Arab Modernists and Maqāṣid Sharīʿah: a Critical Analysis

الخطاب الحداثي ومقاصد الشريعة: دراسة تحليلية نقدية

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Abstract

Maqāṣid Sharīʿah witnessed a progress and expansion in contemporary religious discourse. Arab modernists took place in this discourse too; however, their affiliation to modernism philosophy and epistemology appoints for them specific objectives in using Maqāṣid Sharīʿah. This paper investigates the literature of Arab modernists in the theory of Maqāṣid Sharīʿah to assess their comprehension of the theory and their sources for its establishment as well as to evaluate the outcomes of their use of the theory. This paper used inductive, comparative and critical analysis methods to investigate the issue under study. This paper proved that Arab modernists misinterpret many aspects of the theory of Maqāṣid because they misunderstand the foundations of Uṣūl Fiqh. In addition, it demonstrated that Arab modernist use Maqāṣid Sharīʿah to get free from Sharīʿah detailed legal rulings and legislation. It also confirmed that Arab modernists use Maqāṣid Sharīʿah as an excuse to escape the constraints of the conditions of reading and interpreting divine texts, as well as to escape the requirements of Ijtihād. Furthermore, this paper confirmed their misunderstanding of the Islamic epistemology and methodology progress throughout the successive generations of Muslim scholars. To escape all these limitations, this paper indicated that Arab modernist claim that Maqāṣid Sharīʿah are a substitute of Uṣūl Fiqh and its rules, regulations and maxims. In addition, it revealed that Arab modernists while aiming to abuse the foundations of the theory of Maqāṣid Sharīʿah they wrongly argue with some branches of Islamic knowledge such as causes of revelation and abrogation to support the historicity of the Sharīʿah legislation through its Maqāṣid.

Key Words: Maqāṣid Sharīʿah, Arab Modernists, Ijtihād, Uṣūl Fiqh, epistemology

ملخص البحث

شهد الخطاب المقاصدي تطورا في العقود الأخيرة، وقد شارك فيه تيار الحداثة العربي. إلا أن تحيزهم إلى فلسفة الحداثة ونظريتها للمعرفة أملت عليهم أهداف مسبقة في استخدام مقاصد الشريعة. تقوم هذه الورقة البحثية باستقراء أدبيات المقاصد في الخطاب الحداثي من أجل تقييم مدى استيعابهم لنظرية المقاصد وماهي مواردهم فيه وما هي المخرجات التي توصلوا إليها عن طريق نظرية المقاصد. هذه الورقة البحثية استخدمت المنهج الاستقرائي والمقارن كما لجئت إلى المنهج النقدي التحليل. أثبتت هذه الورقة البحثية أن رموز التيار الحداثي لم يفهموا نظرية المقاصد بسبب ضعفهم في علم أصول الفقه. إلى جانب ذلك، فقد أظهرت هذه الورقة البحثية أن التيار

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الحداثي من خلال استخدامه لمقاصد الشريعة إنما كان يهدف للحصول على فقهه سائل وأن يفر
من قيود قواعد القراءة والفهم والاستنباط التي أرساها علماء المسلمين. إضافة إلى أرادة التفلة من
شروط المجتهد وقيود المجتهد. كشفت هذه الورقة البحثية عن أهم خصائص المقاصد في الخطاب
الحداثي وهي أن المقاصد تعتبر عوضا عن أصول الفقه وقواعده، وأنهم لتحقيق أهدافهم فهم
يناورن باستعمال بعض علو الشريعة كأسباب النزول ومسألة النسخ.

كلمات مفتاحية: مقاصد شريعة، الحداثيون العرب، الاجتهاد، أصول الفقه، أبستمولوجيا

Introduction

There are three Arab modernists' trends that discuss Maqāṣid Sharī'ah, namely marxists, liberalists and secularists. The three groups share three main concepts among them. Firstly the text, secondly the meaning and thirdly the truth Al-Khwiṭar[1].

The first two concepts are the core terminologies and notions within the theory of Maqāṣid Sharī'ah, for this, they are strongly present in the Arab modernists' discourse. The importance of these two terms and concepts is so deep in their intellectual project to the extent that they entitled entire books with such expressions. Books such as Naqd Al-Naṣ by Alī Al-Ḥarb. Al-Naṣ, Al-Ṣulṭah, Al-Ḥaqīqah by Naṣr Abu Zaid. Al-Naṣ Al-Qur'ānī Amām Ishkāliyat Al-Bunyah wa Al-Qirā'ah by Ṭayb Tizīnī. Mafhūm al-Naṣ Dirāsah fi 'Ulūm al-Quran by Naṣr Abu Zaid. Fi Qirā'āt al-Naṣ al-Dīnī by Abd Al-Majīd Al-Farfī. Fi Ma'rifat al-Naṣ by Yumnī al-'īd. Al-Ma'ziq fi Al-Fikr Al-Dīnī Bayna Al-Naṣ wa Al-Wāqi'. These are just few examples of leading Arab modernists' works in addition to dozens of papers and articles holding similar title. It seems that the great struggle of the Arab modernists is with the divine texts and their meaning. Noting here that they use the dichotomy of text and meaning to reach the topic of Maqāṣid. Al-Jābirī as the first Arab modernist who provides an extensive platform to re-read the Islamic heritage with an eye on the Islamists/Salafī reader trying to deviate his standing point[2], has clearly mentioned that the old fashion of fighting Islam by cutting with its heritage did fail. Moreover, he declared that this old fashion led to just opposite results and Muslims become more attached to their heritage[3]. As he proposed, that the rational critic of the Muslim heritage is the only way to spread their new modernism tools and methods of reading and interpreting the divine texts as well as it helps reshaping Islamic epistemology, methodology and history according to modernism standards. Al-Jābirī pointes especially to spread this new epistemology and methodology within what he calls:" … the sector known sometimes as Uṣūlī and sometimes as Salafī …"[4]. According

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[1] Fahd Al-Khwiṭar. *Al-Khiṭāb AL-Maqāṣidī fi Al-Fikr Al-'Arabī Al-Mu'āṣir.* (London, Markaz Taqeen, 1st edn, 2018). p. 101.

[2] Ibrahim al-Sakrān. *Al-Ta'wīl Al-Hadīth li Al-Turāth: Al-Tiqniyāt wa Al-Istimdādāt.* (AL-Riyad, Dār al-Haḍārah li al-Nashr, 2014). p. 84, 85.

[3] Muhamad 'Ābd Al-Jābirī. *Buniyat al-'Aql al-Muslim.* (Markaz Dirāsāt al-Wiḥdah, 1996). p. 567, 552.

[4] Al-Jābirī. *Ibid.*

to Arab modernists, Maqāṣid Sharīʿah is the near Islamic tool and method to Muslims' hearts. Their project of rationalizing the divine texts and Muslim heritage aims to abolish the two authorities that Arab modernists compete. First authority is the authority[5] of the text and second one is the authority of the predecessors[6]. This second authority represents for Muslims the origin of reading, understanding, interpreting and deducing from Quran and Sunnah. In addition, it represents the source of the Islamic epistemology and methodology of Ijtihād. In the other side of the discourse, Arab modernists claim the right of a plurality and diversity of methods and understandings in treating and dealing with religious texts as well as they claim a multiplicity of methods and approaches for Ijtihad[7].

Most important figures among Arab modernists who rid the wave of Maqāṣid Sharīʿah to boost their intellectual projects are Mohamad Arkūn, Ḥasan Ḥanafī, Muhamad ʿAbed Jābiri, Abd Al-Majid Al-Sharfī, Naṣr Ḥāmad Abu Zaid. Ali Ḥarb. Muhamad Shaḥrūr.

This research scrutinized chief characteristics, methods, sources and outcomes used in the theory of Maqāṣid Sharīʿah within the intellectual project of Arab modernists.

Problem Statement

Maqāṣid Sharīʿah is one of the most important branch in the theory of knowledge and framework within the contemporary Islamic discourse. Kamal Imām a contemporary researcher needs 10 volumes to provide a guide concerning the available contemporary literature on Maqāṣid Sharīʿah. Noting that he only dealt with literature that used Arabic language[8]. The theory of Maqāṣid Sharīʿah is a very accurate and precise model to use as stated by Ibn ʿĀshūr[9]. For this reason, not all Muslim scholars discussed and used in details the various aspects of it. In the same way, Maqāṣid Sharīʿah requires a deep knowledge of Uṣūl and Furūʿ of the Sharīʿah[10]. However, Arab modernists with their weak Sharīʿah and Arabic backgrounds as they declare themselves when discussing the issue of Ijtihad[11] choose to use Maqāṣid Sharīʿah as an important rational tool to relocate the Muslim intellect and mind in order to fit their modernism philosophical school. What attracts attention in the Arab modernists' literature of Maqāṣid is that they reached by

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[5] Ali Ḥarb. *Ṭawāṭuʿ al-Aḍḍād al-ʿĀlihah al-Judud wa Kharāb al-ʿĀlam*. (Algeria, Manshrāt al-Ikhtilaf. 1st edn, 2008). P. 19. Ali Ḥarb. Naqd al-Naṣ. P.07, 13

[6] Ali Ḥarb. *Ḥadīth al-Nihayāt (Futuḥāt al-ʿAwalamah wa Azmat al-Huwiah), Morroco, al- Markaz al-Thakafi al-ʿArabī, 2ed edn, 2004).* P. 12.

