THE REFORM DEBATE
Al-Marzūqī and al-Būṭī on the Renewal of *Uṣūl al-fiqh*

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Abstract

The renewal of Islamic legal hermeneutics has been a subject of controversy since the 19th century. Muslim jurists and thinkers disagree on the extent to which the sources and the procedures of *istidlāl*, legal reasoning, embodied in Islamic legal hermeneutics, *uṣūl al-fiqh*, should be restructured. This study deals with one of the most recent discussions on this question, which opposed the Tunisian A. al-Marzūqī and the Syrian M. S. Ramaḍān al-Būṭī. The answers of the two debaters are interesting in more than a case. On the one side, al-Marzūqī argued for an open and collective legal hermeneutics that would function as a public reasoning. On the other side, al-Būṭī adopts a conventional line of thought, defending the methodological self-sufficiency of Islamic law. This paper will investigate the premises, the conclusions, and the counter-arguments of each of the debaters. Besides, light will be shed on the new elements that emerged in the dispute with regard to legal reform in Islamic law.

Key Words: Reform, al-Marzūqī, al-Būṭī, renewal, *uṣūl al-fiqh*, Islamic legal hermeneutics

Introduction

Since M. ʿAbduh (d. 1905), the renewal of Islamic legal hermeneutics, *uṣūl al-fiqh*, has been explored in heated discussions. For ʿAbduh, the key-concept of renewing *uṣūl al-fiqh* is public interest,

Ilahiyat Studies
Volume 4 Number 1 Winter/Spring 2013

p-ISSN: 1309-1786 e-ISSN: 1309-1719
DOI: 10.12730/13091719.2013.41.68

maṣlaḥa, which should frame the new Muslim legal thought.[1] Without questioning the four traditional sources of Islamic law, he infused a cautious ethical spirit in legal reasoning. In this regard, he drew attention to Abū Isḥāq al-Shāṭibī (d. 1388) and his *al-Muwāfaqāt fī uṣūl al-sharīʿa*, a cornerstone in the Muslim legal ethics, called the higher objectives of Islamic law, *maqāṣid al-sharīʿa*. The recurrent question of debate is how far one would go to reform the sources and the procedures of legal reasoning.

Jurists and intellectuals disputed ʿAbduh's legacy. On the one hand, an increasing number of traditionnist jurists adopted, with prudence, ʿAbduh's perspective. Others, more open to reform such as M. al-Ghazālī (d. 1996), criticized the centrality of analogy and singular reports, *khabar al-wāḥid*,[2] using the legal ethics of the Qurʾān more freely. The latter would be the umbrella that covers public interest-based reasoning. However, nothing radical emerged out of this approach. Juristic caution and the apology of *sharīʿa* subsidized the ethics of *maqāṣid al-sharīʿa* to the traditional *uṣūl*. On the other hand, Muslim intellectuals employed ʿAbduh's *maṣlaḥa*-frame to elaborate far-reaching proposals of renewing *uṣūl*. Thus, in 1980, the Sudanese Ḥasan al-Turābī challenged traditional *uṣūl* studies. Although he does not belong to the religious establishment of *ʿulamāʾ*, the publication of his *Risāla fī tajdīd uṣūl al-fiqh al-Islāmī* was a turning point. Al-Turābī questions analogy, enlarges the use of *maqāṣid* and presumption, rejects consensus in its traditional juristic form, and, instead, he calls to a democracy-like consensus.[3] A similar effort of renewal has been undertaken by the Egyptian Ḥasan Ḥanafī. Contrary to al-Turābī, Ḥanafī lacks juristic training. He suggests transforming *uṣūl al-fiqh* from a juristic, rational, deductive, and logical science, as he describes it, into a philosophical, humanistic, behavioral, and general field of knowledge.[4] He calls to consider the public interest as a central method of legal reasoning and to discard the the-

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1 The standard work on ʿAbduh's legal views is still Kerr's volume published in 1966: Malcolm Hooper Kerr, *Islamic Reform: The Political and Legal Theories of Muḥammad ʿAbduh and Rashīd Riḍā* (Berkeley: University of California Press, 1966).

