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**COUNTER-IMPLICATURE FROM THE  
PERSPECTIVE OF AL-BĀQILLĀNĪ**

**(D. 403 AH/1013 CE)**

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**Ahmad Al-Saiid Zaki Hemeidah**

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# COUNTER-IMPLICATURE FROM THE PERSPECTIVE OF AL-BĀQILLĀNĪ (D. 403 AH/1013 CE)

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## **Abstract:**

Counter-implicature is utilized by some jurists as a method of legal inference and as a source of legislation. This paper analyses the perspective of a jurist affiliated to the Mālikī school of law and legal theory, namely al-Bāqillānī (d. 403/1013), regarding counter-implicature. It demonstrates that al-Bāqillānī does not conform to the predominant position of the school regarding counter-implicature. His affiliation to the Mālikī school does not prevent him from espousing a contrary view.

**Keywords:** Counter-Implicature, Counter-Implicature Of Attributes, Legal Inference, Implied Meaning, School Affiliation

دليل الخطاب من منظور الباقلاني (توفي 403 هـ/1013 م)

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## **المخلص:**

بعض الفقهاء والأصوليين يستنبطون الأحكام الشرعية من خلال توظيف دليل الخطاب ويعدونه مصدرا للتشريع. وهذا البحث يحلل منظور الباقلاني (توفي 403 هـ/1013 م)، الفقيه والأصولي المالكي، لدليل الخطاب. ويوضح البحث أن وجهة نظر الباقلاني لا تتفق مع الاتجاه السائد للمذهب المالكي تجاه دليل الخطاب، كما يبين أن الانتماء المذهبي لم يمنع الباقلاني من تبني وجهة نظر مغايرة للمذهب الذي ينتهي إليه.

الكلمات المفتاحية: دليل الخطاب، دليل الخطاب في الصفة، الاستنباط الفقهي، المعنى الضمني، الانتماء المذهبي.

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## 1. Introduction

Counter-implicature refers to the contrary meaning imparted by a sentence. For example, if one says, “I like blue cars,” it may be inferred that one intends to say, “I do not like cars that are not blue.” Likewise, if a rule states that pregnant divorced women deserve maintenance, it may imply that non-pregnant divorced women do not deserve maintenance.

Implication has a significant role in the process of interpretation and reasoning in the field of Islamic legal theory in particular and legal theory in general, as it helps jurists reach rulings that are not explicitly stated and thus enables them to know the ruling of unstated cases. For example, when a rule states that revocable divorce entitles women to maintenance, it may suggest that irrevocable divorce does not entitle women to maintenance.

Counter-implicature is one of the reasons behind the diversity of juristic views, as its validity is contested by some jurists. As shall be seen, proponents of counter-implicature consider it a valid feature of the Arabic language and argue that the Prophet and his Companions based their understanding in certain situations on this method of inference. Nevertheless, opponents of counter-implicature do not recognize it as a valid method of legal inference, and they provide alternative interpretations of such cases where the Prophet and his Companions seem to have employed counter-implicature.

Proponents of counter-implicature identify various parts of speech that can implicitly impart a contrary meaning, such as adjectives and adjectivals, adverbs and adverbials, and unmodified nouns, yet the proponents of counter-implicature do not all agree on the contrary meaning imparted by unmodified nouns. An adjective or an adjectival can modify a noun or a noun phrase. An adverb or an adverbial can modify a verb. Sometimes an adverb modifies a noun or a noun phrase (In “Only the mother was saved,” the adverb “only” modifies the noun “mother”). Adjectivals and adverbials do not contain actual adjectives and adverbs, and they can be prepositional phrases, participles, infinitives, and clauses with certain features.<sup>1</sup>

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<sup>1</sup> An adjectival clause usually starts with one of these adverbs (*when, where, why*) or pronouns (*who, whom, whose, that, which*), whereas an adverbial clause usually starts with a *subordinating conjunction* (such as *when, where, if, whereas, although, because, so that, so ... that*). For more information on these clauses and on other modifiers, see, for example, Geoffrey Leech and Jan Svartvik, *A Communicative Grammar of English* (Essex: ELBS and Longman, 1979), 285-288; 62-63, 189-197; 197-204; 268-273; 108-109; 176-182, 215.

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## 1.1. Research Questions

This paper analyzes the perspective of al-Bāqillānī as to whether counter-implicature can be considered as a valid method of legal inference by which rulings can be deduced from the Qurʾān and *sunna*. It attempts to answer the following questions. First, to what extent does al-Bāqillānī accept the utilization of counter-implicature as a valid method of inferring rulings from the Qurʾān and *sunna*? Second, why does he (in theory) accept or reject the utilization of counter-implicature? Third, to what extent does his opinion conform to the position of the Mālikī school on the theoretical level? Fourth, from al-Bāqillānī's perspective, what is the position of the Mālikī school regarding the theoretical acceptance of the utilization of counter-implicature as a valid method of inferring rulings from the Qurʾān and *sunna*? Fifth, to what extent does al-Bāqillānī accept the utilization of counter-implicature of attributes (*mafḥūm al-ṣifa*) as a valid method of inferring rulings from the Qurʾān and *sunna*? Sixth, to what extent does his position regarding counter-implicature of attributes conform to the position of the Mālikī school?

## 1.2. Research Data

In this paper, al-Bāqillānī's perspective on counter-implicature will be analyzed. *Al-Taqrīb wa-l-Irshād al-Ṣaghīr*<sup>2</sup> is his only work available to us in the field of legal theory. It is an abridgement of his earlier work *al-Taqrīb wa-l-Irshād al-Awsaṭ*, which in turn is an abridgement of his *al-Taqrīb wa-l-Irshād al-Kabīr*. The available work is available in part. Its manuscript is divided into two parts; only the first was available to the editor. On the last page of the first part, the scribe said that the second part of the book starts with the rulings of the Prophet's actions.<sup>3</sup>

According to Tāj al-Dīn al-Subkī<sup>4</sup> (d. 771/1370), al-Bāqillānī's *al-Taqrīb* was abridged by 'Abd al-Malik al-Juwaynī<sup>5</sup> (d. 478/1085) in his *al-Talkhīṣ*.<sup>6,7</sup>

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<sup>2</sup> *Al-Taqrīb wa-l-Irshād "al-Ṣaghīr"*, ed. 'Abd al-Ḥamīd Abū Zunayd, 2<sup>nd</sup> ed., 3 vols. (Beirut: Mu'assasat al-Risāla, 1998).

<sup>3</sup> *Ibid*, 1:91, 3:431.

<sup>4</sup> Al-Subkī is a jurist affiliated to the Shāfi'ī school of *fiqh*. His name is 'Abd al-Wahhāb b. 'Alī b. 'Abd al-Kāfi al-Subkī. He lived in Damascus and died there; Aḥmad b. Qāḍī Shuhba, *Ṭabaqāt al-Shāfi'īyya*, ed. 'Abd al-'Alīm Khān, 4 vols. (Hyderabad: Majlis Dā'irat al-Ma'ārif al-Nu'māniyya, 1979), 3:140-143.

<sup>5</sup> Al-Juwaynī is a jurist affiliated to the Shāfi'ī school of *fiqh*. His name is 'Abd al-Malik b. 'Abd Allah b. Yūsuf al-Juwaynī. He visited Baghdad, Makka and Madina. He died in Nishapur; Tāj al-Dīn al-Subkī, *Ṭabaqāt al-Shāfi'īyya al-Kubrā*, ed. Maḥmūd al-Ṭanāhī and 'Abd al-Fattāh al-Ḥulw, 10 vols. (Cairo: Dār Ihyā' al-Kutub al-'Arabiyya, n.d. [1964-1976?]), 5:165-222.

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However, he does not specify which of the three *al-Taqrīb*s was abridged. Al-Subkī also called al-Bāqillānī's *al-Taqrīb* “*al-Taqrīb wa-l-Irshād fī Tartīb Ṭuruq al-Ijtihād*” (which roughly means facilitation of and guidance on organizing the ways/methods of *ijtihād*—exerting effort in understanding Divine Law).<sup>8</sup>

Al-Bāqillānī is a jurist and legal theorist affiliated to the Mālik school of law and legal theory, and he is a theologian affiliated to the Ash‘arī school of theology. His name is Muḥammad b. al-Ṭayyib b. Ja‘far b. al-Qāsim, and his *kunya* is Abū Bakr. He lived in Basra and then he settled in Baghdad where he died. He was chief of the Mālikī school in Baghdad. He authored several works in the field of legal theory, such as *al-Muqni‘*, *al-Tamhīd* and *al-Taqrīb wa-l-Irshād*. However, none of them is available with the exception of *al-Taqrīb*.<sup>9</sup>

### 1.3. Methodology

This paper will analyze the perspective of al-Bāqillānī on the validity of utilizing counter-implicature in general and counter-implicature of attributes in particular in inferring rulings from the Qur‘ān and *sunna*. It will also compare and contrast the perspective of al-Bāqillānī with the mainstream perspective of the Mālikī school, and with the perspective of the Shāfi‘ī (majority) school of legal theory on counter-implicature.

## 2. The Position of Counter-implicature in Legal Theory according to al-Bāqillānī

Al-Bāqillānī defines “*uṣūl al-fiqh*” “fundamental principles of *fiqh*” as branches of knowledge representing the foundation of knowledge of rulings of the actions of responsible beings.<sup>10</sup> He believes that *fiqh*<sup>11</sup> is based on eight

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<sup>6</sup> *Kitāb al-Talkhīṣ fī Uṣūl al-Fiqh*, ed. ‘Abd Allah al-Nībālī and Shabbīr al-‘Umarī, 3 vols. (Beirut: Dār al-Bashā‘ir; Makka: Dār al-Bāz, 1996).

<sup>7</sup> Tāj al-Dīn al-Subkī, *Raf‘ al-Ḥājib ‘an Mukhtaṣar Ibn al-Ḥājib*, ed. ‘Alī Mu‘awwaḍ and ‘Ādil ‘Abd al-Mawjūd, 7 vols. (Beirut: ‘Ālam al-Kutub, 1999), 1:232.

<sup>8</sup> *Ibid*, 1:231.