[7] Moḥamad Ḥamzah. *Islam al-Mujadidīn*. (Dar al-Ṭalīʿah li al-Ṭibāʿah wa al-Nashr, 2007). p. 62. Alī Ḥarb. *Hakada Aqraʿu Baʿda al-Tafkīk.* (Boerut, Al-Muʿasasah al-ʿArabiyah li al-Dirāsat wa al-Nashr, 1st edn, 2005). p. 9, 13.

[8] Muḥamad Kamal al-Din Imam. *Al-Dalil al-Irshādī ilā Maqāṣid Sharīʿah.* (Egypt, Muʿasasat al-Furqān, 2007).

[9] Ṭahar ibn Ashūr. *Maqāṣid Sharīʿah.* Tahqiq: Muḥamad al-Mīsāwī. (3rd edn.). (Beirut: Dār al-Nafāʿis, 1432 AH). p. 188.

[10] Abu Isḥāq al-Shāṭibī. *Al-Muwāfqāt*. Al-Muwafaqāt. Taḥkik: Mashhūr Ḥasan. (Dar Ibn Al-Qayyim wa dar ibn Afan, 2nd edn, 1427). vol 1. p. 124.

[11] Muḥamad Jamal al-Bart, Ahmad al-Raysūnī. *Al-Itihad, al-Naṣ, al-Wāqiʿ, al-Maṣlahah*. (.Beirut: Dar al-Fikr, 1st edn; 2000). p. 136.

using Maqāṣid Sharīʿah the exact opposite results and reverse outcomes of what Muslim scholars reached by using the same Maqāṣid Sharīʿah. An evident problem that needs a clarification by scrutinizing the totality of the framework of Maqāṣid Sharīʿah within the Arab modernists' discourse. This research investigated the features, and sources used to support Maqāṣid Sharīʿah within the Arab modernists' discourse. In addition, this research critically analyzed the full frame that Arab modernists provided to substitute the well-known foundations and sources of Maqāṣid Sharīʿah established by Muslim scholars through successive generations of Muslim scholars.

Methodology

This research used inductive methods to provide aspects of the framework of Maqāṣid Sharīʿah as displayed by both Muslim scholars as well as by Arab modernists. In addition, it used comparative method to seek for comment and contrasting elements in both discourses, as well as it used critical analysis to evaluate the new features and outcomes that Arab modernists try to attach to Maqāṣid Sharīʿah.

Significance of the study

The current research provides academicians and researchers with a new and comprehensive understanding of the Arab modernists' literature concerning the field of Maqāṣid Sharīʿah, by deeply investigating the framework and backgrounds of this trend. This research offers a scrutiny about the origin and sources of the Arab modernists' discourse. In addition, the current research provides Muslim society with tools and methods to assess objectively modern attempts to change the Islamic epistemology and methodology. Furthermore, this research built a block within contemporary attempts to revive the use of Maqāṣid Sharīʿah in the process of Ijtihād.

Characteristics of Maqāṣid within Arab Modernists' Discourse

According to Muslim scholars, Maqāṣid Sharīʿah holds a set of features, however, most significant ones in relation to the debate with Arab modernists are the following; first feature is generality and regularity[12]. Second feature is stability and immutability[13]. Third feature is preciseness and strictness[14]. These three characteristics of Maqāṣid Sharīʿah go against the primary foundations of modernism, namely first relativity of truth. Second plurality of readings, understandings and interpretations of texts[15]. Third loss of rules, regulations and stipulations for Ijtihād. This paper discusses other features of Maqāṣid Sharīʿah within Muslims scholars' discourse while scrutinizing the features of Maqāṣid Sharīʿah in the Arab modernists' one.

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[12] Al-Shāṭibī Abū Isḥāq. *Al-Muwāfakāt.* Taḥqīq: Abd Allah Drāz. (Egypt: Al-Maktabah al-Tijariyah al-Kubrah). vol 1. p. 87, vol 2. p. 38, vol 2, p. 38.

[13] Al-Shāṭibī, (Ibid). vol 1. p. 77. vol 2. p. 37, vol 3. p. 105.

[14] Al-Shāṭibī, (Ibid). vol 2. p. 309.

[15] Ali Ḥarb. *Al-Fikr wa al-Ḥadath. (*Beirut: Dar al-Kunuz al-dhahabiyah, 1st edn, 1997). P. 66. Muḥamad Nāṣr al-ʿAjm. *Al-Naqd al-ʿArabī al-Ḥadīth wa Madāris al-Naqd al-Gharbiyah.* (Tunisia: dar Muhamad al-Ḥāmi, 1st edn, 1998). P. 379. Ali Ḥarb. Naqd al-Naṣ. P. 150.

The following section highlights the most important characteristics of Maqāṣid Sharīʿah according to Arab modernists' treatise. They use these characteristics to establish arguments for their new interpretations of divine texts and their innovated understandings of the Sharīʿah legislation. In addition, they maintain these characteristics to defend their theory of changing Sharīʿah legal rulings over time and according to social developments and needs. Furthermore, they assert these characteristics of Maqāṣid Sharīʿah to enforce western modernism's outcomes in an Islamic environment.

First: Maqāṣid Sharīʿah as the Substitute of Uṣūl Fiqh

Arab modernists declare war against classical Muslim scholars accusing them to have imprisoned the Muslim mind and intellect on the rules and regulations of Uṣūl Fiqh that they project to renew[16]. Imam Shāfiʿī was the best target from them. As put by Arkūn, the aim of celebrating Maqāṣid Sharīʿah is to reduce the strict theoretical limits of Uṣūl Fiqh by exchanging it with a new concept, which is Maqāṣid Sharīʿah[17]. Arab modernists are using Maqāṣid Sharīʿah to pass their intellectual project of modernism to change Islamic teachings and legal rulings through an Islamic tool and from Muslim heritage[18]. After the failing of their predecessors to shake the Muslims' convictions and religious positions, Arab modernists turned to use Islamic tools and names[19]. According to Arab modernists, Uṣūl Fiqh is a blocking mean towards establishing the outcomes of modernism in Muslim societies, as well as it becomes a burden hindering the process of modernists' opinion on Ijtihād[20]. Al-Sharfī sees that Uṣūl Fiqh and ʿUlūm Quran block the reader of the divine texts from deep understanding[21]. It is so important to abolish the classical Uṣūl Fiqh within the Arab modernists' discourse, that they have an eagerness and loud call voice to renovate this branch of Islamic epistemology[22]. According to Ḥasan Ḥanafī, Muslim scholars established:" rigid and stationary principles consisting in the fourth sources of evidence, tight logic for words, and they appoint a five injection based Sharīʿah ruling Aḥkām Taklīf[23]". All these rules of interpretation and stipulations for the process of Ijtihād, according to the Arab modernists, hinder the course of development as they distance the revelation form the renewed reality of life[24]. For this trend, Maqāṣid Sharīʿah is the best option to replace the classical Uṣūl Fiqh or to renovate it on its light. In an ironic way, to honor Al-Shāṭibī's theory of Maqāṣid, Al-Jābirī mistakenly interprets the achievement of Al-Shāṭibī as an epistemological cut and move from the classical Uṣūl

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[16] Hasan Hanafi. *Hisar al-Zaman*. (Egypt: Markaz al-Kitab wa al-Nashr, 2004). p. 41.

[17] Mohamad Arkūn. *Tarikhiyat al-Fikr al-Arabi al-Islami*. (Al-Markaz al-Thaqafi al-Arabi, 2nd edn, 1994). (p. 179). See Adb Al-Majid al-Sharfi. (*Labinat*. Tunisia: Dar al-Jadidah. 1994). p.162, 163.

[18] Mohamad ʿĀbad al-Jabiri. *Al-Masʿalah al-Thaqafiyah fi al-Watan al-Arabi*. (Beiurut: Markaz Dirasāt al-Wiḥdah al-ʿArabiay, 2nd edn, 1999). (p. 250).

[19] Al-Jābirī. Ibid.