2 Muḥammad al-Ghazālī, *al-Sunna al-nabawiyya bayna ahl al-fiqh wa-ahl al-ḥadīth* (Cairo: Dār al-Shurūq, 1989).

3 Ḥasan al-Turābī, *Tajdīd uṣūl al-fiqh al-Islāmī* (Beirut: Dār al-Jīl, 1980).

4 Ḥasan Ḥanafī, *Min al-naṣṣ ilā l-wāqiʿ: muḥāwala li-iʿādat bināʾ uṣūl al-fiqh* (Cairo: Markaz al-Kitāb li-l-Nashr, 2004), II, 588.

oretical traditional *uṣūl*. This proposal did not persuade traditionnist audiences. A serious divide between the legal ethics of the intellectuals and the legalism of the jurists brought ʿAbduh's synthesis to a deadlock.

In the West, several Muslim intellectuals attempted, in a critical outlook, at the renewal of Islamic legal hermeneutics. In particular, Fazlur Rahman (d. 1988), argues for a new dynamic legal hermeneutics; it is an independent reasoning, *ijtihād* that looks at the Qurʾān and the Sunna as scriptures that move innovatively through different social forms. As he puts it, "Islam is the name of certain norms and ideals which are to be progressively realized through different social phenomena and set-ups."[5] Accordingly, Muslims should seek values in the texts, not in the medieval institutions, and embody these Islamic values in the modern institutions. More radically, M. Arkoun (d. 2010) rejects the notion of *ijtihād* altogether. For him, *ijtihād* is a mechanism of thinking about *sharīʿa* within the orthodox perspective elaborated by the classical jurists. He sees a close relationship between the belief in the sacred character of the language of the Qurʾān, law and the claim of truth in Orthodox Islam. In other words, one cannot produce any significantly different *ijtihād* from the traditional *fiqh* as long as the traditional linguistic and anthropological frameworks are maintained. Arkoun also vehemently criticizes the authority of the jurists to be entitled to *ijtihād*. In his view, they took advantage to set the rules of *ijtihād* that ultimately fix the legal qualifications and social norms. Thus, *ijtihād* turned into the application of rules of juridical schools.[6] The traditional Islamic legal hermeneutics should be substituted by Western social sciences. Renewal, as he sees it, is possible only if modern Muslims move from this traditional epistemology to criticism of the Muslim mind; that is, only and only if the mindset becomes modernist, deconstructionist, and secularist.

The wide rejection of al-Turābī's endeavour, let alone the ideas of Ḥanafī, Fazlur Rahman, and Arkoun, postponed a serious debate on the issue between the jurists and the intellectuals. In the Sunnī Arabic speaking countries, the most audacious jurists would stick to *maqāṣid al-sharīʿa* as a complementary approach to traditional *uṣūl*,

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5 Fazlur Rahman, *Islamic Methodology in History* (Islamabad: Islamic Research Institute, 1995), 189.

6 Mohammad Arkoun, *Pour une Critique de la Raison Islamique* (Paris: Maisonneuve et Larose, 1984), 73.

being a safe and conciliatory approach.[7] Conversely, modernist intellectuals rarely dare to venture into the field of *uṣūl*.

Recently, a sober debate took place between the Tunisian Abū Yaʿrub al-Marzūqī and the Syrian Muḥammad Saʿīd Ramaḍān al-Būṭī (d. 2013). It was published under the title of *Ishkāliyyat tajdīd uṣūl al-fiqh*. The answers of the two debaters to the questions of definition, modalities, and implications of this renewal are stimulating in more than a case. Al-Marzūqī, the proponent, argued for an open and collective legal hermeneutics that would function as a public reasoning. His belief in human reason and freedom is essential. As a critique of the juristic elitism, he rejected any special authority that would be given to the jurists. Since juristic authority is based on the derivation of judgments through analogy, *qiyās*, he categorically dismissed this method. In this regard, he recalls Ibn Taymiyya (d. 1328) and Ibn Khaldūn (d. 1406) as models of a realistic synthesis between reason and transmission. He hails them for their reliance on scriptures and reality rather than analogical reasoning. Thus, in his view, they are the precursors of a deep renewal of Islamic legal hermeneutics. Moreover, al-Marzūqī discards the logical, legal, and linguistic premises of traditional *uṣūl al-fiqh* for their incapacity to grasp the realities of modern times. He suggests the use of political philosophy and ethics as an effective way of renewal to find adequate legal decisions for new cases.