<sup>9</sup> See Muḥammad Makhluḥ (Mālikī jurist d. 1360/1941), *Shajarat al-Nūr al-Zakiyya fī Ṭabaqāt al-Mālikiyya*, 2 vols. (Cairo: al-Maktaba al-Salafiyya, 1931), 1:92-93; ‘Abd Allāh al-Marāghī, *al-Fath al-Mubīn fī Ṭabaqāt al-Uṣūliyyīn*, 3 vols. (Cairo: printed by Muḥammad ‘Uthmān, 1947), 1:221-223; ‘Iyāḍ al-Yaḥṣubī (Mālikī jurist d. 544/1149), *Tartīb al-Madārik wa-Taqrīb al-Masālik li-Ma‘rifat A‘lām Madhhab Mālik*, ed. Muḥammad al-Ṭanjī et al., 2<sup>nd</sup> ed. 8 vols. (Morocco: Wazārat al-Awqāf, 1983), 7:44-70.

<sup>10</sup> Al-Bāqillānī, *al-Taqrīb*, 1:172.

<sup>11</sup> Al-Bāqillānī defines “*fiqh*” (from the perspective of scholars of *fiqh* and theology, *kalām*) as knowledge of rulings (*aḥkām*, pl. of *ḥukm*) of the actions of responsible beings (*mukallaḥfūn*, pl. of

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fundamental principles (*uṣūl*, pl. of *aṣl*), the first of which is address/speech (*khiṭāb*) in the Qur'ān and *sunna*. He notes that such address has multiple types,<sup>12</sup> such as counter-implicature (*dalīl al-khiṭāb*). To distance himself from this type under discussion, al-Bāqillānī adds the phrase “according to those who validate [its use].”<sup>13</sup> In another occurrence, al-Bāqillānī remarks that jurists accepting counter-implicature consider it as a type of clarification (*bayān*).<sup>14</sup>

Before exploring counter-implicature (or *dalīl al-khiṭāb* “the indicator of address”), al-Bāqillānī draws a contrast between this type of meaning and the meanings that a text suggests by way of *mafhūm al-khiṭāb* (that which can be understood from address), *lahn al-khiṭāb* (the tenor of address), and *faḥwā al-khiṭāb* (the purport of address), three near synonymous terms referring to implicit meaning. Al-Bāqillānī illustrates these three types of meanings with three Qur'ānic verses: “Don't say to them *uff-fie*” (17:23); “Strike with your staff the sea. Then it parted” (26:63); and “They don't receive injustice in the amount of a thread” (4:49).<sup>15</sup> The first and third examples are the same. In the first verse, saying the least remark of distaste and disapproval to parents is forbidden; thus, anything harsher than that is also forbidden a fortiori (by a stronger force of logic). The third verse asserts that God will not do injustice to a group of people even in the least amount; hence, they will not receive injustice of a greater amount a fortiori. The second verse can be considered as a type of ellipsis, as it means God ordered Moses to strike the sea with his staff, Moses struck the sea, then it parted.

The contrast that al-Bāqillānī provides is highlighted by the use of the expression “as to” (*ammā*), which signifies two cases. In the first case, the author

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*mukallaḥ*) that can be reached through careful examination (*naẓar*) and that are based on *sharī'ah* [e.g. Divine and prophetic speech] rather than intellect (*'aql*). Examples of such rulings include considering an act as obligatory, impermissible, permissible, valid or invalid; *al-Taqrīb*, 1:171-172.

<sup>12</sup> Al-Bāqillānī enumerates fifteen types of speech. Examples include an order; a forbiddance (*nahy*); an abrogating text; an abrogated text; a text with multiple possible meanings (*mujmal*); a text with a limited scope of applicability (*khāṣṣ*, *khuṣūṣ*); a text with a wide scope of applicability (*'amm*, *'umūm*), if proven to be so; and that which a text suggests by way of *lahn al-khiṭāb*, *mafhūm al-khiṭāb*, and *faḥwā al-khiṭāb*; *al-Taqrīb*, 1:311.

<sup>13</sup> *Ibid*, 1:310-311.

<sup>14</sup> *Ibid*, 3:373. For a discussion of the term *bayān*, see Joseph Lowry, “Some Preliminary Observations on al-Shāfi'ī and Later *Uṣūl al-Fiqh*: The Case of the Term *bayān*,” *Arabica* 55, no. 5 (2008): 505-527.

<sup>15</sup> Al-Bāqillānī's illustration is brief, as he discusses this topic before; al-Bāqillānī, *al-Taqrīb*, 3:331.

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says that there is a consensus of opinion on the validity of these three<sup>16</sup> suggested meanings. Thus, it would follow that there is no consensus of opinion on the validity of counter-implicature, and this represents the second case of the expression “as to”.

### 3. Al-Bāqillānī’s Definition of Counter-implicature

Al-Bāqillānī defines counter-implicature “according to those who validate it” as “a connection between a ruling and one of the two attributes of something; such connection makes the establishment of that ruling with that attribute serve as an indicator drawing one’s attention to that which is not connected with that attribute.”<sup>17</sup> In other words, the ruling exists when the attribute exists, and it does not exist when the attribute does not exist. This leads to the affirmation of the ruling when connected to the attribute, and to the negation of the ruling when not connected to the attribute.

Al-Bāqillānī illustrates counter-implicature with four examples. First, God’s saying “And whoever of you kills it **intentionally**, the penalty is an equivalent from sacrificial animals to what he killed” (Q. 5:95). Second, “And do not kill your children **for fear of poverty**” (Q. 17:31). Third, “Verily you are **only** a warner for those who fear it” (Q. 79:45). Fourth, the Prophet’s saying “In **freely-grazing** sheep, there is *zakat*”<sup>18</sup>. Al-Bāqillānī does not explain what the counter-implicature of these examples is. He only highlights that this, according to those validating counter-implicature, requires the affirmation of the ruling connected to the attribute, and the negation of the ruling when not connected to the attribute.<sup>19</sup>

If this rule is applied to the adverb “intentionally” in the first example, then the counter-implicature would be “And whoever of you kills it not intentionally,

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<sup>16</sup> Or we can safely say this suggested meaning, as al-Bāqillānī considers all of them (*maḥḥūm*, *lahn*, and *faḥwā*) as near synonyms, and regards them as one entity, and thus he uses them interchangeably. See, for example, *al-Taqrīb*, 1:347. For a full discussion of al-Bāqillānī’s semantic categorization of comprehensible speech, see *al-Taqrīb*, 1:340-351.

<sup>17</sup> In translating the definition, I attempted to be as close as possible to the original; *al-Taqrīb*, 3:331. A simple example to illustrate the definition is “I like blue cars,” which by way of counter-implicature suggests “I do not like cars that are not blue.”

<sup>18</sup> There is a similar *ḥadīth* in al-Bukhārī’s *Ṣaḥīḥ*, “In the charity of sheep, in the free-grazing thereof, if they are forty to one hundred and twenty, there is one sheep.” This is part of a long report where Abu Bakr al-Ṣiddīq describes in detail the exact amount due for charity based on Prophetic teaching; Muḥammad al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, ed. Abū Shu‘ayb al-Karmī (Riyadh: Bayt al-Afkār al-Dawliyya, 1998), 283.

<sup>19</sup> Al-Bāqillānī, *al-Taqrīb*, 3:331.

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such penalty would not be due.” In other words, the verse prescribes a penalty for intentional killing of game during pilgrimage. Thus, a pilgrim would be relieved from penalty if he does not kill game intentionally; in other words, if he kills it in any way that is not intentional. I avoided saying “unintentionally” because had I done so, I would have restricted the scope of negation to this particular possibility.

Applying counter-implicature to the prepositional phrase “for fear of poverty” will result in an unintended meaning as the Almighty would not allow parents to kill their children not for fear of poverty. On the contrary, if the verse forbids parents from killing their children even in the case of poverty, it also forbids the same act in the absence of this case a fortiori. Perhaps al-Bāqillānī provides this example in order to demonstrate that counter-implicature is not applicable in all cases, or to raise the reader’s distaste when he sees the ramifications of applying counter-implicature.

Using “only” *innamā* in the third example provided by al-Bāqillānī raises two possibilities. The verse comes in the context of the disbelievers of Quraysh asking the Prophet about the time of the Last Day (Q. 79:42). The Almighty advises the Prophet that his mission is not to ask about the time of the Last Day, rather to warn about it. Thus, the mere verb “warn” is the main focus of the word “only”. This focus can also be extended to the prepositional phrase “for those who fear it.” In such a case, the meaning would be that Prophetic warning is addressed only to those who fear the Last Day. Applying counter-implicature to this portion would result in a contradiction with other verses demonstrating the encompassing nature of Prophetic mission.<sup>20</sup> Therefore, it seems to me that al-Bāqillānī mentioned this example in order to highlight how counter-implicature can cause disharmony within the corpus of Qur’ānic texts.

In the fourth example, “In **freely-grazing** sheep, there is *zakat*,” the adjective “freely-grazing” implies, when applying counter-implicature, that sheep that do not graze freely are exempt from *zakat*. Like the previous three examples, al-Bāqillānī does not explain what the counter-implicature of this Prophetic report is. However, in another occurrence he clarified that the counter-implicature of this saying, according to those validating counter-implicature, is that sheep that are supplied with animal feed are exempt from *zakat*.<sup>21</sup> Moreover, he explains in a

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<sup>20</sup> See, for example, Muḥammad al-Qurṭubī, *al-Jāmi‘ li-Aḥkām al-Qur’ān wa-l-Mubayyin li-mā Taḍammanah min al-Sunna wa-l-Furqān*, ed. ‘Abd Allah al-Turkī et al., 24 vols. (Beirut: Mu’assasat al-Risāla, 2006), 22:66-67.

<sup>21</sup> Al-Bāqillānī, *al-Taqrīb*, 3:87.



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further instance that this report is taken to indicate that the ruling on working sheep is different from that of freely-grazing sheep.<sup>22</sup> It seems that sheep used by farmers in agriculture are not allowed to graze freely, yet they are fed with animal feed.<sup>23</sup> Thus, we have two examples of sheep that do not graze freely, and therefore are exempt from *zakat*.