[20] Muhamad jamal Barut. *Al-Ijtuhad, Al-Nas, Al-Waqi, Al-Maslaha*. (Beirut, Dār AL-Fikr, 1st edn. 2000). (p. 84).

[21] Muhamad Sharfi. *Al-Ilam wa Al-Hriyah Suʿ Tafahum Tarikhi*. (Manshurat rabitat al-aqlaniyin al-arab, Dār al-batraa li al-tawzi, 2007). (p. 76).

[22] Ḥasan Ḥanafī. (Ibid). p.

[23] Ḥasan Ḥanafī. *Min Al-Naṣ Ila Al-waqiʿ*. (Egypt: Markaz al-Kitab li al-Nashr, 2005). (vol 1. P. 309).

[24] Ḥasan Ḥanafī. (*Ibid*). Vol 1. P. 25. Ḥasan Ḥanafī and Abu Yaʿrūb al-Marzūkī. Al-Nadar wa al-Amal. (Bierut: Dar al-Fikr, 1st edn, 2003). P. 156.

Fiqh established especially by Imam Shāfiʿī[25]. He declares that Al-Shāṭibī became conscious that the old way of Ijtihād has ended its sources and abilities to deal with the new cases of Muslim real life. In addition, Al- Jābirī claims that to tackle the shortcoming of this classical epistemology and methodological tools of understanding, Al-Shāṭibī saw that it was indispensable to open the doors of Ijtihād within a new formwork[26]. According to Al-Jābirī and his follow, at that time of Muslim history, new form of Ijtihād required the establishment of new principles and new foundations. In their readings, Arab modernist understood that Al-Shāṭibī built these new needed principles and foundations upon the Maqāṣid Sharī'ah instead to build them upon the understanding of divine texts, or upon deduction from them or upon the Qiyāh analogy[27].

While these are the claims of most Arab modernists concerning the relation between Al-Shāṭibī and Imam Shāfiʿī, the literature of Uṣūl Fiqh and Maqāṣid Sharī'ah reveals the total opposite. To establish the existing relation between the theory of Maqāṣid within Al-Shāṭibī's epistemology and imam Shāfiʿī's one, this paper focuses on analyzing two major Arab modernists' claims about the theory of Maqāṣid according to Al-Shāṭibī. First the issue of universals of the Sharī'ah *Kulliyāt* in contrast of Sharī'ah detailed rulings and legislation *Juz'iyāt*. Second, the location of both worldly benefits *Maṣāliḥ* and the hereafter ones.

First, Arab modernists claim that Al-Shātibī's theory of Maqāṣid is based in prioritizing the universals of the Sharī'ah *Kulliyāt* over Sharī'ah detailed rulings and legislation *Juz'iyāt*. In such a way, they claim that people can change or abolish these detailed Sharī'ah rulings and legislation as long as they maintain its universals[28]. Moreover, they claim that starting from the *Kulliyāt* of the Sharī'ah against its *Juz'iyāt* allows establishing and enforcing new Sharī'ah rulings and guidelines for contemporary life. This claim includes issues of Islamic creed ʿAqīdah, code of ethics and morals, pillars of Islam such as prayer, political affairs, women issues and all other aspects of life[29]. To crone the Arab modernists' understanding of the Al-Shāṭibī's approaches to Maqāṣid, Al-Jābirī claims that Al-Shāṭibī built the principles of interpretation and stipulations of Ijtihād upon the Maqāṣid and breached with the investigation of words and with Arabic semantics and rhetoric approaches in dealing with divine texts as used to be within the classical Muslim scholars' literature[30].

To deal with this claim, first it is worth to assess Arab modernists' understanding of the notion of Sharī'ah universals *Kulliyāt* within the Shāṭibī's epistemology and its relation with the detailed Sharī'ah rulings and legislation *Juz'iyāt*. Second, it is important

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[25] Muḥamad ʿĀbad al-Jabiri. *Buniyat al-Aql Al-Arabi*. (Beiurut: Markaz Dirasāt al-Wiḥdah al-ʿArabiay, 9th edn, 2009). p. 540, 574.

[26] Al-Jābirī. *Ibid*. Jamal al-Bartr. Ibid. p. 110, 106.

[27] Muḥamad ʿĀbad al-Jābirī. *Al-Din wa Al-Dawlah, wa Tatbiq shariah*. (Beirtu, Markaz Dirasat Al-Wihadah al-Arabiyah, 1st edn, 1996). (p. 163).

[28] Al-Sharfī. *Labinat*. P. 162.

[29] Al-Sharfī. *Labinat*. P. 162.

[30] Al-Jābirī. *Buniyat al-Aql Al-Arabi*. (Beiurut: Markaz Dirasāt al-Wiḥdah al-ʿArabiay, 9th edn, 2009) P. 538.

to check whether Al-Shāṭibī had the honor of being really the first to highlight this concepts of *Kulliyāt* and *Juzʿiyāt* and the relation that governs their various interactions. Third, it is central for this study to verify if Al-Shāṭibī formed a cut and a move from Imam Shāfiʿī and classical Muslim scholars of Uṣūl Fiqh as well as it is essential for this paper to investigate Muslim scholars' heritage to look for any existence of Maqāṣid roots and origins before Al- Shāṭibī.

Concerning Arab modernists' understanding of Al- Shāṭibī's theory of Maqāṣid, it seems that there is a misreading; otherwise, it is an intentional misuse of the concept of Sharīʿah universals *Kulliyāt*. A comprehensive reading of both books of Al-Shāṭibī namely, al-Muwāfaqāt and al-ʿIʿtiṣām plus a consideration of his strict adherence to the Maliki school of law, reveals just the opposite to Arab modernists' claims. While they reject many of Sharīʿah rulings and legislation *Juzʿiyāt* maintaining that they are giving priority to the universals of Sharīʿah *Kulliyāt* over *Juzʿiyāt* because of the conflicting nature among the two, the heritage of Al-Shāṭibī reveals a harmonious relation and connection between *Kulliyāt and Juzʿiyāt*. In addition, there is no such claim of conflict between the two levels according to Al-Shāṭibī's theory of Maqāṣid. Al-Shāṭibī himself judges wrong to give priority to a Sharīʿah universal *Kullī* by abandoning its source and origin which is the juzʿī itself[31]. Rather, Al-Shāṭibī excluded the consideration of Sharīʿah universal *Kullī* on the expense of neglecting of its Juzʿī[32]. Furthermore, to dismantle such attitude, Al-Shāṭibī dedicated a full chapter for the consideration of Sharīʿah rulings and legislation *Juzʿiyāt* for the sake to emphasis their importance in the theory of Maqāṣid. He declared that the Lawgiver in setting up the universal *Kullī* intends in the same time to establish the details of the Sharīʿah legislation and its texts[33]. Consequently, within Al-Shāṭibī's theory of Maqāṣid the details of Sharīʿah legislation *Juzʿiyāt* are as important as the universals themselves. More than this, Al-Shāṭibī demonstrates that without the Sharīʿah consideration of the details of its legislation *Juzʿiyāt*, therefore it would not be sound to seek for its universals *Kulliyāt*[34]. Furthermore and this is a refuting remark to Arab modernists' claims, Al-Shāṭibī refused to accept the negligence of a detailed Sharīʿah ruling *juzʿī* in case a scholar's perception and Ijtihād leads him to establish a conflict between a *Kullī* and a *juzʿī*[35]. He argues that this detailed Sharīʿah ruling is the reason of the existence of the *Kullī*, and the Lawgiver intends both. In this way, he argues that neglecting the Sharīʿah detail ruling *juzʿī* is an abandonment of an intended matter of the Lawgiver. Hence, it is impossible to consider the *Kullī* on the expense of the *juzʿī*[36]. To put this in practice, Al-Shāṭibī comments on well-known Fatwa case within his own school of law which proves the Arab modernists' misreading. One prominent Maliki scholar named Yaḥya Ibn Yaḥya has commanded the King Abd Araḥmān ibn al-Ḥakam when he had sexual intercourse in the day of Ramadan to fast two consecutive months instead of freeing a slave. According to Yaḥya Ibn Yaḥya, the aim of the expiation

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[31] Al-Shāṭibī. (*Ibid*). vol 3. P. 174.
[32] Al-Shāṭibī. Ibid. vol 3. P. 176.
[33] Al-Shāṭibī. Ibid. vol 2. P. 96
[34] Al-Shāṭibī. Ibid. vol 2. P. 96, 97.
[35] Al-Shāṭibī. Ibid vol 3. P. 176.
[36] Al-Shāṭibī. Ibid vol 3. P. 176.

