradiction with the things, then may we use the general one' [TAR B, p. 71] [TAR L, p.73], this is just as the prophet's *sunna* in āl-Šāfi'y's concept for it [Risāla K: 307]. In addition, the prophet's *sunna*, for āl-Šāfi'y, is *Aḥadyth* or the prophet's fixed speech, i.e. written. (It is known thanks to Schacht [81, p. 145] that āl-Šāfi'y triumphed for *Aḥadyth* movement in his time)
107. See the above note.
108. [Ms.23a-23b]. It must be noted here the different reading of Lyons where he reads: 'حكيماً ما هو أحداً' / some wise man who is unique, as: 'حكيماً ماهراً جداً' / a very clever wise man' [TAR L, 75b: 22-23, p. 74.]. However, this does not effect in the significance of the sentence in general, i.e. it should be there some wise man. But on my reading which accords to the Arabic *Organon* manuscript, this wise man should be only one man, a unique one. It should be noted also Badawi's different reading for another word in that sentence. Thus, he reads: 'يرذل' / be getting bad,' as: 'يردك' / comes to you' [TAR B, p.72]. It should be noted also the great difference in meaning between the [Ms.23a-23b] and the Aristotelian text [1375b: 23-24]: 'And [one should say] that to seek to be wiser than the laws is the very thing that is forbidden in those laws that are praised'.
109. This happens during his arguing against 'istiḥsān and Iraqi school, thus he says: 'فإن قلت: لأنهم لا علم لهم بالأصول' / if you say because they have no knowledge of elements/usūl' [15 ix, p. 74] and his intention by these elements is the *Qur'ān* and *sunna* as it is shown by the next paragraphs. He also calls the knowledge of the *Qur'ān* and *sunna* 'علم الأصول' / science of the elements' [15 ix, p. 77]. Cf. Also, [84, p. 60]. However, some scholars [35, pp. 55-60] [33, p. 78] [45, p. 22] supposed without any textual justification that āl-Šāfi'y had four elements (or sources). Lowry [63] refused to consider that āl-Šāfi'y had any theory about elements or sources [ibid., pp. 24, 50], because, from his point of view, whenever āl-Šāfi'y speaks about elements or sources, then his talking either messy or out of context [ibid., pp. 32-33]. Lowry arrived to this conclusion as a result of his gathering of lists of āl-Šāfi'y's sentences about elements [ibid., pp. 31- 32]. But most of what he gathered are not sentences about elements so far as Lowry's believing so. Most of the sentences in Lowry's lists do not contain the word *usūl*/elements (for example, [Risāla K: 397; 881; 1101]. Thus, Lowry also like the other mentioned scholars does not have textual evidence for his claim.
110. For example: 'فلا يجوز أن يقال لقول: فرضاً إلا لكتاب الله، ثم سنة رسوله' / So it is not permissible to regard anything as a duty save that set forth in the *Qur'ān* and *sunna* of His Apostle' [Risāla M, p. 112]. See also [Risāla K, 266; 281; 293, and Passim].
111. Schacht [48, pp.17-19]. For a more detailed analysis and meanings of the term *sunna*, see [23, pp. 259-282].
112. 'And He [God] said: God has sent down to thee the Book and the Wisdom, and has taught thee what thou did not know before; the bounty of God towards thee is ever great [Q. IV, 113]... So God mentioned His Book – which is the *Qur'ān* – and Wisdom, and I have heard that those who are learned in the *Qur'ān* – whom I approve – hold that wisdom in the *sunna* of the Apostle of God' [Risāla M, p. 111; Risāla K: 250 252].
113. For the primary meaning of the term *ijtihād*, see [31, pp. 188-194]. And for its development [45, pp. 19-20].
114. āl-Šāfi'y says about the *a fortiori*: 'فأقوى القياس' / and the strongest *qiyās*' [Risāla K: 1483].
115. [TAR B, pp. 11, 13-14] [TAR L, pp. 10,12], their counterparts passages in *On Rhetoric* are [24, 1356b 15-16; 1357a 31-33] respectively.
116. It is interesting that neither Hallaq [43] [45] nor Lowry [64, pp. 32-3; 147 ff.] recognized inferring by sign at āl-Šāfi'y. However, Lowry identified it as 'in the nature of estimation based on incomplete information, driven by necessity, and evaluated in terms of purely pragmatic consideration' [64, p. 147]. But as I shall show that this is not correct.
117. [82, pp. 99-100]. Also, [64, p.153, n.138]. Our result is confirmed also by H. Motzki [70] statistical research about the role of non- Arabs converts in the Islamic formative scholarship. According to this statistical work, their role was weak in comparison to the native Arabs from the Arabian Peninsula.

- 
118. For the influence of Hellenistic rhetoric on the Jewish or Hebraic informal logic, see: Daube, D., 'Rabbinic methods of Interpretation and Hellenistic Rhetoric,' in: *Hebrew Union College Annual*, 22, 1949, pp. 239–264.
119. [22 *ii*, p.448].
120. For Ka'b's son and their knowledge of the ancient books, see [61 *ix*, p. 455].
121. The other misunderstanding of Aristotle because of translation in philosophy is the attribution of theology of Aristotle (in fact, extracts from the *Enneads* of Plotinus) to Aristotle. For more details, see: Rowson, E.K., 'The Theology of Aristotle and Some Other Pseudo-Aristotelian Texts Reconsidered,' in: *Journal of the American Oriental Society*, 112, 1992, pp. 478-484.