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7 That said, in the recent years, the interest in the subject of *tajdīd* in legal hermeneutics has significantly increased. See: Muḥammad al-Dasūqī, *al-Tajdīd fī l-fiqh al-Islāmī* (Beirut: Dār al-Madār al-Islāmī, 2001); ʿAbd al-Salām ʿAbd al-Karīm, *al-Tajdīd wa-l-mujaddidūn fī uṣūl al-fiqh* (Cairo: al-Maktaba al-Islāmiyya, 2003); al-Dasūqī, *Naẓra naqdiyya fī l-dirāsāt al-uṣūliyya al-muʿāṣira* (Beirut: Dār al-Madār al-Islāmī, 2004); ʿAbd al-Salām Balājī, *Taṭawwur ʿilm uṣūl al-fiqh wa-tajadduduh*[a] (al-Manṣūra: Dār al-Wafāʾ, 2007). For a historical introduction and assessment of literature on renewal of *uṣūl*, see: Muḥammad Fatḥī Muḥammad ʿAtrabī, *al-Tajdīd fī ʿilm uṣūl al-fiqh al-Sunnī fī l-ʿaṣr al-ḥadīth: bayna l-naẓariyya wa-l-taṭbīq* (al-Iskandariyya: Dār al-Maṭbūʿāt al-Jāmiʿiyya, 2012). For Western studies, see: Birgit Krawietz, *Hierarchie der Rechtsquellen im tradierten sunnitischen Islam* (Berlin: Duncker & Humblot, 2002); David Johnston, "A Turn in the Epistemology and Hermeneutics of Twentieth Century *uṣūl al-fiqh*," *Islamic Law and Society* 11/2 (2004), 233-282; id., "*Maqāṣid al-sharīʿa*: Epistemology and Hermeneutics of Muslim Theologies of Human Rights," *Welt des Islams* 47/2 (2007), 149-187; Felicitas Opwis, "Changes in Modern Islamic Legal Theory: Reform or Reformation?" in Michaelle Browers and Charles Kurzman (eds.), *An Islamic Reformation?* (Lanham, MD: Lexington Books, 2004), 28-53.

In contrast, al-Būṭī adopts a conservative line of thought, defending the theoretical self-sufficiency of Islamic law. For him, the notion of public interest, *maṣlaḥa*, is an appropriate frame to tackle new juridical cases. However, public interest should be regulated by the traditional authority of the jurists and the principles of *sharīʿa*. As he understands it, the reason for the stagnation of modern *ijtihād* does not lie in the traditional tools and premises of *uṣūl al-fiqh*. Rather, it has to do with the inability of *mujtahid*s to use these devices. For this reason, al-Būṭī casts off the modernist views of *uṣūl* renewal. In his opinion, Islamic legal hermeneutics do not need renewal as they are, in their traditional form, the only appropriate tools for reading the sources of law in Islam. Since these sources are immutable, the tools should not be renewed. The reactivation of *ijtihād* is to be carried out with the same traditional legal reasoning. Thus, it can be said that the ethical view of the philosopher al-Marzūqī clashes with the procedural one endorsed by the jurist al-Būṭī.

Taking up a critical posture, this paper examines the debate under consideration. In order to capture better the intellectual background of the debate, I will briefly introduce the participants. Then, I will explore the premises, the conclusions, and the counter-arguments of each of the debaters. In the first place, al-Marzūqī's position will be investigated. Subsequently, I will look at al-Būṭī's rebuttal of al-Marzūqī's thesis on the new Islamic legal hermeneutics as he perceives it.