Kafārah is to reprimand the person. He thought that in the case of the king freeing a slave would not have an impact because he can free as many slaves as he wants. Al-Shāṭibī a Maliki scholar as Yaḥya Ibn Yaḥya while reporting this Fatwa, clearly said:" this fatwa is invalid Bāṭil …"[37]. As he considered this Ijtihād by nullifying the *juzʿī* to give priority for this specific *Kullī* as an elimination of the Lawgiver's intent in his detailed legislation, which breaches the consensus Ijmāʿ[38].

Second, it is worth to investigate at least within the frame that academic paper space allows, the existence of the approach of Sharīʿah universals *Kulliyāt* within Muslim scholars' epistemology and methodology before Al-Shāṭibī. What was totally unexpected is that the investigation revealed that not only Muslim scholars before Al-Shāṭibī discussed the issue of Sharīʿah universals *Kulliyāt* and its *Juzʿiyāt*, but it revealed also that Imam Shāfiʿī himself emphasized its importance in the process of Ijtihād. Ironically, Al-Shāṭibī himself in his theory of Maqāṣid referred to Imam Shāfiʿī and to previous scholars. First, Al-Shāṭibī in his Muwafaqāt extensively quoted and cited many scholars before him[39]. Scholars such as al-Ghazālī, Al-ʿIz ibn abd al-Salām and many others. This refute the Arab modernists' claim of epistemological cut and move from classical Muslim scholars, as it refutes the unfounded assertion of al-Jābirī, that classical Muslim scholars' heritage is totally absent in the foundation of Al-Shāṭibī's theory of Maqāṣid [40]. Perhaps it is not enough that Al-Shāṭibī quoted his predecessors[41], more than this, Al-Shāṭibī honored them and declared their rooted expertise in Islamic epistemology and methodology and called to fulfill the duty of following them and to give priority to their opinions over ours[42]. Al-Shāṭibī invoked that predecessor scholars are more expert and hold deeper knowledge than their successors and the later were never as deep in expertise as the firsts[43]. There is an important remark that Al-Shāṭibī made as it answers one of the core problem with Arab modernists' discourse; Al-Shāṭibī pointed that the late jurists' disagreements is generally due to non-expertise in Islamic various knowledge and generally it comes from persons that do not fulfill the conditions of Ijtihād[44].

Al-Shāṭibī's several quoting proves that he did not give his back to the contributions of hundreds of scholars' generations before him. In contrary, he deemed himself as liable to them and their scholarship in various fields of Islamic epistemology and methodology.

Besides, it is interesting to check the validity of the Arab modernists' claim that Al-Shāṭibī moved from Imam Shāfiʿī and his epistemology and methodological fences, especially Imam Shāfiʿī's theory of Arabic rhetorical of Ijtihād and its cognitive system

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[37] Al-Shatibi. a*L-Iʿtiṣām.* Taḥkik: Mashhūr Ḥasan (Maktabat al-Tawḥīd). vol 2. P. 113.
[38] Al-Shāṭibī. Ibid.
[39] See for this the introduction of Mashhūr Ḥasan for al-Muwafaqāt.
[40] Al-Jābirī. Bunyat al-Aql al-ʿArabī. p. 547.
[41] Al-Khwiṭar. Ibid. p. 476.
[42] Al-Khwiṭar. Ibid. p. 476.
[43] Al-Shāṭibī. Ibid. vol 1. P. 147…154.
[44] Al-Shāṭibī. Ibid. vol 3. P. 278.

[45]. Ironically enough to find that Al-Shāṭibī invested Imam Shāfi'ī's own theory as well as he referred to him in several occasions. Paradoxically, Al-Shāṭibī quoted imam Shāfi'ī in the same issues of accusation claimed by Arab modernists against Imam Shāfi'ī and on which they claim that Al-Shāṭibī represents an epistemological move from Imam Shāfi'ī. Al-Shāṭibī cited Imam Shāfi'ī's well-known texts concerning Arabic rhetoric and the stipulation of an expertise in semantics and the rules governing the Arab tong to understand divine texts and Islamic Sharī'ah and in proceeding in Ijtihād[46]. Moreover, Al-Shāṭibī defended for Imam Shāfi'ī's situation of Arabic expertise by quoting him by name from al-Risālah, which is Imam Shāfi'ī's masterpiece in Uṣūl Fiqh[47]. Noting here, that Al-Shāṭibī quoted imam Shāfi'ī by name eighteen 18 times[48], and in many other places without naming him directly. In those many times of quotations, Al-Shāṭibī was inferring and confirming the foundations and outcomes of Imam Shāfi'ī's theory[49].

Last point in this section highlights the concept of Sharī'ah Kulliyāt and Juz'iyāt within Muslim scholars heritage. First, Imam Shāfi'ī himself mentioned the necessity for the Mujtahid while proceeding in Ijtihād to observe the Kulliyāt of Sharī'ah[50]. Imam Shāfi'ī said that the Mujtahid should give priority for the Sharī'ah universals *Kulliyāt* over the details Sharī'ah rulings *Juz'iyāt* in some cases. In addition, that Al-Juwaynī reported that Imam Shāfi'ī insisted on regarding and respecting the objectives and intents of Lawgiver while the Mujtahid is making Ijtihād[51]. After Imam Shāfi'ī, many Muslim scholars used the word Maqāṣid and the concepts of Kulliyāt and Juz'iyāt to refer to the theory of Maqāṣid Sharī'ah. Scholars like al-Juwaynī[52] discussed a variety of topics within the theory of Maqāṣid Sharī'ah. After him, come Abu Ḥāmad al-Ghazālī and he discussed the five necessities among other topic of the theory of Maqāṣid[53]. Then come Al-Fakhr al-Rāzī[54] and al-'Āmidī[55]. After that the disciple of Al-'Āmidī, whose name will be linked to Maqāṣid Sharī'ah forever, namely Al-'Iz ibn Abd Al-Salām. With Ibn Abd Al-Salām, Maqāṣid Sharī'ah jumped into new horizon compared with the past where he established a variety of core topics in theory of Maqāṣid Sharī'ah[56]. Al-Qarāfī, the

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[45] Al-Jābirī. Buniyat al-aql al-Arabi. P. 250. See Aouidad Rachid. Arab modernists against Imam Shāfi'ī: a critical analysis. Submitted to the Journal of Integrated Sciences (JIS), August 2021.

[46] AL-Shāṭibī. Al-Itisam. vol 3. P. 257-260

[47] AL-Shāṭibī. Al-muwafqat. vol 2. P. 103-104.

[48] Al-khwitar. Ibid. 480, 482.

[49] See for more details Aouidad. Rachid. Ibid. Al-Khwitar Ibid. Mashur hasan. Ibid.

[50] Abu Ḥāmad al-Ghazālī. *Al-Mankhul fi taliqat usul fiqh.* Taḥkīk: Muhamad hasan Hītū (Dimashq: dar al-Fikr 2nd edn, 1400AH). P. 576.

[51] Abu al-Ma'ālī Al-Juwayni. *Al-Burhan fi uṣūl Fiqh.* Taḥkik: 'Abd al-'Aḍīm Dīb. (Cairo: Tawzī' Dar al-Anṣār, 2nd edn, 1400 AH). Vol 2. P. 94.

[52] Al-Juwani. Ibid. vol 2. P. 810, 823, 905, 911, 961, 1238,

[53] Abu hamad Al-Ghazali. *Al-Mustasfa.* (Egypt: Sharikat al-Ṭibā'ah al-Faniyah al-Mutaḥidah, nd). P. 251-265. Also his book *Shifa al-Ghalīl Fi Bayan al-Shabah wa al-Mukhayal wa masālik al-Ta'līl.* (Baghdad: Maṭba'at al-Irshād, 1390 AH). P. 159, 161, 163, .

[54] Al-Mahsul vol2.p.

[55] Sayf al-Din Al-Amidi. *Al-Ihkam fi usul al-Ahkam.* (Egypt: AL-Maktab al-Thaqāfī li al-Nashr wa al-Tawzī', 1st edn, 1979). Vol 2. P. 274

[56] Ibn Ab Al-Salam. *Qawiid al-Ahkam fi masalih al-anam.* (Beirut: Dar al-Kutub al-'Ilmiyah, nd). Vol 1. P. 9,47-50, 111, 140, 167, 175. Vol 2. P. 160.

disciple of Ibn Abd Al- Salām, has also cultivated his teacher's establishments in many aspects[57]. These Muslim scholars and others discussed the Kulliyāt and Juzʿiyāt of Sharīʿah and the relation among them, they also discussed the Maqāṣid of Sharīʿah and its position among other sources of evidences and its importance for the Mujtahid.