The definition of counter-implicature provided by al-Bāqillānī as “a connection between a ruling and one of the two attributes of something” may lead us to think in a binary way of an attribute and its direct opposite, such as good and bad, tall and short, etc. However, the fourth example refines our understanding of the definition, as it shows us that there may be more than one instance considered to be the opposite of the attribute connected to the ruling. Furthermore, the word “different” may be more accurate than the word “opposite” in this respect.

Moreover, the definition al-Bāqillānī presents for counter-implicature restricts the scope of this linguistic phenomenon to an attribute (*ṣifa*). Thus, whenever al-Bāqillānī mentions “counter-implicature” or “*dalīl al-khiṭāb*”, this will be understood as counter-implicature of attributes, unless he indicates otherwise. In addition, the four examples he advanced should be considered as cases of counter-implicature of attributes. From these examples, we can see that the term “attribute” covers various linguistic structures, such as adverbs, adverbials, adjective clauses, and adjectives. Thus, the term “attribute” is not restricted to the linguistic adjective in the grammatical sense.

#### 4. Advocates of Counter-implicature of Attributes

Having contrasted counter-implicature with other suggested meanings, defined counter-implicature and presented some examples, al-Bāqillānī then moves to explore the validity of this method of inference. He remarks that there is a debate among jurists over the validity of counter-implicature (of attributes).<sup>24</sup> Such validity is established by the “majority” of *fiqh* scholars, chief<sup>25</sup> among whom are al-

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<sup>22</sup> Ibid, 3:342.

<sup>23</sup> I cannot see how sheep can be used in agriculture. Perhaps jurists apply counter-implicature to this report, and then by way of analogy establish that working cattle are exempt from *zakaat*.

<sup>24</sup> Al-Bāqillānī, *al-Taqrīb*, 3:332.

<sup>25</sup> By “chief” I mean the most well-known jurists to have validated counter-implicature, as if al-Bāqillānī wanted to say that recognition of counter-implicature characterizes al-Shāfi‘ī and his fellows. My understanding is supported by the Ḥanafī jurist al-Dabbūsī (d. in Bukhara 430/1039), who presents counter-implicature as a debatable point between the Ḥanafī and Shāfi‘ī jurists. See his work on debatable issues in legal theory between Abū Ḥanīfa, his fellows, Mālik, Ibn Abī Laylā and

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Shāfi'ī<sup>26</sup> and his fellows. Al-Bāqillānī adds that “most” of the fellows of Mālik<sup>27</sup> and (most of)<sup>28</sup> the Zāhirīs<sup>29</sup> also validate counter-implicature. The position of Mālik is not declared in this statement, and it may not be accurate to assume that Mālik, like most of his fellows, accepts counter-implicature. However, at least we come to know from this statement that the mainstream position within the Mālikī school up to al-Bāqillānī, from al-Bāqillānī's point of view, was in favour of counter-implicature.<sup>30</sup>

Moreover, al-Bāqillānī refers to “his *shaykh*-teacher,”<sup>31</sup> Abū al-Ḥasan al-Ash'arī,<sup>32</sup> in two instances where he reaches legal and theological rulings by applying counter-implicature to two Qur'ānic verses. Al-Bāqillānī does not say explicitly that al-Ash'arī validates counter-implicature. However, we can count him

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al-Shāfi'ī; 'Ubayd Allāh al-Dabbūsī, *Ta'sīs al-Nazar*, ed. Muṣṭafā al-Dimashqī (Beirut: Dār Ibn Zaydūn, n.d.; Cairo: Maktabat al-Kulliyāt al-Azhariyya, n.d.), 131-132.

<sup>26</sup> Al-Shāfi'ī is a jurist after whom a school of *fiqh* is named. His name is Muḥammad b. Idrīs b. al-'Abbās b. 'Uthmān. He lived in Makka, and he travelled to Medina, Yemen, Baghdad, and Egypt. In the field of legal theory, he is famous for his *al-Riṣāla* (message/treatise). He died in Egypt 204/820; al-Marāghī, *al-Faḥḥ*, 1:127-135.

<sup>27</sup> Mālik's name is Mālik b. Anas b. Mālik. He is a jurist after whom a school of *fiqh* is named. He died in Medina 179/796; al-Marāghī, *al-Faḥḥ*, 1:112-118.

<sup>28</sup> The phrase “most of” can apply to both Mālik's fellows and the Zāhirīs, or to the former only.

<sup>29</sup> The exact phrase used by al-Bāqillānī is “*ahl al-zāhir*” (i.e. people advocating the apparent overcoming meaning of legislative texts); *al-Taqrīb*, 3:332; the Zāhirī school of law is named after the principle of *al-zāhir*. They are also called the Dāwūdīs, in reference to Dāwūd b. 'Alī (d. 270/884). It is good to know that the Zāhirīs, or most of them, up to al-Bāqillānī, validate counter-implicature. I think there might have been some developments within this school as Ibn Ḥazm (d. 456/1064) is known for his total rejection of suggested meanings, especially counter-implicature. See 'Alī b. Ḥazm, *al-Iḥkām fī Uṣūl al-Aḥkām*, 8 vols. (Beirut: Dār al-Āfāq al-Jadīda, n.d. [1979?]), 7:2-53.

<sup>30</sup> It is not clear why al-Bāqillānī does not specifically mention the opinion of Mālik in this respect. One possible explanation is that the term “counter-implicature” was not in use during Mālik's time. However, Mālik could have applied this method before the coinage of the term took place. Further investigation is needed in order to ascertain Mālik's stance on counter-implicature. It is important to know his view because he is assumed to be the mainstay of the school named after him, and his fellows are also assumed to follow his opinions.

<sup>31</sup> Among the teachers of al-Bāqillānī are students of al-Ash'arī, but not al-Ash'arī himself. Thus, when al-Bāqillānī refers to al-Ash'arī as “his *shaykh*-teacher,” we can understand that as a reference to a leading figure whom al-Bāqillānī reveres and follows.

<sup>32</sup> Al-Ash'arī's name is 'Alī b. Ismā'īl b. Iṣḥāq b. Sālim. He is a theologian after whom a school of theology is named. He lived in Basra, and he travelled to Baghdad after 300/912. In the field of law, the Mālikīs consider him a Mālikī, whereas the Shāfi'īs consider him a Shāfi'ī. He died in Baghdad 324/935-6; al-Marāghī, *al-Faḥḥ*, 1:174-176; Ibn Farḥūn, *al-Dībāj*, 2:94-96; al-Subkī, *Ṭabaqāt*, 3:347-444.

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among the advocates of counter-implicature given the way al-Ash‘arī reaches his conclusions. It is also possible that al-Ash‘arī derives these rulings by applying another principle, yet the citation of al-Ash‘arī immediately after the advocates of counter-implicature with seeming application of counter-implicature gives preponderance to the first possibility.

We can double check the position of al-Ash‘arī in his works, especially in relation to the two examples cited by al-Bāqillānī. The available works of al-Ash‘arī do not assign a separate section dedicated to the discussion of counter-implicature. Although his available works are in the field of theology rather than legal theory, they sometimes include discussions of topics in legal theory.<sup>33</sup> I tracked the two examples provided by al-Bāqillānī in his works in order to find out how al-Ash‘arī uses them as evidence. I managed to detect one of the examples, and I found that al-Bāqillānī was quite honest in presenting the comments of al-Ash‘arī.

In this example, al-Ash‘arī cites Q. 83:15 in order to prove his view that the believers are going to see the Almighty in the Hereafter. The verse reads “No! Indeed, from their Lord, that Day, **they** will be partitioned.” In other words, the Almighty is going to prevent the disbelievers from seeing Him in the Hereafter. Al-Ash‘arī understands from this verse that such prevention excludes the believers.<sup>34</sup> The same style of reasoning is adopted by al-Bāqillānī when he comments on this verse in his theological works.<sup>35</sup> It seems to me that al-Bāqillānī may have used another principle of legal theory, other than counter-implicature, because he rejects counter-implicature. We have his clear-cut statement in his works on legal theory regarding his position on counter-implicature. It might be said that perhaps al-Bāqillānī had an earlier position that he later revised.

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<sup>33</sup> See, for example, his *Maqālāt al-Islāmiyyīn wa-Ikhtilāf al-Muṣallīn*, ed. Muḥammad ‘Abd al-Ḥamīd, 2 vols. (Cairo: Maktabat al-Nahda al-Miṣriyya, 1950). In this work, there is discussion of abrogation; conflict of texts; *ijtihād*; commands and their wordings; consensus; causation of God’s rulings; texts with wide scope of applicability (*‘amm*); and texts with limited scope of applicability (*khāṣṣ*).

<sup>34</sup> Al-Bāqillānī, *al-Taqrīb*, 3:332; Abū al-Ḥasan al-Ash‘arī, *al-Ibāna fī Uṣūl al-Diyāna*, ed. Bashīr ‘Uyūn, 3<sup>rd</sup> ed. (Damascus: Dār al-Bayān; al-Ṭā’if: al-Mu’ayyad, 1990), 48, 63.

<sup>35</sup> See, for example, Abū Bakr al-Bāqillānī, *al-Inṣāf fī mā Yajib I’tiqāduh wa-lā Yajūz al-Jahl bih*, ed. Muḥammad al-Kawtharī, 2<sup>nd</sup> ed. (Cairo: al-Maktaba al-Azhariyya li-l-Turāth, 2000), 24; Abū Bakr al-Bāqillānī, *Kitāb al-Tamhīd*, ed. Richard McCarthy (Beirut: al-Maktaba al-Sharqiyya, 1957), 328.

In addition, al-Ash‘arī seemingly applies counter-implicature to Q. 49:6 “If there comes to you a **disobedient** one with information, investigate.”<sup>36</sup> He believes in acting upon reports narrated by one reporter or a small number of reporters. He bases his view on this verse as it indicates that the ruling differs when an upright person is the source of information. In other words, the reports of an upright narrator are acceptable.

## 5. Opponents of Counter-implicature of Attributes

Having named jurists advocating counter-implicature (of attributes), al-Bāqillānī then cites the opponents invalidating counter-implicature. Among the opponents are “the people of Iraq” (in reference to Abū Ḥanīfa<sup>37</sup> and his fellows, and perhaps Iraqi jurists in general), a “great number” of the fellows of Mālīk, Ibn Surayj,<sup>38</sup> “proficient” jurists from among the fellows of al-Shāfi‘ī, and al-Bāqillānī himself.<sup>39</sup> The following table illustrates the debate among jurists and theologians over the validity of counter-implicature up to al-Bāqillānī’s time from the perspective of al-Bāqillānī.

