LOGIC, FORMAL ARGUMENTS AND FORMALIZATION OF ARGUMENTS IN SUNNĪ JURISPRUDENCE

BY

WAEL B. HALLAQ

Part I. Logic and Formal Arguments*

SOME DECADES before the translation movement from Greek into Arabic began, a battle over the ultimate source of Law had already been fought and won by Traditionalist Islam, represented by the well-known Ibn Idrīs al-Shāfi‘ī (d. 204/820). The triumph of the theory of the divine origins of law compelled Islamic jurisprudence to dissociate itself from all rationalist tendencies involved in philosophical ventures. Chief among these tendencies were the discussions on metaphysics in which logic served as the guiding spirit of philosophical argumentation. Associated with such heretical enterprises, logic as an organon of philosophy could hardly be distinguished from substantive metaphysical doctrines, and in such an environment Traditionalist jurisprudence kept suspected logic at bay. It was not until the appearance of the Shāfi‘ī-Ashʿarī intellectual Abū Ḥāmid al-Ghazālī (d. 505/1111) that logic as a method was sifted out of Aristotelian philosophy and thus cleared of its «non-theistic» tendencies. Ghazālī’s endeavor in bringing logic into law, and the persistence of what may be called the Ghazālīan thesis among some of his influential usūlist successors, will form the subject of this essay. While the following section attempts, in general terms, to analyze Ghazālī’s attitude towards logic in the law, it is not until Part II of this essay that we will encounter, in the form of a translation, what may be described as one of the most revealing statements which Ghazālī made on the logic of legal argument.

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Until the fifth/eleventh century, Sunnī jurisprudence succeeded to a significant extent in resisting the influences of Aristotelian for-

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mal logic. In Shāfi‘ī’s theory, for instance, no formal arguments were recognized; his typology of arguments was confined to analogy, *argumentum e contrario* and *a fortiori* arguments. Any rudimentary deductive arguments that may be discerned in his positive legal system were, for him as well as for his successors, but linguistic arguments. Even towards the end of the fourth/tenth century, long after the translation of Greek philosophical works was undertaken, Sunnī jurisprudence was still little affected by the introduction of Greek formal logic. While several nonformal methods of legal inquiry seem to have been developed and refined in light of the new material that these translation offered, only one important formal argument was assimilated; namely, the conditional disjunctive syllogism, known to usulists as *al-sabr wa l-taqsīm* or, briefly, *taqsīm*. In this argument the possible effects of a legal fact are enumerated with the view of establishing the true effect(s), or the absence thereof. If P, for instance, is the legal fact, and Q and R are phenomena which we think to be the possible effects of

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1 In Sunnī legal theory, including that of Shāfi‘ī, pure deductive arguments as well as *argumenta e contrario* were deemed necessarily linguistic, for the conclusion of such arguments was seen to be derived from the language of revelation rather than through the medium of rational inferences. In the background of this theory there lies the fundamental typology of certitude and probability, a typology which dominated and dictated the approach to legal analysis. Aside from considerations of authenticity, revelation was structurally and linguistically categorized into degrees of clarity, whereby the scale of certitude and probability could be applied. A Quranic text in which a rule is clearly specified needs no inference to deduce the legal norm therefrom. It was argued that the knowledge posited by such a text is necessary or immediate (darūrī); the intellect, once exposed to it, has no choice but to comprehend it. Thus, when a genus is prohibited, for instance, it is immediately understood that each one of its species are also prohibited, even though the individual species are not specifically prohibited. This is why in the traditional exposition of legal theory deductive arguments are not recognized as such, but are instead identified as linguistic arguments. A glance at substantive and positive law books reveals the deductive character of arguments which are otherwise considered linguistic. For further discussion on this matter see my article «Non-Analogical Arguments in Sunnī Juridical Qiyās,» *Arabica* (1989), fasc. 3, pp. 286-306; Muhammad b. Abī Ṣāḥil al-Sarākhṣī, *Uṣūl*, ed. Abū l-Waфа al-Afghānī, 2 vols., Cairo, 1372 H., I, 236-254; Abū l-Walid Muḥammad Ibn Ruṣd, *Bidāyat al-Mujtahid wa-Nihayat al-Muṭtaṣīd*, 2 vols., Cairo, 1329 H., I, 3-4.