This short look on the relationship between Al-Shāṭibī and his predecessors Muslim scholars especially Imam Shāfiʿī, reveals two things. First, it reveals that the Arab modernists' allegations are unfounded. Al-Shāṭibī did not symbolize the epistemological cut, in contrary he was a harmonious knot in the chain of Muslim scholars' epistemology and methodology. Second, it exposes the misunderstandings and weakness of Arab modernist[58] in both Arabic language and tong as well as in Uṣūl Fiqh and Maqāṣid. In addition to their weak surrounding of Sharīʿah detailed rulings and legislations. In addition, this section revealed that Muslim scholars before Al-Shāṭibī did invest the theory of Maqāṣid Sharīʿah and discussed the connection of Sharīʿah Kulliyāt and Juzʿiyāt.

Second: Maqāṣid are Independent from Divine Texts

Arab modernists find in Maqāṣid Sharīʿah a refuge to dismantle the importance of divine texts as well as the legislation and meanings they carry. They reduce the use of the divine texts to help building the framework of Maqāṣid Sharīʿah and exclude them from the framework of Sharīʿah legislation[59]. The Arab modernist Al-Sharfī goes far by calling to free the Muslim mind from the pathologic attachment to divine texts, especially the text of Quran. Instead of the texts, he calls to the give Maqāṣid Sharīʿah the optimum position to enact legislations that suits the needs and aspirations of the society[60]. Furthermore, this Arab modernist sees that even Maqāṣid Sharīʿah in contemporary time should witness an epistemological cut from al-Shāṭibī himself, in order to transcend the literal understanding of the divine texts[61]. In reality while Arab modernists are invoking Maqāṣid to free themselves from the texts, they are in reality using western methodologies and approaches to prosecute Muslim heritage including Quran and Sunnah. Whether they use historicism, or modern linguistic theories, or semiotic, or anthropological or philosophical theories[62], they aim to take the authority of meaning and understanding from the author and the text and to give these privileges to the reader. As claimed by Niḍāl, that classical rules of understanding divine texts has reduced the meaning of the text in its surface construction, whereas they aim is to construct a relation between the text and the reader. A relation that own the secret of the meaning and possesses its intents[63]. Niḍāl and his follow mean to eliminate the whole Muslims' heritage in Tafsīr,

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[57] Shihab al-Din Al-Qarafi. *Al-Furuq.* (Beirut: Alam al-Kutub). Vol 2. P.32. Al-Nafais. (Egypt: Maktabat Nazar Al-Baz, 1ˢᵗ edn, 1995) Vol 1. P. 324, 402, vol 3. P. 1473-1479, vol 4. P. 1578, 1932.

[58] This is a fact that should be writen on.

[59] Abd Al-Majid Al-Sharfi. *Al-Hadathah wa al-Islam.* (Dar Madār al-Islamiyyah, 2009). p. 155.

[60] Abd Al-Majid Al-Sharfi. *Labinat.* (p .162).

[61] Abd Al-Majid Al-Sharfi. *Tahdith al-Fikr al-Islami.* (Dal al-Madar al-Islami, 2ⁿᵈ edn 2009). p. 41, 46.

[62] Muhamad arkun. *Tarikhiyat al-fikr al-arabi al-islami.* (Beirut, markaz al-inma al-arabi, 2ⁿᵈ edn, 1996). (p.61).

[63] Nidal Adb Al-Kader Salah. *Al-Maziq fi al-Fikr al-Dini Bayna Al-Nas wa al-Waqi.* (Dār al-Talia, 1ˢᵗ edn, 2006). (p. 85).

Sharḥ Ḥadīth, epistemology and methodology to open the door to any reader to install his own understanding and own interpretation of Quran and Sunnah. Arab modernists adopt the theory of the death of the author to end with the meaningless of any divine text and the absence of the Lawgiver intended meaning. However, in the Arab modernists' discourse the issue of reading divine text is deeper than free interpretation and personal understanding, they do not believe in the existence of a transmitted truthful evidence. Ḥasan Ḥanafī declares that there is no way to rely on the truthfulness of a narration Khabar "… in contrary to what is spread in the Salafī modern school in its full reliance on Allah said and the prophet said…"[64]. The reality is that Arab modernist believe that the truth is not found in the transmitted evidences Quran and Sunnah, rather truth dwell behind the use of mind[65].

Third: Rationalizing Sharī'ah by the Mean of its Maqāṣid

According to Arkūn, rationalizing the divine texts of the Sharī'ah means to give the human mind the priority in interpreting the texts, producing legal rulings, and freeing the mind from the bandage of the rules of Uṣūl Fiqh[66]. The process of rationalizing Sharī'ah passes through the concept of *Ta'līl*, which is the core element of the legitimacy of Maqāṣid Sharī'ah theory. However, Arab modernists discuss the concept of *Ta'līl* far from the approach of scholars of Uṣūl Fiqh[67]. One maxim that Muslim scholars established in this chapter of Uṣūl and Maqāṣid is that the Sharī'ah ruling exists where the effective reason 'Ilah exists, *Al-Ḥukm Yadūr ma'a 'Ilatihi wujūdan wa 'Adaman*[68]. This means according to Muslim scholars that the effective reason is behind the legislation of the Sharī'ah ruling[69]. However, al-Jābirī claims that it is the benefit al-*Maṣlaḥah* and not the effective reason that establishes the Sharī'ah rulings and in the same time, it governs the divine texts[70]. Arab modernists never well define Maṣlaḥah or investigate its categories or condition and its other aspects as Muslim scholars' did. Rejecting the concept of 'Ilah as the effective reason and claiming that Sharī'ah legislation turns with the Maṣlaḥah not with the 'Ilah, leads them to conclude that abrogation Naskh is an ongoing process[71]. They claim that because considering the Maqāṣid as the effective reason, the Guided Caliph 'Umar has abrogated the share of Mu'alafat Qulūbuhum from Zakat. Arab modernists conclude that in the same way by using Maqāṣid as an effective reason it will help in contemporary time to abrogate other Sharī'ah ruling according to modern needs[72]. It is a nonstop process of claims; Al-Jābirī

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[64] Hasan hanafi. *Al-turath wa al-tajdid min al-aqidah ila al-thawrah.* (Beirut, Dār al-tanwir. 1ˢᵗ edn, 1988). p. 318.

[65] Khaldah Said. *Al-malamih al-fikriyah li al-hadathah.* (Majalat fusul, cairo, 1984). vol 4, n3. p. 27.

[66] Arkun. *Tarikhiyat al-Fikr Al-Arabi al-Islami.* p. 75.

[67] Al-Jabiri, *Wijhat Naḍar, 63.*

[68] See for this maxim: Abu Al-Khaṭāb al-Kalwḍānī. *Al-Tamhīd fi Uṣūl Fiqh.* (Jedah: Dar Al-Madanī, 1ˢᵗ edn, 1985). vol 4. P. 24. Abu Abd Allah al-Tilmsāni. *Bina' Al-Furū' 'ala al-Uṣūl.* (Beirut: dar al-Kutub al-Ilmiyah, 1ˢᵗ edn, 1983). p. 150.

[69] Ibn Al-Najār al-Fatūḥī. *Sharḥ al-Kawkab al-Munīr.* (riyad: Maktabat al-Ubaykan, 2ⁿᵈ edn, 1997). vol 4.p 55.

[70] Al-Jabiri, *Wijhat Naḍar.* p. 63, 65.

[71] This paper provides down a section for this issue.

[72] Adnan Umamah. *Al-Tajdid fi al-Fikr al-Islami.* (Dar ibn al-Jawzi, 1ˢᵗ edn, 1442 AH). p. 463.

goes far to claim that Quran and Sunnah did not dictated the rules and maxims of Uṣūl Fiqh[73], and Muslims scholars according to their times and circumstances establish these rules and maxims, and it is fully legal to change them according to the current circumstance also[74].

Dilemmas within Arab Modernists' Maqāṣid Discourse

The literature of Maqāṣid within the Arab modernists' discourse reveals two central issues that shape their understanding. First, they establish Maqāṣid far from the Sharīʿah detailed legal rulings and legislation. Second, they consider Sharīʿah legislation only as a mean to main Sharīʿah objectives represented in Maqāṣid Sharīʿah[75].