Table 1.1: Counter-implicature of Attributes (CoA) between Opponents and Proponents (approximately up to 400 H/1000 CE) from Al-Bāqillānī’s Perspective

Jurist	Counter-implicature of Attributes	
	Valid	Invalid
Majority of Jurists	Yes	No
Al-Shāfi‘ī (d. 204/820)	Yes	No
Fellows of al-Shāfi‘ī (Shāfi‘īs)	Yes	No
Mālīk (d. 179/796)	? (probably validates it)	?

<sup>36</sup> Al-Bāqillānī, *al-Taqrīb*, 3:332.

<sup>37</sup> Abū Ḥanīfa’s name is al-Nu‘mān b. Thābit. He is a jurist after whom a school of *fiqh* is named. He lived in Kufa and travelled to Makka. He died in Baghdad 150/767; al-Marāghī, *al-Fatḥ*, 1:101-105.

<sup>38</sup> Ibn Surayj’s name is Aḥmad b. ‘Umar b. Surayj. He is a jurist affiliated to the Shāfi‘ī school of *fiqh*. He lived in Baghdad and Shiraz. He died in Baghdad 306/918; al-Subkī, *Ṭabaqāt*, 21-39; al-Marāghī, *al-Fatḥ*, 1:165-166. In his available work on law, he discusses the topic of acting upon reports narrated by one reporter. He, like al-Ash‘arī, cites Q. 49:6 and follows the same style of reasoning that seems to be an application of counter-implicature to the Qur’anic verse. See Ṣāliḥ al-Duwaysh, “Al-Wadā‘i’ li-Manṣūṣ al-Sharā‘i’ li-Abī al-‘Abbās Aḥmad b. ‘Umar b. Surayj al-Mutawaffā Sanat 306 H” (Master’s thesis, University of al-Imām Muḥammad b. Su‘ūd al-Islāmiyya, Riyadh, 1984), 2 vols. 2:671-672.

<sup>39</sup> Al-Bāqillānī, *al-Taqrīb*, 3:332.

Fellows of Mālik (Mālikīs), Most of them	Yes	No
Dāwūd b. ‘Alī (d. 270/884)	? (probably validates it)	?
Fellows of Dāwūd “People of <i>zāhir</i> ” (Zāhirīs)	Yes	No
Al-Ash‘arī (d. 324/935)	? (probably validates it)	?
Abū Ḥanīfa (d. 150/767)	?	? (probably invalidates it)
Fellows of Abū Ḥanīfa “People of Iraq” (Ḥanafīs)	No	Yes
Fellows of Mālik (Mālikīs), A Great Number	No	Yes
Ibn Surayj (d. 306/918)	No	Yes
Fellows of al-Shāfi‘ī (Shāfi‘īs), Some of them	No	Yes
Al-Bāqillānī (d. 403/1013)	No	Yes

This table draws our attention to the citation of al-Shāfi‘ī’s fellows twice by al-Bāqillānī. In the first instance, the author says that they validate counter-implicature (of attributes).<sup>40</sup> However, he later remarks that some of them invalidate this method of inference.<sup>41</sup> He does not use a quantifier (such as “most”) in the first time of their mention, as he does when he refers to Mālik’s fellows. Thus, when al-Bāqillānī refers to a community of jurists, we can take it as a reference to either the entirety or the majority of such community. Because al-Bāqillānī mentions al-Shāfi‘ī in particular as well as his fellows, yet he does not follow suit with other jurists who have fellows, I do not consider the leading figure to necessarily share the same opinion of his fellows.

<sup>40</sup> Ibid, 3:332.

<sup>41</sup> Ibid, 3:332.

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## 6. Other Types of Counter-implicature

The previous debate focuses on one main type of counter-implicature, namely counter-implicature of attributes. Al-Bāqillānī then adds—without referring to specific scholars—that some Shāfi‘ī jurists “go so far” (*tajāwaz*) and accept counter-implicature of nouns and names.<sup>42</sup> Thus, when there is a connection between a ruling and a mere<sup>43</sup> unmodified noun (*laqab*), the ruling differs when the noun differs. The verb phrase “go so far” used by al-Bāqillānī reflects how he feels about making mere nouns a target of counter-implicature.

Moreover, there are other types of counter-implicature. We come to know from al-Bāqillānī that the proponents of the last type of inference validate counter-implicature of numbers, extent (*ghāya*), and conditions. Al-Bāqillānī notes—without referring to specific scholars—that the latter two types are validated by some of the jurists who invalidate counter-implicature of attributes. However, he does not state his position regarding these two types. He, nevertheless, promises to discuss all of these opinions in detail.<sup>44</sup>

From al-Bāqillānī’s brief presentation of the scholarly debate over the validity of each type of counter-implicature, we can see that counter-implicature of attributes took up most of the presentation, and that other types were referred to very briefly. The lengthy discussion that followed reflected the centrality of counter-implicature of attributes in al-Bāqillānī’s argumentation. Almost 80% of his analysis was devoted to counter-implicature of attributes.

Within his analysis of counter-implicature of attributes, al-Bāqillānī comments on counter-implicature of nouns. Having examined counter-implicature of attributes, he studies counter-implicature of extent. Afterwards, he introduces a new type, namely counter-implicature of *innamā* (verily ... only). Then, he concludes with counter-implicature of conditions. In my following discussion of al-Bāqillānī’s exposition, I am going to focus on counter-implicature of attributes, which is the main type discussed by Muslim jurists. This discussion will reveal whether al-Bāqillānī’s view regarding counter-implicature of attributes conforms to or contradicts the view of the Mālikī school to which he is affiliated.

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<sup>42</sup> Ibid, 3:333.

<sup>43</sup> A mere noun means that there is no linguistic qualification (modifier) that precedes or follows the noun, such as an adjective. “Report” is a mere noun.

<sup>44</sup> Al-Bāqillānī later discusses counter-implicature of extent and conditions but not numbers; *al-Taqrīb*, 3:358-360, 363-365.

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## 7. Al-Bāqillānī's View of Counter-implicature of Attributes

Al-Bāqillānī divides his detailed discussion of counter-implicature of attributes into two main sections. In the first section, he provides his arguments against this method of inference. In the second section, he mentions the arguments of those validating counter-implicature of attributes. Throughout his refutation, the term (*ahl al-lughā*) appears very frequently. It literally refers to “people of language,” (specialists in language). His main argument is that we do not have an explicit statement (*tawqīf*) attributed to such specialists proving this linguistic feature. In his refutation, al-Bāqillānī allows his opponents to respond to his arguments and raise questions. His fifth and last argument against counter-implicature of attributes included a refutation of counter-implicature of nouns. In what follows, I will present the first section of al-Bāqillānī's discussion, which comprises five arguments proving the invalidity of counter-implicature of attributes.<sup>45</sup>

### 7.1. Arguments against Counter-implicature of Attributes

#### 7.1.1. First Argument

1. Were counter-implicature of attributes valid, it would have been established by way of language and explicit texts (*tawqīf*)<sup>46</sup> from the people of language,<sup>47</sup> or by investigating their speech.<sup>48</sup>

If proponents of counter-implicature of attributes have an explicit statement (*tawqīf*) attributed to Arabs, this attribution may be in the form of a report narrated by multiple narrators (*mutawātir*) or a small number of narrators (*āḥād*). The authenticity of the latter cannot be undoubtedly ascertained, and therefore it cannot serve as a basis of a language feature. Although the authenticity of the former (*mutawātir* report) can be of the highest degree, it is impossible that such statement exists because most scholars invalidated counter-implicature of attributes. According to al-Bāqillānī, it is invalid to accept a language feature used in understanding the Qur'ān and *sunna*, especially the legal content, when such feature is established by a small

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<sup>45</sup> Ibid, 3:333-338.

<sup>46</sup> *Tawqīf* usually refers to explicit texts from the Qur'ān or *sunna*; however, it is used here in relation to scholars of Arabic language.

<sup>47</sup> Al-Bāqillānī uses the pronoun “them” without mentioning a noun beforehand. Most probably, he refers to the people of language (*ahl al-lughā*), whether it is a reference to Arabs in general or linguists in particular.

<sup>48</sup> Al-Bāqillānī, *al-Taqrīb*, 3:333-335.

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number of authorities. To be accepted, a language feature has to be established by multiple authorities relating an explicit statement from the Arabs.

1.1 <sup>49</sup>**Proponents of Counter-implicature of Attributes:** What do you mean by “investigation of their speech” that can serve as an explicit statement attributed to them by a *mutawātir* report?

**Al-Bāqillānī’s Response:** In response to this hypothetical question, al-Bāqillānī provided some examples. For instance, the Arabs apply (*a lam*) to denote a higher degree of knowledge than (*alīm*).

1.2 If you invalidate counter-implicature of attributes, then you need a narration on their [Arabs] authority.

We do not need a narration for something that they do not apply or recognize. We need a narration in matters they established.

### 7.1.2. Second Argument

2. Enquiry is appropriate in cases where attributes are present.<sup>50</sup>

For example, when one says to you “If Zayd hits you **intentionally**, then hit him,” it would be appropriate to ask that person “If he hits me unintentionally, should I hit him?” The same applies when you are told the following: “Don’t kill your child **for fear of poverty**,”<sup>51</sup> and “Pay Zakat for your **freely-grazing** livestock”.

Appropriateness of enquiry about something is an indicator to the appropriateness of including that thing in the scope of applicability of speech/address. In other words, the saying “If Zayd hits you intentionally, then hit him,” gives rise to the question whether the ruling is the same in the case of hitting by mistake. The questioner wants to verify whether the statement-giver intended to apply the ruling of hitting to two cases or to one case only. Thus, there is a probability that the ruling of the opposite case (that is not connected to the attribute) may be the same as or different from the ruling of the original case (that is connected to the attribute). It is this probability that renders the ruling of the opposite case (that is not connected

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<sup>49</sup> The subset of numbers indicates a response on the part of the proponents of counter-implicature of attributes. Al-Bāqillānī’s response immediately follows.