I. The Debaters

I begin with al-Būṭī as he is well-known for Western[8] as well Muslim audiences.[9] Born in Turkey in a Kurdish family (Boutan Island, 1929), al-Būṭī is a Syrian religious scholar who became one of the most prestigious religious Sunnī scholars in the last forty years. He synthesized a traditional Azhari training (PhD from al-Azhar in 1965),

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[8] Andreas Christmann, "Islamic Scholar and Religious Leader: a Portrait of Shaykh Muḥammad Saʿīd Ramaḍān al-Būṭī," *Islam and Christian-Muslim Relations* 9/2 (1998), 149-169; Sandra Houot, "De la religion à l'éthique. Esquisse d'une médiation contemporaine," *Revue du monde musulman et de la Méditerranée* 85-86 (1999), 31-46; id., "Culture religieuse et média électronique: le cas du cheikh Muḥammad al-Būṭī," *Maghreb-Machrek* 178 (2003), 75-87.

[9] In Arabic see: ʿAbd al-Ṣamad Balḥājj, "al-Taṣawwuf wa-l-Ikhwān al-Muslimūn fī Sūriyya: al-Būṭī wa-madrasatuhū," *al-Misbār* 66 (*al-Islām al-nāʾim: al-taṣawwuf fī bilād al-Shām*) (2012), 283-304.

Ikhwānī intellectual line and Sufism. Of particular importance is the influence of Bediuzzaman Saʿīd Nūrsī (d. 1960) on him. Although critical of the Arab socialism and other secular ideologies, he supported the Syrian regime until his death in 2013. With regard to Islamic law, al-Būṭī is a conservative. He enthusiastically defended sustaining the juristic schools, *madhāhib* against a Salafī anti-*madhāhib* campaign. Al-Būṭī won the esteem of traditional Muslim scholars with his book, *Ḍawābiṭ al-maṣlaḥa fī l-sharīʿa al-Islāmiyya* [*The Regulations of Public Interests in Islamic Law*]. Herein, he claims that in Islamic law, public interest can only be real if approved by the Qurʾān and the Sunna.[10] In his view, ethics of law cannot renew Islamic law for no consideration is given to ethics outside the texts; religion is the basis of public interest and humans cannot grasp divine wisdom embodied in *sharīʿa*.[11] His Shāfiʿism is obvious here as he promotes the idea that good and evil are effects of the legal command.

In contrast, Muḥammad al-Ḥabīb al-Marzūqī, known as Abū Yaʿrub al-Marzūqī is unfamiliar to the Western and Islamic informed publics. Nonetheless, he is well-known to the Arabic audiences thanks to his numerous publications, media appearances on al-Jazeera, and controversies he was involved in. Born in Tunisia (1947), he is trained in Paris in philosophy, especially Islamic and Greek philosophies. In several publications, he promotes a new Arab philosophy that includes the religious component, a reaction to largely secular philosophers in the Arab world. He rejects Aristotelian Muslim philosophy and *kalām* for they are realists, claiming the existence of universals and particulars. Al-Marzūqī is a nominalist who believes in the existence of particulars only. In one of his recent publications, he argues for the unity of philosophy and religion.[12] His Islamic affinities were confirmed in the current political scene of Tunisia as he was a representative of the Islamic political party Ennahda (1911-1912). However, he resigned and distanced himself from politics. His writings focus on epistemology, philosophy of history, and metaphysics. The only publication where he expands on Islamic law is his debate with al-Būṭī.

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[10] Muḥammad Saʿīd Ramaḍān al-Būṭī, *Ḍawābiṭ al-maṣlaḥa fī l-sharīʿa al-Islāmiyya* (Beirut: Muʾassasat al-Risāla, 1973), 58.

[11] *Ibid*., 67.

[12] Abū Yaʿrub al-Marzūqī, *Waḥdat al-fikrayn al-dīnī wa-l-falsafī* (Damascus: Dār al-Fikr, 2011).