The first crisis in the Maqāṣidic Arab modernists' discourse concerns the neglect of the Sharīʿah legal rulings and detailed legislation. This crisis is the result of the defect in defining the parameters of the methodology to use in order to outline the channels of Maqāṣid Sharīʿah. In addition, Arab modernists' discourse lacks detailed account about the definition of Maṣlaḥah as well as Maqāṣid, this leads Jamal Sulṭan to say:" it is not only the undetermined benefit Maṣlaḥah that can change according to time and place, but even the stipulated benefit Maṣlaḥah can also change"[76]. Furthermore, it lacks detailed account about the regulations and maxims that shape the concept of Maṣlaḥah. A little review of the literature of Maṣlaḥah within Muslim scholars' discourse reveals a huge efforts and detailed account about the various aspects of Maqāṣid and Maṣlaḥah [77]. In contrary, a review of Arab modernists' literature on both Maqāṣid and Maṣlaḥah reveals a huge gap at the level of epistemology as well as at the level of methodology. What features their discourse in both Maqāṣid and Maṣlaḥah is the broad and general statements of praising the two concepts and branches of knowledge. However, when it comes to efforts to regulate the details, Arab modernists show a weak understanding of both Muslims' heritage on the field and a blurry view of their own project. This blurry vision and weak epistemological and methodological foundations of Maqāṣid and Maṣlaḥah is reflected in their unsatisfactory abbreviation of the deep implications of the theory of Maqāṣid. Arab modernists reduce the theory of Maqāṣid and the concept of Maṣlaḥah to include only material benefits neglecting that of the hereafter. Ḥasan Ḥanafī declares clearly:" life and worldly affairs are the first intent of Maqāṣid Sharīʿah[78]. Whereas, the devotional aspects of the religion, people striving for the interests of the hereafter and the needs of the soul and purification of the self are all at once absent in their discourse. This exemplifies the secularization of the religious discourse; al-Hwīdī put it clear that whenever there is an opposition between divine texts and Sharīʿah rulings with the Maṣlaḥah of people, priority is given to the Maṣlaḥah of people over divine texts and

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[73] See Aouidad Rachid. Ibid.

[74] Al-Jabiri, *Wijhat NaDār*. (p.66).

[75] Abd Allah Al-ʿAjīrī. *Yanbu al-Ghiwayah al-Fikriyah*. Markas bayan, 2nd edn, 1434 AH. (p. 292).

[76] Jamal Sultan. *Tajdid al-Fikr al-Islami*. (riyad, Dār al-watan, 1412 AH). p. 54.

[77] Al-Juwani, *Al-Burhan*. Vol 2. P. 161. Al-Ghazali, *Al-Mankhul*. 154, 354. *Al-Mustasfa*. Vol 1. P. 216, vol 2. P. 135.

[78] Hasan hanafi. *Min Al-Nas ila al-waqi*. Vol 2. P. 571.

Sharīʿah legal rulings[79]. Consequently, Arab modernists agree that because Maṣlaḥah is the first pillar and principle of the legislation, the legal rulings of the Sharīʿah legislation and its rules turn whenever the Maṣlaḥah turns[80].

Ironically, as it always is, Arab modernists miss the full picture of the theory of Maqāṣid in the Shāṭibī's conception. While, they praise Shāṭibī to devaluate Imam Shāfiʿī[81], they miss to read comprehensively Al-Shāṭibī, it is either a misreading or an intentional misuse. While they revere the material Maṣlaḥah and worldly benefit, Al-Shāṭibī stated that there is a consensus that the benefits Maṣlaḥah and harms Mafsadah of the hereafter have priority over the benefits and harms of this world[82]. Furthermore and in the same sentence, Al-Shāṭibī says:" it is not correct to consider a worldly benefit that harms the benefit of the hereafter[83]". Al-Shāṭibī provides its readers with two important maxims in his theory of Maqāṣid as they are a core constituent of his epistemology. First, he declares that religious' benefits Maṣlaḥah take precedence over the worldly benefits[84]. Second maxim ":" nothing that negatively affects the Maṣlaḥah of the hereafter is in accordance with the objectives of the Lawgiver[85]". These clear statements distinguish Al-Shāṭibī and his theory from the Arab modernists' claims and interpretations about the worldly objectives of the Lawgiver.

In the other hand, Arab modernists are eager to neglect considering the detailed Sharīʿah legislation, moreover, they refuse to consider those detailed legal rulings while conceptualizing the Maqāṣid of Sharīʿah. This is another ironical misreading of Shāṭibī's theory of Maqāṣid. While they prioritize the higher objectives and *Kulliyāt* over the detailed Sharīʿah legal rulings *Juzʿiyāt*, Al- Shāṭibī is just in the opposite way. He says:" it is an obligation to consider these *Juzʿiyāt* within these *Kulliyāt* … he who considers the *Juzʿī* and turned away from the *Kullī* is wrong as well as he who considers the *Kullī* and turned away from the *Juzʿī* …[86]". What shows that Arab modernists are misunderstanding the theory of Maqāṣid Sharīʿah, is that rejecting those detailed legal rulings of the Sharīʿah *Juzʿiyāt* leads to dismantling their own *Kullī*. Al-Shāṭibī goes further to say that rejecting and turning away from Sharīʿah *Juzʿiyāt* to priorities Sharīʿah *Kulliyāt* is a contradiction, because there is no way to certainty about the *Kullī* only if the *Juzʿī* is a certainty. In addition, he states that if the *Kullī* contradicts the *Juzʿī* this means that the *Kullī* is not fixed and it is in a state of doubt[87].

Hence, Al-Shāṭibī himself refutes the first epistemological problem in the theory of Maqāṣid within the Arab modernists' discourse.

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[79] Fahmi Al-Hwīdī. *Al-Tadawun al-Manqus.* (cairo: Dār shuruq, 1st edn, 1994). p. 176.

[80] Al-jabiri. Wijhat Nadr. (Beirut: markaz dirasat al-wihdah al-arabiyah, 1st edn, 1992). (p . 64). fahmi Al-hwidi. Hata la Takuna Fitnah. (Oman: Dār shuruq, 1st edn, 1989). (p. 97).

[81] Al-Jabiri. Ibid.

[82] Abu Ishaq Al-Shāṭibī. *Al-Muwafaqat.* (vol 3. P. 124).

[83] Al-Shāṭibī. Ibid.

[84] Al-Shāṭibī. Ibid. vol 3. P. 94

[85] Al-Shāṭibī. Ibid. vol 3. P. 124

[86] Al-Shāṭibī. Ibid. vol 3. P. 174.

[87] Al-Shāṭibī. Ibid. vol 3. P. 175.

Second dilemma in the Arab modernist' concept of Maqāṣid is that they claim that the detailed Sharī'ah legal rulings and legislation are only a mere tool and mean to the higher objectives of the Lawgiver. By this, they mean that people can exchange these tools and means as long as they observe the higher objective of the Lawgiver al-Sharfī provided a full chapter about [88]. As an example, they claim that the great acts of worship such as prayer are no longer obligatory. They argue that the higher objective of the Lawgiver at that time was to purify the human soul, and as long as people now can reach this aim by other means, they have the right to replace these acts of worship[89]. This means that as long as people find ways to elevate their spiritual life, the Islamic acts of worship become unnecessary. Ironically, Shāṭibī again refuted this kind of thinking about Maqāṣid Sharī'ah in his own theory. Epistemologically, Shāṭibī considers that humans by using their minds and intellect cannot get a full comprehensive understanding of their own interests related to this world. Human knowledge is always limited, as for the Maṣlaḥah, human can only know about some aspects of it and in the same time ignore and are unable to consider other aspects. If this is the case concerning the worldly interests, so the problem of human limitation become higher when dealing with the Maṣlaḥah of the hereafter. Al-Shāṭibī declares that revelation is the only source to know about the Maṣlaḥah of the hereafter[90]. Arab modernists in their quest to change the methodology of understanding, interpreting divine texts and making Ijtihād, they jump to the Maqāṣid in order to get a free and fluid Islamic jurisprudence, where every aspects of Sharī'ah legislation can change. By using such concept of Maṣlaḥah, they discussed issues related to woman in Islam, Khilāfah and politics, international relations as well as issues related to the code of ethics[91].

However, the question that imposes itself is what are the sources of these claims? There are two major sources of evidences within the Arab modernists' discourse to be the reliance and supports of their understanding of Maqāṣid and Maṣlaḥah. The first one concerns the variety of the Guided Caliph 'Umar's Ijtihād. The second one is the well-known name of Al-Ṭūfī and his theory of Maṣlaḥah. Ironically, Al-Ṭūfī is a Ḥanbalī Muslim scholar that Arab modernists praise despite their devaluation of the Ḥanbalī School of law. In addition, to the causes of revelation *Asbāb Nuzūl* and the issue of abrogation Naskh.

Analyses of the Sources of Evidences.

First: the Guided Caliph's Ijtihād

Most inferences of Arab modernists to support their claim of the clash between Sharī'ah legal rulings and higher objectives of the Lawgiver are the various attempts of 'Umar to deal with new cases *Nawāzil* that did not exist in the time of the prophet. Cases such as where the Guided Caliph did not implement the Cut off hand in the year of famine.