<sup>50</sup> Al-Bāqillānī, *al-Taqrīb*, 3:335.

<sup>51</sup> I could not see how it is appropriate to raise a question in this case, as no one would think that the ruling may differ if fear of poverty is absent.



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to the attribute) of an unknown status (*mawqūf*) until verification proves its validity. Therefore, counter-implicature of attributes cannot be established with certainty.

### 7.1.3. Third Argument

3. Sometimes we find them [Arabs] make a connection between a ruling and an attribute, and we find the ruling that is not connected with that attribute the same as the ruling connected with the attribute.<sup>52</sup> Thus, this proves the existence of two possibilities when a ruling is connected with an attribute. The ruling not connected with that attribute may share the same ruling of that ruling connected with that attribute. Also, it may have a different ruling from that ruling connected with that attribute.

3.1 If a ruling connected with an attribute is the same as the ruling connected with a different attribute, the address/speech in this case is used in a figuratively inclusive manner (*tajawwuz wa-ittisā`*).

Response: Make yourself distinct from (perhaps he means that they should declare that they disagree with) those who contend that the address/speech is used in a figuratively inclusive manner if a ruling connected with an attribute is opposed to the ruling connected with a different attribute. Al-Bāqillānī comments on these two possibilities, saying that there is no [big] difference between them.

These two opinions differ regarding what an address is originally applied to denote (*ḥaqīqa*), and what goes beyond this original meaning (*majāz*). The first opinion regards it as an original meaning to have difference in ruling corresponding to the difference in attributes, and regards it as a supra-original meaning to have similarity in ruling in the case of different attributes. Thus, the functioning of counter-implicature of attributes, according to this opinion, is a type of original meaning (*ḥaqīqa*). Conversely, this function, according to the second opinion, is regarded as a type of supra-original meaning (*majāz*). The text is originally intended to denote similarity in ruling in the case of different attributes.

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<sup>52</sup> Al-Bāqillānī, *al-Taqrīb*, 3:335-336.

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#### 7.1.4. Fourth Argument

4. A connection between a ruling and an attribute does not indicate a different ruling in the case of a different attribute because such connection can serve as reporting (providing information about) some acts performed by the one having the attribute. There is consensus of opinion that when we say “The **black** one left,” it does not mean that the white one did not leave. The same applies when we say “Hit the black ones,” as it does not mean that the white ones are excluded from hitting.<sup>53</sup>

4.1 **Proponents of Counter-implicature of Attributes:** We apply counter-implicature in both cases of reports and commands.

**Response:** Make yourselves distinct from those who believe that when there is a connection between a ruling (in the form of a report) and a proper noun, the ruling differs for anyone else who does not have this name. For example, if it is said “**Zayd** prayed,” it would mean that everybody except Zayd did not pray. Al-Bāqillānī comments on this view saying that this is very far-fetched and a manifest mistake, and he promises to discuss this viewpoint later.

#### 7.1.5. Fifth Argument

5. There is a consensus of opinion among linguists and semanticists (*ahl al-lughā wa-l-ma‘ānī*) that the purpose of using nouns—whether they are mere proper names (such as Zayd) or attribute-based nouns (such as the hitting one *ḍārib*)—is distinction. Based on this consensus, if there is a connection between a ruling and a noun, then this means the affirmation of the ruling when connected to the noun. If there is a connection between a ruling and an attribute-based noun, and this connection is taken to indicate a different ruling in the absence of such a noun, then the same result would take place if there is a connection between a ruling and a mere proper noun. Because the second hypothetical case is invalid, the same invalidity would also apply to the first case. In other words, the ruling will not differ if the noun differs, whether or not the noun denotes an attribute.<sup>54</sup>

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<sup>53</sup> Ibid, 3:336.

<sup>54</sup> Ibid, 3:336-338.

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5.1 **Proponents of Counter-implicature of Attributes:** You are applying analogy between two types of nouns, and, according to your opinion, analogy is not applied to language.

Response: This is not the case. We narrated on the authority of the people of language (Arabs/linguists) that nouns are applied to distinguish the named, and that connection between a ruling and a noun, such as a proper noun, means the affirmation of the ruling to the noun but does not<sup>55</sup> mean the negation of the ruling to a different noun. In the same way the one making such a claim needs an explicit statement (*tawqīf*) from them (people of language), your claim as well needs the same proof, but how would it be possible for you to have it?

Furthermore, those who validate analogy in nouns do not invalidate drawing an analogy between mere proper nouns and attribute-based nouns.

5.2 If someone says that a group of those who validate counter-implicature of attributes also validate counter-implicature of nouns, so how can we refute such a claim?

Response: We should not engage in a discussion with those espousing counter-implicature of nouns because we certainly know that people of language do not apply the saying “I saw **Zayd**” to denote that they did not see his clothes or anything covering him, and that they saw him naked, his mere body. They also do not apply the saying “**Zayd** is a knowledgeable one (*‘ālim*)” to denote that anybody else except Zayd is not a knowledgeable one. Likewise, the saying “**Muḥammad** is a prophet” does not mean that anybody else is not a prophet. Thus, it is not proper to engage in a discussion with those espousing counter-implicature of nouns.

Moreover, there is a consensus among people of language that in their language there can be one predicate for the subject. They also unanimously agree that in their language there can be two or more predicates for the subject. Based on this consensus, it would be invalid to assume that the saying “**Zayd** came” has one predicate affirming his coming, and another predicate negating this action for anyone else, because in this case we will ever have two predicates for the same

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<sup>55</sup> The negation particle is needed in the Arabic text so that the meaning would be sound.

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subject. In other words, we will not have a case where we can have only one predicate. Such result is unanimously rejected by people of language. Thus, the coming of Zayd does not negate the coming of anyone else.

If the saying “**Zayd** came” negates the coming of anyone else other than Zayd, then the saying “Zayd and ‘Amr came” would be a contradiction. Because no one considers the latter example as a contradiction, then the arguments for counter-implicature of nouns are refuted. The same issue of contradiction is used by al-Bāqillānī to refute counter-implicature of attributes. He argues that were counter-implicature of nouns and names valid, this would prove the invalidity of counter-implicature of attributes. For example, if the saying “In **freely-grazing** sheep, there is *zakāt*” exempts fed sheep from *zakāt*, then the saying “In freely-grazing sheep and fed sheep, there is *zakāt*” would be a contradiction. Because such contradiction is not recognized, then it follows that counter-implicature of attributes is invalid.

## 7.2. Arguments in Favor of Counter-implicature of Attributes

Having advanced his arguments against the use of counter-implicature of attributes, al-Bāqillānī presents the arguments in favour of counter-implicature of attributes.<sup>56</sup> After enumerating these arguments, he counters them in a separate section.<sup>57</sup> In order to keep a smooth flow of reading, I am going to provide below a presentation of each argument followed by its counterargument.

### 7.2.1. First Argument

1. Counter-implicature of attributes is applied in the language of Arabs, and if al-Shāfi‘ī attributes such application to Arabs, then this proves the case.<sup>58</sup> Moreover, Abū ‘Ubayd<sup>59</sup>, whose opinions are authoritative in the field of

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<sup>56</sup> Al-Bāqillānī, *al-Taqrīb*, 3:338-342.

<sup>57</sup> Ibid, 3:342-358.

<sup>58</sup> Ibid, 3:338-340.

<sup>59</sup> Abū ‘Ubayd’s name is al-Qāsim b. Sallām al-Khuzā‘ī, while Abū ‘Ubayd is his *kunya*. He is a linguist, jurist, and a scholar of *ḥadīth*. He died in 224/838 in Makka five years after his pilgrimage. He was born in Herat (currently in Afghanistan), and he travelled to Iraq, Ṭarsūs, Egypt and Makka; al-Mufaḍḍal al-Ma‘arrī, *Tārīkh al-‘Ulamā’ al-Naḥwiyyīn min al-Baṣriyyīn wa-l-Kūfiyyīn wa-Ghayrihim*, ed. ‘Abd al-Fattāh al-Ḥulw (Riyadh: Jāmi‘at al-Imām Muḥammad b. Su‘ūd al-

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language, applies counter-implicature to two prophetic reports. The first is “A **well-off** person’s delaying of repayment makes his reputation<sup>60</sup> violable and punishment lawful.”<sup>61</sup> He takes this report as an indicator of the impermissibility of punishing the one who is not well-off (the one who is not able to repay his debt).<sup>62</sup>

The second report roughly reads “It is better for a person to let his body cavity become full of purulent matter than to let it become **full of poetry**.”<sup>63</sup> When it was said to Abū ‘Ubayd that the report refers to a specific type of poetry that includes insults or bad words, he does not approve of this interpretation because it will render the counter-implicature of the report of no effect, and because defamatory poetry, regardless of amount, whether little or much, is forbidden. The report warns against letting the cavity become full of poetry; thus, that which is less than that is permissible.

According to al-Bāqillānī, both al-Shāfi‘ī and Abū ‘Ubayd contend that if there is no purpose behind applying an attribute in speech, then the concept

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Islāmiyya, 1981), 197-200; Jamāl al-Dīn al-Qifī, *Inbāh al-Ruwā ‘alā Anbā’ al-Nuḥā*, ed. Muḥammad Ibrāhīm, 4 vols. (Cairo: Dār al-Fikr al-‘Arabī; Beirut: Mu’assasat al-Kutub al-Thaqāfiyya, 1986), 3:12-23.