II. Al-Marzūqī's Approach

Al-Marzūqī considers that Muʿtazilī theology and Khārijism-Ẓāhirism had a destructive influence on *uṣūl*.[13] According to him, these schools infused a sense of rebellion and non-consensual tendencies into the Sunnī *uṣūl al-fiqh*. The first is responsible for esoteric interpretation while Khārijism and Ẓāhirism spread rigid formalism and literalism. Although his affirmation of the Muʿtazilī influence on *uṣūl* is right, his assumption about the esoteric impact of Muʿtazilism on Ḥanafī and Shāfiʿī schools is debatable. For him, even the juristic use of linguistic interpretation stems from a Muʿtazilī influence.[14]

That said, Muʿtazilīs were not the only ones to practice linguistic interpretation. The latter was common among exegetes and theological schools. Further, he considers the *maqāṣid* theory a by-product of Muʿtazilism. Probably, what lies behind al-Marzūqī's claim is the promotion of ratiocination, *taʿlīl* by Muʿtazilīs – the asset of the *maqāṣid* theory. Even so, Ashʿarīs and Sufis also contributed to the development of this theory as shown by al-Ḥakīm al-Tirmidhī (d. ca. 910), al-Juwaynī (d. 1085), and al-Ghazālī (d. 1111).

Al-Marzūqī's standpoint on the influence of Khārijism-Ẓāhirism on *uṣūl* does not reflect the standard view on the matter. In their deliberations, Sunnī juridical schools did not take seriously the Khārijī and Ẓāhirī positions. Besides, Ẓāhirism rejects the mainstream Sunnī use of *qiyās* and its understanding of juridical consensus. Al-Marzūqī perceives the continuity of Ẓāhirism in the Mālikī and Ḥanbalī schools. Probably, he was led to think so by the role the three schools assign to traditions. Ẓāhirism endorses the literal meaning of the Qurʾān and ḥadīth while the Mālikīs promote the traditions in general, and those of Medina in particular. Finally, the traditionnist character of Ḥanbalism is renowned. However, the elaboration of legal-linguistic analysis is not a monopoly of Ẓāhirism. Al-Shāfiʿī (d. 820) should be given some credit with regard to this approach.

There are two exceptions from al-Marzūqī's overall denunciation of *uṣūl* legacy: Ibn Taymiyya and Ibn Khaldūn. In his view, their reflections on language, history, knowledge, and nature are revolution-

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[13] Abū Yaʿrub al-Marzūqī and Muḥammad Saʿīd Ramaḍān al-Būṭī, *Ishkāliyyat tajdīd uṣūl al-fiqh* (Damascus: Dār al-Fikr, 2006), 25.

[14] *Ibid.*, 50-51.

ary and should inspire the desired renewal.[15] On the one side, Ibn Taymiyya, as interpreted by al-Marzūqī, used a critical method of knowledge and nature to purify language and history from formalism and esoteric ideas. That is, he fought the negative influences of Ẓāhirism and Muʿtazilism on Sunnism. Al-Marzūqī praises Ibn Taymiyya's method based on the Qurʾān-ḥadīth, reality, and creation. Ibn Taymiyya is also eulogized for seeking an agreement between nature and law. Here, al-Marzūqī displays an uncommon interpretation of Ibn Taymiyya. While the typical scholarly reception of Ibn Taymiyya highlights his rejection of philosophy, al-Marzūqī perceives him as a nominalist philosopher. According to his interpretation, Ibn Taymiyya criticized Aristotelian realism, which claims the universals exist as such. Against it, Ibn Taymiyya argues that universals exist only as particulars.[16] In addition, in his perspective, Ibn Taymiyya might be the first to consider *ijtihād* and *jihād* as individual obligations.[17]

Ibn Taymiyya's main mission was to de-philosophize Sunnī theology. His claim of the agreement of transmission and reason is apologetic and aims at defending traditions. In this regard, he is not different from any Sunnī theologian or jurist al-Marzūqī rejects. For Ibn Taymiyya, both *ijtihād* and *jihād* are governed by the traditions (in *ijtihād*) and the state authority (in *jihād*). Moreover, Muʿtalizīs, whom al-Marzūqī dismisses, were among the earliest to call to individual responsibility in reasoning and forbidding the wrong.