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[88] Abd Al-Majid Al-Sharfī. *Al-Islam bayna al-Risalah wa al-Tarikh*. (Beirut: dar al-Tali'ah, 2nd, 2008). P. 59. Abd Al-Majid Al-Najar. Al-Qiar al-Jadidah li al-Nas al-Dini. (Dimashq, Markaz al-Rayah li al-Tanmiyah). p. 69.

[89] Al-Sharfī. Ibid. p. 63.

[90] Al-Shāṭibī. Ibid (vol 2. P77, 527).

[91] Al-Sharfi. Ibid.

In addition, he stopped given the share of Mu'alafat Qulūbuhum as well as he did not distribute the spoils of war[92]. Arab modernists interpret those acts as a deviation from the divine texts and their legal rulings for a proper understanding and implementation of the higher objectives of the Lawgiver[93]. In addition, they claim to find on those acts, evidences for their great struggle against the authority of the text[94]. Furthermore, these Ijtihād of the Guided Caliph constitute the fundamental evidences for their historicity project concerning the Quran and Sunnah. Al-Jābirī goes far to say that the Ijtihād of all companions was with the Maṣlaḥah even if they contradict the definitive texts Qaṭ'ī[95].

Arab modernists seem to neglect reading Muslim scholarship in various field of Sharī'ah studies, they do not try to verify and evaluate the Muslim scholars' interpretation of these acts of Ijtihād that 'Umar issued. As al-Khwiṭar explains, this Arab group jumps into making Ijtihād without meeting the necessary tools of such process. Moreover, they give themselves the right to read, understand and interpret Quran Sunnah and historical fact in their own way[96]. Most of this Guided Caliph's Ijtihād are linked to what is called in Uṣūl Fiqh as establishing or verifying the ratio *Taḥqīq al-Manāṭ*. Concerning the hand cut, Islam encourages dropping punishment by any kind of ambiguities[97]. The year of famine is a situation where the condition of implementing the punishment are not verified. Concerning the share of zakat, the Guided Caliph did not really stop it meaning first, it is not obligatory to give all the eight kinds of beneficiaries of Zakat. Second, the guided caliph himself said that the reason and the effective reason 'Ilah is no longer existing. Thirdly, Muslim scholars did not understand that this share does not longer exist as a Sharī'ah ruling. Consequently, 'Umar Ibn abd al-'Azīz in his time give this share to a Christian[98]. As Ibn Al-Qayam concludes, the Guided Caliph's acts are all in line with divine texts, analogy Qiyas and objectives of the Lawgiver. In addition, the Guided Caliph did not give priority to the Maṣlaḥah over the legal rulings of the divine texts[99].

Arab modernists' claim that the guided caliph used to give priority to the Maṣlaḥah and to the spirit of the Sharī'ah over the texts is refuted by the many reports on his behalf declaring clearly the opposite. As he is among the first companions to fix the hierarchy of evidences[100].

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[92] Nasr Abu Zaid. Mafhum al-Nas. (Beirut, al-markaz al-thaqafi al-arabi). P. 12.

[93] Nasr Abu Zaid. Mafhum al-Nas. p. 104. Muhamad Abad al-Jabiri. *Al-Din wa al-Dawlah wa Tatbiq al-Shariah.* (Beirut: Markaz al-Dirāsāt al-Wiḥdah al-'Arabiyah, 1st edn, 1996). p. 9. Tayab Tizini. *Al-Nas al-Qurani amama Ishkaliyat al-Buniyah wa al-Qiraah.* (Dar Yanabi', 1997). p. 219.

[94] Ibid. see references above.

[95] al-Jabiri. (Ibid). (p. 42)

[96] Fahd al-Khwitar. *Ibid.* (p. 174).

[97] Ibn Al-Mudhir. *Al-Ishrāf ala Madhahib al-'Ulama'.* (Al-Imararat al-arabiyah al-Mutahidha, Maktabat Makah al-Thaqafiyah, 1st ed, 2004). vol 7. p. 291.

[98] Ibn Sad. *Al-Tabqat al-Kubra.* vol 5. p. 558.

[99] Ibn al-Qayyim al-Juziah. *Ilam al-Muwaqiin an Rabi al-Alamin.* Taḥkik Mashhūr Ḥassan. (Dar ibn Al-Jawzī, 1st edn, 1423 AH). vol 3. P. 11.

[100] Aouidad Rachid. Ibid

Second: Al-Ṭūfī

Amazing enough how Arab modernists reduce the full theory of Maṣlaḥah in the conceptualization of Al-Ṭūfī to the following report. Al-Sharfī says:" … the result that he (Al-Ṭūfī) reached is that Maṣlaḥah should always take priority over the texts, even the effective ones *Qaṭ'ī*[101]". The reality is that the concept of Maṣlaḥah within al-Ṭūfī's approach falls in the well-known chapter of Uṣūl Fiqh, which is Takhṣīṣ al Naṣ[102]. Scholars of Uṣūl Fiqh established that the general *'Umūm* of a text can be weak in cases or possible only concerning some *Afrād[103]*, hence the original text can fall under *Takhṣīṣ* by another text, or by an analogy, or by a necessity *Ḍarūrah*, or by a general need *Ḥājah 'Āmah*. Al-Ṭūfī himself declared in many places[104] that prioritizing the Maṣlaḥah falls under Takhṣīṣ process or as a Bayan. Al-'Ajlān[105] summarizes the theory of Maṣlaḥah in al-Ṭūfī's conceptualization as follow:

1. Interest *Maṣlaḥah* does not take precedence over effective text *Qaṭ'ī*
2. Interest Maṣlaḥah does not take precedence over texts related to acts of worship and al-Muqadarāt
3. Considered Interest Maṣlaḥah are those legitimate ones that the evidences considered
4. Giving priority to Interest Maṣlaḥah in only the case where there is no possible manner to combine between the Maṣlaḥah and the text which is not effective *Qaṭ'ī*
5. Giving priority to Interest Maṣlaḥah falls under Takhṣīṣ al-'Ām

Third: Causes of the revelation *Asbāb Nuzūl* Quran.

The causes of revelation is an important chapter in the science of Quran[106]. It essentially intends to mention all issues, incidents and events that accompanied the revelation of Quranic verses[107]. Muslim scholars discussed in details the various aspects related to the causes or reasons of revelation *Asbāb Nuzūl* [108] among which they mentioned that Quranic verses could be classified into two categories accordingly. First, the many verses that have no cause of revelation and they are revealed without any event or question. Second are those verses that have been revealed to answer a question or to

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[101] Abd al-Majid al-sharfi. *Tahdith al-Fikr al-Islami*. (p. 41).

[102] Ala al-Din al-Bukhari. *Kashf al-Asrar*. (Beirut: Dar al-Kutub al-Arabia, 3rd edn, 1997). Vol 1. P.307. Jamal al-Din Ibn al-Hajab. *Muntah alWusul*. (Bierut: Dar al-Kutub al-Ilmiayh, 1st edn, 1985). P. 119.

[103] Muhamad Fathi Al-Durayni. *Manahij al-Usuliyah*. (Beirut: Muasasat al-Risalah, 3rd edn, 1997). P. 144. Mohnmad ibn Ali al-Shawkani. *Irshad al-Fuhul*. (cairo: Dar al-Salam, 1st edn, 1998). Vol 1. P. 408.

[104] Najm al-Din Al-Tufi. *Sharh Mukhtasar al-Rawdah*. (Bieurut: Muasast al-Risalah, 1st edn, 1988). Vol 1. P. 561, 562, 563. Vol 2. P. 550.

[105] Fahd al-Ajlan. *Marakat al-Nas*. (Markaz al-Bayan li al-Buhut wa al-Dirasat, 1433 AH). (vol 1. P. 124)

[106] Abu Al-Hasan Al-Wahidi. *Asbab Nuzul*. (Al-Damam: Dar Salah, 2nd edn, 1992). P. 8. Bar Al-Din al-Zarakashi. *Al-Burhan fi Ulum Quran*. (Beirut: Dar al-Marifah, 1st edn, 1990). Vol 1. P. 22.

[107] Muhamad al-Zarqani. Manahil al-Irfan. (Egypt: Matbaat Issa al-Babi al-Halabi, 3dr edn, nd). Vol 1. P. 106.