<sup>60</sup> The exact word in the report is “honor” (*ird*), and scholars interpreted this, saying that the creditor can sue the debtor, say that he is unfair or that he is unfairly postponing the repayment of his debt, or speak harshly to the debtor. See, for example, Sulaymān Abū Dāwūd, *Sunan Abī Dāwūd*, ed. Shu‘ayb al-Arna‘ūt and Muḥammad Billī, 7 vols. (Damascus: Dār al-Risāla al-‘Ilmiyya, 2009), 5:232, 473; Aḥmad al-Nasā‘ī, *Sunan al-Nasā‘ī al-Musammā bī-al-Mujtabā*, ed. Ṣidqī al-‘Aṭṭār (Beirut: Dār al-Fikr, 2005), 1088; and Muḥammad al-Qazwīnī (known as Ibn Māja), *Sunan Ibn Māja*, ed. Muḥammad al-Albānī and Mashhūr Āl Salmān (Riyadh: Maktabat al-Ma‘ārif, n.d. [1997?]), 410, 414; Aḥmad al-Qurṭubī (Mālikī jurist d. 656/1258), *al-Mufhim li-mā Ushkil min Talkhīṣ Kitāb Muslim*, ed. Muhyī al-Dīn Mīstū et al., 7 vols. (Damascus: Dār Ibn Kathīr; Damascus: Dār al-Kalim al-Ṭayyib, 1996), 4:438-440; ‘Alī b. Baṭṭāl (Mālikī jurist d. 449/1057), *Sharḥ Ṣaḥīḥ al-Bukhārī*, ed. Abū Tamīm Yāsir Ibrāhīm, 2<sup>nd</sup> ed. 11 vols. (Riyadh: Maktabat al-Rushd, 2003), 6:522-523.

<sup>61</sup> Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 449; Abū Dāwūd, *Sunan Abī Dāwūd*, 5:473; Ibn Māja, *Sunan Ibn Māja*, 414; this is an approximate translation of the report.

<sup>62</sup> According to Abū ‘Ubayd, the *ḥadīth* report does not mention any debtor in general, yet a specific type of debtors is the focus of this report, which is well-off debtors who are able to repay their debt. Therefore, debtors who are not able to repay their debt are exempt from punishment. See Abū ‘Ubayd al-Qāsim b. Sallām, *Gharīb al-Ḥadīth*, ed. Ḥusayn Sharaf, 6 vols. (Cairo: Majma‘ al-Lughā al-‘Arabiyya, 1984-1999), 1:389-390.

<sup>63</sup> Al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, 1187; Abū al-Ḥusayn Muslim, *Ṣaḥīḥ Muslim*, ed. Abū Qutayba al-Fāryābī, 2 vols. (Riyadh: Dār Ṭayba, 2006), 2:1073. This is an approximate translation of the report.

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of scope-limitation (*takḥṣīs*) would be of no use.<sup>64</sup> In other words, they want to say that an attribute limits the scope of applicability of the statement ruling. For example, when a person is able to repay his debt, and yet he repeatedly asks for deferment, such a person is liable to punishment, as indicated in a Prophetic report. The ruling here in this report is limited to a specific category of people, and, therefore, the ruling will differ in the case of a person who is not able to repay his debt. The same concept applies to the Prophetic report demonstrating the obligation to pay *zakat* on **freely-grazing** sheep. The attribute “freely-grazing” limits the scope of *zakat* to such category of sheep, and therefore working sheep will lie beyond the scope of this ruling.

1.1 **Al-Bāqillānī’s Response:** It is not established that al-Shāfi‘ī and Abū ‘Ubayd attribute to Arabs applying counter-implicature of attributes.<sup>65</sup> Nevertheless, they say that counter-implicature of attributes is required by language. This can be considered as a type of *ijtihād* (effort in understanding Divine Law) on their part. There is a possibility that their thought (*ẓann*) that the Prophet and Arabs applied counter-implicature is not correct.

1.2 Furthermore, if we suppose they attribute this language feature to Arabs, knowledge will not be established by their attribution because it can be considered as an *āḥād* report narrated by a small number of reporters.<sup>66</sup> We explained before that a language feature cannot be established by *āḥād* reports, even if it is true that these reports can be used to establish language features in the field of poetry. Thus, al-Bāqillānī differentiates between law and literature concerning their respective basis. In other words, we can use an *āḥād* report up to Arabs and use the information contained in this narration in understanding poetry. Nonetheless, we cannot use a similar report to utilize it in the interpretation of the legal content of the Qur’ān and *sunna*.

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<sup>64</sup> Al-Bāqillānī, *al-Taqrīb*, 3:342.

<sup>65</sup> Ibid, 3:342.

<sup>66</sup> Al-Bāqillānī, *al-Taqrīb*, 3:343.

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1.3 If we suppose they attribute this language feature to Arabs, yet a group of linguists and all scholars invalidating counter-implicature declare that counter-implicature is not a language feature applied by Arabs, then the claims of each group would become equal.<sup>67</sup> Further, it is not permissible to establish a language feature based on the saying of those who have opinions and narrations as they may use it to support their opinion.<sup>68</sup>

1.4 With regards to Abū ‘Ubayd’s interpretation of “It is better for a person to let his body cavity become full of purulent matter than to let it become **full of poetry**,” that it is permissible to make one’s cavity not full of poetry, he may have said so due to his belief that defamatory poetry, even when of little amount, is impermissible.<sup>69</sup> This guided Abū ‘Ubayd to rule out the possibility of understanding “poetry” in the report to mean “defamatory poetry” because such type of poetry is forbidden in any amount. Thus, if this constitutes the basis of his interpretation, it would follow that this was a form of reasoning rather than narrating this understanding on the authority of Arabs. It would also follow that counter-implicature is not the basis of his understanding.

1.5 The belief that an attribute when used to restrict the scope of applicability should have a purpose and that the sole purpose of this restriction is affirming the ruling of that which is connected to the attribute and negating the ruling of that which is not connected to the attribute is wrong.<sup>70</sup>

1.5.1 This is a fatal methodological error because you attempt to know what speech was originally applied to denote through attempting to know its purpose

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<sup>67</sup> Ibid, 3:343.

<sup>68</sup> The author of the present paper thinks that this constitutes severe criticism of al-Shāfi‘ī and Abū ‘Ubayd. Al-Bāqillānī uses the word *madhhab*, and it may refer to a school position or to opinion in general. Although he may have criticized al-Shāfi‘ī and Abū ‘Ubayd here, the way he phrases his response to them in the previous paragraphs shows clearly that he chooses his words very carefully, which suggests that he respects them.

<sup>69</sup> Al-Bāqillānī, *al-Taqrīb*, 3:343-344.

<sup>70</sup> Ibid, 3:354.

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(*fā`ida*). Nonetheless, you should do the opposite because knowing the purpose of speech follows knowing what speech was applied to denote.

1.5.2 If proponents of counter-implicature do not know other purposes of restriction, they should not claim with certainty that there is no other purpose, as some purposes of speech may escape their knowledge. Al-Bāqillānī then gives some examples of purposes behind connecting rulings to restrictive attributes. For example, jurists will have to investigate whether the contrary case shares the same ruling of the original case.<sup>71</sup>

## 7.2.2. Second Argument

2. God says “Ask forgiveness for them, or do not ask forgiveness for them. If you ask forgiveness for them **seventy times**, never will God forgive them.”<sup>72</sup> When this verse was revealed, the Prophet said that he would increase his act of seeking forgiveness more than seventy times.<sup>73</sup> This shows that the ruling differs when the number increases.<sup>74</sup>

2.1 This is an *āḥād* report, whose authenticity cannot be undoubtedly ascertained, and thus it cannot be used as proof.<sup>75</sup>

2.2 The Prophet, who is the most eloquent person among Arabs and the most person among them knowledgeable of the meaning of speech, may have said so because he knew that this verse wanted to make him lose hope in their being forgiven. He also knew that the verse is similar to the saying “Whether or not you intercede for Zayd, your intercession would never be accepted, even if you intercede for him

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<sup>71</sup> Ibid, 3:354-355.

<sup>72</sup> Q. 9:80. The verse was revealed regarding the hypocrites who pretended to be Muslims, while in fact they hid their disbelief in Islam.

<sup>73</sup> Al-Bukhārī, *Ṣaḥīḥ al-Būkhārī*, 265-266; Muslim, *Ṣaḥīḥ Muslim*, 2:1125-1126.

<sup>74</sup> Al-Bāqillānī, *al-Taqrīb*, 3:340.

<sup>75</sup> Ibid, 3:344.



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seventy times.” Such matters could not have escaped the Prophet’s knowledge, and therefore, this report cannot serve as proof.<sup>76</sup>

2.3 It is permissible for the Prophet to intercede more than seventy times for the hypocrites who passed away despite the fact that God made him lose hope in his intercession being accepted because the Prophet wanted to reconcile the hearts of the alive hypocrites and bring about harmony within the community in the hope that they may become good people in the future. The Prophet did not seek forgiveness for such people because he believed that they would or may be forgiven if he sought forgiveness for them more than seventy times.<sup>77</sup>

2.4 <sup>78</sup>It is possible that the Prophet sought forgiveness for the hypocrites more than seventy times before he and his community were explicitly informed that God does not forgive anyone from the disbelievers. The intellect makes it possible that such people may be forgiven, and such possibility is precluded by way of revelation only.<sup>79</sup> The explicit revelation came after the Prophet sought forgiveness for these people, “God does not forgive that [anyone] be with Him associated [in worship].”<sup>80</sup>

2.5 If intellects make it possible that such people may be forgiven in the case of seeking forgiveness for them more than seventy times, the Prophet—through his intellect rather than through utilizing counter-implicature—came to know this possibility. The verse says that never will God forgive them if the Prophet sought forgiveness for them seventy times. Thus, the counter-implicature of this verse is that definitely God will forgive them if the Prophet sought forgiveness for them seventy times. Counter-implicature was not utilized on the part of the Prophet because no one in this [i.e. Muslim] community postulates that the Prophet knew that

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<sup>76</sup> Ibid, 3:344.

<sup>77</sup> Ibid, 3:344.

<sup>78</sup> Before moving to this point, al-Bāqillānī discusses a theological issue regarding this matter, where he opposes the Mu‘tazilī’s, whom he refers to as Qadariyya.

<sup>79</sup> Al-Bāqillānī, *al-Taqrīb*, 3:345-346; the exact word used by al-Bāqillānī is *sam‘* (hearing), which basically refers to revelation from God.

<sup>80</sup> Q. 4:48, 116.

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forgiveness by God would definitely take place if he exceeded seventy times of forgiveness-seeking.<sup>81</sup>

### 7.2.3. Third Argument

3. God says “If he [the deceased] has **siblings**, then his mother takes one sixth [of inheritance].”<sup>82</sup> This part of the verse prescribes the share of inheritance for the mother when her son, for example, dies childless leaving his parents and siblings. The immediate preceding part of the verse reads “If he [the deceased] did not have a child, and he was inherited by his parents, then his mother takes one third [of inheritance].” Thus, the mother takes one third of inheritance in the absence of siblings, and when they exist, she takes one sixth of inheritance. The word “siblings” is a plural noun, and the least number that can be considered as plural is three, according to Ibn ‘Abbās.<sup>83</sup> Thus, if the deceased has three siblings, the mother takes one sixth of inheritance. However, if he has less than three siblings, the mother, according to Ibn ‘Abbās, takes one third, and this can be considered as an application of counter-implicature. Ibn ‘Abbās opposed other scholars who gave the mother one sixth of inheritance if the deceased has two siblings.<sup>84</sup>

3.1 If these opinions were truly attributed to Ibn ‘Abbās, and he declares that he reaches these legal conclusions by applying counter-implicature, this would not constitute proof that can be used in establishing counter-implicature. These conclusions would represent his own opinions rather than ascriptions to the Prophet or Arabs. Thus, hypothetically speaking, he would think that language requires the use of counter-implicature.<sup>85</sup>

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<sup>81</sup> Al-Bāqillānī, *al-Taqrīb*, 3:346.

<sup>82</sup> Q. 4:11; al-Bāqillānī, *al-Taqrīb*, 3:340.

<sup>83</sup> Ibn ‘Abbās’s name is ‘Abd Allah b. al-‘Abbās b. ‘Abd al-Muṭṭalib. He is a Companion of the Prophet. He was appointed as the governor of Basra by ‘Alī b. Abī Ṭalib. After ‘Alī was killed in the battle of Ṣiffayn, Ibn ‘Abbās returned to Hijāz. He died in al-Ṭā’if, Makka 68/687; Ibn Ḥajar al-‘Asqalānī, *al-Iṣāba fī Tamyīz al-Ṣaḥāba*, ed. ‘Abd Allah al-Turkī, 16 vols. (Cairo: n.p. [Markaz Hajar?], 2008), 6:228-246.

<sup>84</sup> See Ibn Jarīr al-Ṭabarī, *Jāmi‘ al-Bayān ‘an Ta’wīl Āy al-Qur’ān*, ed. ‘Abd Allah al-Turkī, 26 vols. (Cairo: Dār Hajar, 2001).

<sup>85</sup> Al-Bāqillānī, *al-Taqrīb*, 3:350-351.

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3.2 All Companions opposed him in these rulings, and did not utilize counter-implicature. If his opinion is proof, then their opinions are also proof.

3.3 There is no narration attributed to Ibn ‘Abbās demonstrating that he derives contrary rulings in these cases by means of counter-implicature.<sup>86</sup>

3.4 Ibn ‘Abbās gave the mother one third rather than one sixth of inheritance because every inheritor has a base prescribed share in Divine Law. If he/she is assigned another share on a certain condition, he/she will resume receiving their base (original) share when the condition no longer exists. Thus, if the base share of the mother is one third, then she was assigned one sixth if there are siblings of the deceased, the original state resumes if there are no siblings.<sup>87</sup>

#### 7.2.4. Fourth Argument

4. The Prophet says “Water is from **water**, [i.e. one must have a wash if semen comes out of his body].”<sup>88</sup> The Prophet’s Companions believed that this report was abrogated by the Prophet’s saying “If the two circumcised parts meet, then a wash is obligatory, [i.e. one must have a wash after intimacy].”<sup>89</sup> However, there is a consensus of opinion that the explicit text (*naṣṣ*) of the first report was not abrogated. In fact, the counter-implicature of the explicit text was abrogated, which is “No water is without water, [i.e. one does not have to have a wash if semen does not come out of his body].” Thus, the Companions must have understood the first report in such a way

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<sup>86</sup> Ibid, 3:351.

<sup>87</sup> Ibid, 3:352.

<sup>88</sup> Abū Dāwūd, *Sunan Abī Dāwūd*, 1:156; Muḥammad al-Tirmidhī, *al-Jāmi‘ al-Kabīr*, (The book is widely known as *Sunan al-Tirmidhī*), ed. Bashshār Ma‘rūf, 6 vols. (Beirut: Dār al-Gharb al-Islāmī, 1996), 1:154; al-Nasā‘ī, *Sunan al-Nasā‘ī*, 59; Ibn Māja, *Sunan Ibn Māja*, 118. Similar wording is narrated by Muslim “Verily, water is only from water,” *Ṣaḥīḥ Muslim*, 166-167.

<sup>89</sup> The nearest wording is narrated by Ibn Māja, *Sunan Ibn Māja*, 118-119. Similar wording is narrated by Muslim, *Ṣaḥīḥ Muslim*, 1:168; Abū Dāwūd, *Sunan Abī Dāwūd*, 1:155; and al-Tirmidhī, *Sunan al-Tirmidhī*, 1:151-152.

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(by applying counter-implicature) in order to hold it as abrogated by the second report.<sup>90</sup>

4.1 The Companions' report showing the abrogation of the Prophetic report "Water is from water" is an *āḥād* report, whose authenticity cannot be undoubtedly ascertained, and thus it cannot be used in establishing knowledge.<sup>91</sup>

4.2 Such a report is not attributed to all Emigrants and Helpers. Nonetheless, the narration shows that it was one person or a group of people from the helpers who said so after the second report was related by 'Ā'isha<sup>92</sup>. There is no way that we can certainly know that all Emigrants and Helpers agreed about the abrogation. Thus, al-Bāqillānī requires a consensus of opinion among the Companions in order to prove that they regarded the first report as abrogated by the second one.<sup>93</sup>

4.3 Those who say that the first report is abrogated do not arrive at this conclusion by utilizing counter-implicature. They apply, however, another concept, which is wide scope of applicability (*ūmūm*). Based on this principle, they read the first report as "All instances of having an obligatory wash apply in the case of seminal discharge." This ruling remained stable until a subsequent report was narrated. The second report, however, made one instance of having an obligatory wash apply in the absence of seminal discharge. This meant that the ruling of the first report was partially abrogated.<sup>94</sup>

4.4 It is narrated that the Prophet said, "There is no water **except from water** [i.e. one does not have to have an obligatory wash except when he discharges semen]."<sup>95</sup> This report includes negation and

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<sup>90</sup> Al-Bāqillānī, *al-Taqrīb*, 3:341.

<sup>91</sup> *Ibid*, 3:346.

<sup>92</sup> 'Ā'isha bint Abī Bakr al-Ṣiddīq is the Prophet's wife. She died in Medina 58/678; al-'Asqalānī, *al-Iṣāba*, 14:27-34; al-Namarī, *al-Istī'āb*, 4:1881-1885.

<sup>93</sup> Al-Bāqillānī, *al-Taqrīb*, 3:346-347.

<sup>94</sup> *Ibid*, 3:347.

<sup>95</sup> I did not find this exact wording in six major collections of *ḥadīth*, namely al-Bukhārī's *Ṣaḥīḥ*, Muslim's *Ṣaḥīḥ*, Abū Dāwūd's *Sunan*, al-Nasā'ī's *Sunan*, al-Tirmidhī's *Sunan*, and Ibn Māja's *Sunan*.

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affirmation. It affirms that one must have a wash when he discharges semen, and it negates this obligatory wash in the absence of seminal discharge. Al-Bāqillānī likens this report to another one, which reads “There is no marriage **except with a guardian** [i.e. marriage does not become valid without the guardian’s permission/attendance].” Al-Bāqillānī says that this report is an explicit text (*naṣṣ*) demonstrating the invalidity of marriage without the guardian’s approval. According to him, the structure of negation-exception (no...except) constitutes an explicit text conveying two rulings: negation of a ruling in one situation, and affirming the ruling in another. This opinion is of crucial importance as some jurists may consider the dual function of this structure to be effected by counter-implicature rather than the very words of the text.<sup>96</sup>

To substantiate his point further, al-Bāqillānī adds that there is another explicit narration where the Prophet advises a man that he does not have to have a wash if he had intimacy but did not discharge semen.<sup>97</sup> The Prophet’s comment at the end of this report is “Water is from water,” which conveys the same meaning. Further, al-Bāqillānī says that the Prophetic saying “Verily, water is **only from water**” also denotes the negation of having an obligatory wash if there is no seminal discharge. Such negation, according to al-Bāqillānī, is effected by the preceding three reports and it is not caused by applying counter-implicature to the first report in question “Water is from water.”

Al-Bāqillānī draws the reader’s attention that counter-implicature cannot be applied to the saying “Water is from **water**” because the word “water” [he refers to the second one] is a mere noun, and counter-implicature of nouns is invalid.

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<sup>96</sup> Al-Bāqillānī, *al-Taqrīb*, 3:347-348.

<sup>97</sup> Muslim, *Ṣaḥīḥ Muslim*, 1:166. In this narration, the man is also advised to perform ablution (*wuḍūʾ*). In the Prophetic report previous to this narration, the Prophet says to the man, “Verily, water is only from water.” See also Ibn Māja, *Sunan Ibn Māja*, 118, which is similar to the first narration in *Ṣaḥīḥ Muslim*.

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## 7.2.5. Fifth Argument

5. The Qur'ān allows shortening of prayers in case of fear.<sup>98</sup> Both Ya'lā b. Umayya<sup>99</sup> and 'Umar b. al-Khaṭṭāb<sup>100</sup> wondered that they still shorten prayers although they are in a state of security. 'Umar told Ya'lā that he asked the Prophet about that, and the Prophet advised him that this was an act of charity (*ṣadaqa*) from God to them [believers] and that they should accept His charity.<sup>101</sup> Thus, both Ya'lā and 'Umar understood from the verse that they should offer complete, rather than shortened, prayers in case of security, which can be considered as a case of applying counter-implicature.<sup>102</sup>

5.1 The original state of prayers is completion, and shortening prayers is prohibited, yet it becomes permissible in case of fear. This requires resumption of the original state in the absence of fear. Thus, when they found that shortening prayers is still permissible despite the absence of fear, they wondered whether there is another factor behind this permissibility. At this point, the Prophet explained that there is no such factor and that such permissibility is a charity from God.<sup>103</sup> Hence, al-Bāqillānī interprets the wonder of Ya'lā and 'Umar by referring to the concept of presumption of legal continuity (*istiṣhāb al-aṣl/al-ḥāl*) rather than by applying counter-implicature.