[108] Ibid.

comment on an event or other reasons[109]. However, Arab modernists wrongly use the causes of revelation to fit their imported methodology of historicism[110] to the extent that Al-ʿAshmāwī in several occasions insists that every single verse of the Quran has a cause and a reason[111]. A statement that reveals either ignorance or intentional misleading. Furthermore, Ḥasan Ḥanafī pushes this topic to its end, where he claims that Quranic verses when revealed according to special life causes and worldly reasons, they do not provide a new divine legislation, instead they just embrace an idea of human. He goes far to say, that the revelation does not provide any legislation. According to his interpretation, what happens is an imposition of the reality that the revelation accepts, and this is the meaning of causes of revelation according to him[112]. In another occasion, he reduces the causes of revelation to only as a mere response to a social context[113]. According to al-Jābirī the prominent Arab modernist, causes of revelation and Maqāṣid are the two condition towards an objective Ijtihād[114]. He reached a strange conclusion where he said:" building the rationalization of the Sharīʿah upon *Asbāb Nuzūl* within the framework of Maṣlaḥah, will open doors to build new rationalities for new *Asbāb Nuzūl*[115]. Arab modernists by using *Asbāb Nuzūl* aim to establish the following points; first, the verses are only a response to a social context and an answer to human needs, this mean that social contexts can change and human needs can change, consequently the legal rulings and legislation should change also. Second, they use causes of revelation to point to the humanity of the Quran itself and that there is no such a thing called the words of Allah. Instead, they propose that the Quran is a mere cultural product[116]. Thirdly, they use these causes of revelation to deny the permanence of Sharīʿah legal rulings and legislation. They want to make the divine texts as featured by relativity and holding a moving and changeable meanings. Naṣr abu Zaid claims that by the means of the causes of revelation it is possible to discover new horizons of the legislation that Muslims scholars did not investigate and moreover cotemporary Ijtihād can disagree with past consensuses[117]. This means that the indications of the divine texts can be projected through the development

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[109] Jalal al-Din Al-Suyuti. *Al-Itqān fi ʿUlūm al-Quuran.* (Arabia Saudi, Majmaʿ al-Malik Fahd, 1426 AH). vol 1. P. 189. Mustafah Dib Al-Bughah. *Al-Madkhal li Dirasat al-Quarn.* (Dār Al-Kalim al-Tayab, 1998). (p. 132). Mustafah Dib Al-Bughah. *Mabahith fi Ulum Quran.* (Dār Al-Kalim al-Tayab, …). (p. 71). Abd Allah Shahatah. *Ulum Quaran.* (Dār al-Gharib, 2002). (p. 88).

[110] Al-Sharfi. *Labinat.* (vol 2. P. 25). Al-Jabir. *Wajhat NaDār.* (p. 8.).

[111] Muhamad said Al-Ashmawi. Jawahar al-Islam. (Dar Sinaʿ li al-Nashr, 2nd edn, 1992). p. 197. Muhamad said Al-Ashmawi. *Usul Al-Shariah.* (Maktabat Madbūlī, 2nd edn, 1983). p. 65. Hasan Hanafi. *Humum al-Fikr wa al-Watan.* (vol 1. P.20).

[112] Hasan hanfi. *Al-Yasar al-Islami wa al-Wihdah al-Wataniyah.* (p. 37). Hasan Ḥanafī. *Al-Turath wa al-Tajdid.* (Dar Qubāʿ li al-Ṭibāʿah wa al-Nashr, 2nd edn, 2000). p.135.

[113] Hasan hanafi. *Naqd al-Khitab Al-Dini.* (p. 300).

[114] Muhamad Abad Al-Jabiri. *Al-Dimoqratiyah wa Hukuk Al-Insan.* (Munadamat al-Yunisku, 1996). (p.20).

[115] Al-jabiri. Wijhat Nadr. (bierut : markaz dirasat al-wihdah al-arabiyah, 1st edn, 1992). (p.57).

[116] Arkun. *Al-Quran min al-Tafsir Al-Mawruth ila Tahlil al-Khtab al-dini.* (p21). Nasr Abu Zaid. Mafhum al-Nas Dirasah fi Ulum al-Quaran. (morocco: Al-Markaz al-Thaqafi al-Arabi, 1st edn, 2014) (p. 27). Hasan hanafi. Hiwar al-Ajyal. (p. 412).

[117] Nasr Abu Zaid. *Dawāʿir al-Khawf min Khitab al-Maraʿa.* (morocco: Al-Markaz al-Thaqāfī al-ʿArabī, 3rd edn, 2004) p. 11.

of the social realities and circumstances and in the same time, those divine texts will remain only historical reports of a previous social reality[118].

A little knowledge about the chapter of causes of revelation in the Muslim scholars' literature reveals a range of fundamental differences with the manipulation of Arab modernists in their use of the same chapter. First in terms of definition, Muslim scholars define the causes of revelation in accordance with the idea of divine revelation from Allah, whereas Arab modernists define it as something near to formula of law[119]. Second, both group deeply disagree on the ways to know about these causes. According to Muslim scholars, causes of revelation can only be knew by a report from the companions who witnessed the revelation and its event or question. However, for the Arab modernists the way of report is not a sound way. They argue that causes of revelation are the connection of the human intellect with the reality in this sense they are not connected to the narration and report, but it is an intellectual efforts that can reveal them[120].

Fourth: Abrogation Naskh

Naskh means[121] that an older divine revelation may be substitute with another delayed one. Muslim scholars stipulate the knowledge of the chapter of abrogation in order to proceed in Ijtihād and in order to proceed in Tafsīr Quran as well. Most discussions about this chapter of abrogation are presented in Sciences of Quran, Uṣūl Fiqh and Mukhtalaf al-Ḥadith. What concerns this paper is to show the exaggerate way Arab modernists use chapters of Islamic knowledge to strengthen the establishment of modernism philosophy pillars. Nasr Abu Zaid as usual, puts his finger on the topic to claim that this chapter crowned their efforts to prove the undetached connection and attachment between the divine text and the context of reality[122]. There exists other extreme opinions among Arab modernists concerning the issue of Naskh, where there is who claims that the process of Naskh did not end with the end of revelation[123].

Those Arab modernists by advocating the chapter of Naskh aim to emphasis the priority of the context and the material world over the divinity and perpetuity of the texts and their legal rulings and legislation. In such a way, Sharīʿah rulings on politics, justice, women issues for example change according to social contexts and development.

It is to be noted here, that there is a group of Arab modernist who deny totally the existence of abrogation influenced by the Muʿtazilī teachings[124].

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[118] Nasr Abu Zaid. *Ibid.* p. 11. Nasr Abu Zaid. *Naqd al-Khitab al-Dini.* (Al-Nashir dar Saynāʿ, 2ed edn, 200). p. 210.

[119] See for example Al-Ashmawi, *Usul al-Shariah*, 86.

[120] Hasan ahnafi. *Min Al-Naql Ila Al-Aql.* p. 73)

[121] Abu Ishaq al-Shirazi. Sharh al-Luma. Beirut: Dar al-Gharb al-Islami, 1ˢᵗ edn, 1407AH). p. 127.

[122] Nasr abu Zaid. *Mafhum al-Nas.* (p. 130). See also, Hasan Ḥanafi. *Min Al-Aqidah ila al-Thawrah.* (Beirut: Dar al-Tanwīr, 1ˢᵗ edn, 1977). vol 2. P. 504.

[123] Al-Dawi Khawlidiyah. *Al-Nasikh wa al-Mansukh, Tarikhiyat al-Quran.* (Majalat Dirasat Arabiyah, N 5, 1996). (p. 47).

[124] Mohamad Shaḥrūr. *Al-Dawlah wa al-Mujtamaʿ.* (Dimashq: Al-Ahālī li al-Ṭibaʿah, nd). P. 571

Conclusion

This paper clearly proved the Arab modernists reveal either weak understanding of Muslim scholars' heritage or intentional misleading of Muslim community. It displayed how they overturn the concept of Maṣlaḥah and theory of Maqāṣid to fit their affiliation to modernism philosophy and epistemology against the Islamic epistemology. In addition, this paper showed that Al-Shāṭibī consist in a harmonious unit in the chain of Maqāṣid Sharīʿah. Al-Shāṭibī did not represent an epistemological move from classical Uṣūl Fiqh scholars especially Imam Shāfiʿī. Furthermore, this paper exposed the new feature of Arab modernists' discourse, which is ti use Islamic tools to deviate Islamic teachings and legislation. Most important, this paper settled the right connection between Kulliyāt Sharīʿah and its Juzʿiyāt, as well as between Uṣūl Fiqh and Maqāṣid.

Limitations of the Study

Due to the space constraint, this paper did not investigate other aspects of the theory of Maqāṣid in Muslims scholars' heritage such as the channel to discover the Maqāṣid. In the same time, this paper did not deal with other claims of Arab modernists, such as the re-building of ʿUṣūl Fiqh upon the principles of Maqāṣid Sharīʿah, which is an important topic to study and investigate. This paper calls researchers to scrutinize and critically analyses the various principles of Arab modernists' discourse.

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