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<sup>98</sup> Q. 4:101 “And when you travel throughout the land, there is no blame upon you for shortening the prayer, if you fear that those who disbelieve may attack [or disrupt] you.”

<sup>99</sup> Ya'lā's name is Ya'lā b. Umayya b. Abī 'Ubayda b. Hammām. He is a Companion of the Prophet. He was appointed by Abū Bakr al-Ṣiddīq as the governor of Ḥulwān, Egypt; then he was appointed as the governor of some parts in Yemen during the time of 'Umar b. al-Khaṭṭāb and 'Uthmān b. 'Affān. Ibn Ḥajar suggests that Ya'lā was not killed during the Battle of Ṣiffayn. Ya'lā died in 47/667; Al-'Asqalānī, *al-Iṣāba*, 11:447-449.

<sup>100</sup> 'Umar's name is 'Umar b. al-Khaṭṭāb b. Nufayl. He is a Companion of the Prophet. He became head of the Muslim nation after Abū Bakr died in 13/634. He was killed in Medina by Abū Lu'lu'a Fayrūz, a non-Muslim slave of al-Mughīra b. Shu'ba, in 23/644; al-'Asqalānī, *al-Iṣāba*, 7:312-317; Ibn 'Abd al-Barr al-Namarī, *al-Istī'āb fī Ma'rifat al-Aṣḥāb*, ed. 'Alī al-Bajāwī, 4 vols. (Beirut: Dār al-Jīl, 1992), 3:1144-1159.

<sup>101</sup> The nearest wording is narrated by Muslim, *Ṣaḥīḥ Muslim*, 1:310, al-Nasā'ī, *Sunan al-Nasā'ī*, 361 and Ibn Māja, *Sunan Ibn Māja*, 191. Similar wording is narrated by Abū Dāwūd, *Sunan Abī Dāwūd*, 2:399-400, and al-Tirmidhī, *Sunan al-Tirmidhī*, 5:127.

<sup>102</sup> Al-Bāqillānī, *al-Taqrīb*, 3:341.

<sup>103</sup> *Ibid*, 3:349-350.

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## 7.2.6. Sixth Argument

6. The Prophet said “Verily, excess-*ribā*-usury is **only in credit**.”<sup>104</sup> According to the proponents of counter-implicature, Ibn ‘Abbās concludes from this report that *ribā* applies to credit transactions only. Thus, he reasons that *ribā* does not apply to cash transactions.<sup>105</sup>

Forbidden excess (or *ribā*) can take place in transactions in various ways, and the two main causes of forbidding such increase are the element of increase itself when it occurs in certain situations, and deferment. A transaction, or selling agreement, is usually seen by jurists to denote an exchange of items between the buyer and seller. These items can be of the same or different kind, and these two categories of items can be exchanged in cash or credit transactions. Cash denotes an on-the-spot transaction, where the buyer and seller have their items ready at the time of making the transaction and they exchange their items on the spot without any delay. Credit denotes a deferred transaction, where either the buyer or seller does not have his item ready at the time of making the transaction, and thus partial exchange takes place where the buyer, for example, gives his item to the seller, who at a later time gives his item to the buyer.

The items of the buyer and seller can be of the same kind, such as exchanging gold for gold, and they can be of different kind, such as exchanging gold for wheat. When of the same kind, items should be exchanged in the same amount, for example 1kg of gold in return for 1kg of gold, and such exchange should be on the spot (a cash transaction). Thus, if one of these items is more in amount, such increase will render the transaction forbidden, as it now involves *ribā al-faḍl* (*ribā* of increase). Furthermore, if the exchange of two items of the same kind was not done on

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<sup>104</sup> Muslim, *Ṣaḥīḥ Muslim*, 2:749; al-Nasā’ī, *Sunan al-Nasā’ī*, 1069-1070; Ibn Māja, *Sunan Ibn Māja*, 387. Similar wording is narrated by al-Bukhārī “There is no excess-*ribā*-usury except in credit,” *Ṣaḥīḥ al-Bukhārī*, 407-408. In this narration, Abū Sa‘īd al-Khudrī came to know that Ibn ‘Abbās does not require sameness in amount when exchanging gold for gold and silver for silver. Abū Sa‘īd asked Ibn ‘Abbās whether his opinion is based on a report he heard [directly] from the Prophet or based on a verse from the Qur’ān. Ibn ‘Abbās denied the two possibilities and said that they [Abū Sa‘īd and the like] know the Prophet better. However, he said that Usāma [b. Zayd] told him that the Prophet said “There is no excess-*ribā*-usury except in credit.” Some scholars, such as al-Tirmidhī, suggest that Ibn ‘Abbās retracted his position after his encounter with Abū Sa‘īd al-Khudrī; see, for example, al-Tirmidhī, *Sunan al-Tirmidhī*, 2:522.

<sup>105</sup> Al-Bāqillānī, *al-Taqrīb*, 3:342.

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the spot (a credit transaction), such deferment will render the transaction forbidden, as it now involves *ribā al-nasī‘a* (*ribā* of deferment).

When of a different kind, the items of the buyer and seller can be exchanged if they have same or different amounts, for example 1kg of wheat in return for 2kg of barley, and such exchange in either case should be on the spot (a cash transaction). Thus, the element of increase in this situation is permissible.

6.1 If these opinions are truly attributed to Ibn ‘Abbās, and he declares that he reaches these legal conclusions by applying counter-implicature, this would not constitute proof that can be used in establishing counter-implicature. These conclusions would represent his own opinions rather than ascriptions to the Prophet or Arabs. Thus, hypothetically speaking, he would think that language requires the use of counter-implicature.<sup>106</sup>

6.2 All Companions opposed him in these rulings, and did not utilize counter-implicature. If his opinion is proof, then their opinions are also proof.

6.3 There is no narration attributed to Ibn ‘Abbās demonstrating that he derived contrary rulings in these cases by means of counter-implicature.<sup>107</sup>

6.4 Ibn ‘Abbās forbids *ribā* when it takes place in credit transactions (exchanging two items of the same kind and amount; exchanging two items of the same kind but of different amounts; exchanging two items of different kinds but of the same amount; exchanging two items of different kinds and amounts).<sup>108</sup> Nonetheless, he does not forbid *ribā* when it takes place in cash transactions (exchanging two items of the same kind but of different amounts) because he believes

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<sup>106</sup> Ibid, 3:351.

<sup>107</sup> Ibid, 3:351.

<sup>108</sup> Explanation is mine. For more information on *ribā*, see, for example, Abū al-Ḥasan al-Lakhmī (Mālikī jurist d. 478/1085), *al-Tabṣira*, ed. Aḥmad Najīb, 14 vols. (Qatar: Wazārat al-Awqāf wa-l-Shu‘ūn al-Islāmiyya, 2011), 6:2765-2874.



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through intellect<sup>109</sup> that all types of selling agreement are permissible and that none of them should become otherwise without proof from Divine Law (*sharʿ*). Such Law forbids *ribā* [in general], then [in particular] forbids it in credit transactions. Thus, the permissibility of *ribā* in cash transactions is established through intellect [as there is no proof from Divine Law indicating otherwise]. Another possibility is that such permissibility is established based on a Prophetic report, “There is no excess-*ribā*-usury except in credit.” This report is considered as an explicit text proving that *ribā* in cash transactions is not a type of *ribā*. This ruling is generated by the very words themselves rather than their counter-implicature.<sup>110</sup>

### 7.2.7. Seventh Argument

7. Connecting a ruling to a restrictive attribute is similar to connecting a ruling to an effective cause (*illa*).<sup>111</sup> In the same way the ruling in the latter case is established when the effective cause exists and is negated in its absence, the ruling in the former case is established when the attribute exists and is negated in its absence.

7.1 Although there is similarity between the two cases, the purpose of the effective cause does not involve negating the ruling that is not connected to it.<sup>112</sup> The effective cause when connected to a ruling affirms this ruling. Moreover, the purpose of effective cause is informing us of the rationale behind prohibition.

### Conclusion:

The analysis reveals that in general al-Bāqillānī can be considered among the opponents of counter-implicature, unlike the Mālikī school to which he is affiliated that advocates counter-implicature in general. Al-Bāqillānī rejects the utilization of counter-implicature in general as a valid method of inferring rulings from the Qurʾān and *sunna*. Unlike his school, he also rejects the utilization of counter-implicature of attributes. His main argument is that we do not have an explicit statement (*tawqīf*) attributed to people of language (Arabs in general or

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<sup>109</sup> Perhaps this is a reference to the principle of presumption of legal continuity, where an action is permissible until proven otherwise.

<sup>110</sup> Al-Bāqillānī, *al-Taqrīb*, 3:351-352.

<sup>111</sup> *Ibid*, 3:356.

<sup>112</sup> *Ibid*, 3:357.

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language specialists) proving this linguistic feature. Moreover, he contends that utilizing counter-implicature in some cases leads to false reasoning.

Al-Bāqillānī provides the opinion of the Mālikī school regarding counter-implicature of attributes only; however, he does not comment on the school position regarding other counter-implicature types, such as conditions, extent, confinement by using “only-*innamā*,” numbers, and nouns. Unlike his school that accepts counter-implicature of attributes as a valid method of legal inference, al-Bāqillānī rejects this type of inference. The paper demonstrates that his affiliation to the Mālikī school does not prevent him from espousing a contrary view. Moreover, his views that are not in conformity with the school position does not make later Mālikī jurists consider him a non-Mālikī jurist.

This paper invites researchers to investigate the position of individual Mālikī jurists within the 5<sup>th</sup>/11<sup>th</sup> century regarding the utilization of counter-implicature in legal inference. It is crucial to know whether al-Bāqillānī was the only Mālikī jurists during his time to reject counter-implicature. If there were more Mālikī jurists during this time who share the same view, then we need to investigate the reasons behind this change in the Mālikī jurists’ position regarding counter-implicature.

This paper urges scholars on Islamic legal theory to reconsider the classification of Islamic legal theory schools into the Ḥanafīs versus the rest, as each non-Ḥanafī school may not have a unified position that is contrary to the Ḥanafī school of legal theory.

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