Al-Marzūqī reads Ibn Taymiyya as a pioneer of renewal of legal hermeneutics who focuses on scriptures and rejects juristic imitation, *taqlīd*. Be that as it may, contrary to Ibn Taymiyya who dismissed philosophy as a tool of attaining "truth," al-Marzūqī thinks philosophy is able to provide a rational theory of knowledge and to build Islamic law as ethics.[18]

In his admiration of Ibn Taymiyya, al-Marzūqī follows Fazlur Rahman who believed Ibn Taymiyya to be "the only medieval Muslim who seeks to formulate clearly the ultimate issues at stake between the cognitive approach to reality of the Greeks and the 'anticlassical'

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15 *Ibid*., 52-53.

16 Al-Marzūqī, *Iṣlāḥ al-ʿaql fī l-falsafa al-ʿArabiyya* (Beirut: Markaz Dirāsāt al-Waḥda al-ʿArabiyya, 1996), 176.

17 Al-Marzūqī and al-Būṭī, *ibid*., 66.

18 *Ibid*., 225.

attitudes of the Koran."[19] Further, Fazlur Rahman described Ibn Taymiyya as a bright and bold spirit who made an attempt to reopen the gate of absolute *ijtihād*.[20]

As for Ibn Khaldūn, al-Marzūqī accredits him for establishing a philosophy of history to replace theology and Islamic philosophy, *fiqh*, and Sufism.[21] He joins a general appraisal of his legacy among the Muslim intellectuals. However, Ibn Khaldūn conceived his philosophy of history in accordance with the religious and rational sciences of his time. Ibn Khaldūn wrote about, praised and taught these sciences. In his *Muqaddima*, he refers to the mentioned subjects with appreciation.

In the debate, the most surprising position al-Marzūqī endorses is his criticism of *maqāṣid al-sharīʿa* and al-Shāṭibī. Since decades, modernists have attempted to use al-Shāṭibī in order to generate an ethical transformation of Islamic law. In spite of this "semi agreement" of intellectuals and jurists on al-Shāṭibī, al-Marzūqī denounces *maqāṣid* theory for its alleged impossibility and immorality. Al-Marzūqī asserts that it is impossible to grasp the higher objectives of God. Without knowing them, one cannot know neither which laws fulfill these objectives. He does not consider induction, *istiqrāʾ*, the main method used by the *maqāṣid* jurists, as sufficient to reach certainty. He claims induction to be impossible to carry on in the texts of *sharīʿa*. Accordingly, he discards the five necessities of Islamic law (preservation of religion, life, intellect, property, and progeny) as seen by *maqāṣid* theory.

In his view, these necessities should be interpreted as ethical rather than legal principles. For instance, the preservation of religion should not be the imposition of rituals, but the respect of religious freedom. Also, the safeguarding of life concerns the dignified one and not any life. Al-Marzūqī denies that forbidding wine protects the intellect. Rather, it is through the continuous nourishing and developing of intellectual skills and reflection that such purpose may only be accomplished.[22] With regard to property, he requires it to be licit. Besides, he highlights the role of a just state in sustaining such prop-

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[19] Fazlur Rahman, *Prophecy in Islam: Philosophy and Orthodoxy* (Chicago: University of Chicago Press, 1958), 101.

[20] Id., *Islam* (London: Weidenfeld & Nicolson, 1966), 79.

[21] Al-Marzūqī and al-Būṭī, *ibid*., 53.

[22] *Ibid*., 80-82.

erty. For him, the protection of progeny, as an objective of its own, is irrelevant as life implies progeny.

He also compares *maqāṣid* theory to utilitarianism, which, in his view, is immoral as it is based on pragmatism.[23] For this reason, al-Marzūqī relinquishes analogy, *qiyās* as well as public interest, *maṣlaḥa*. He deems them inadequate for an Islamic legislation as the jurist who practices them recedes from the texts and ignores consensus. Inasmuch as the legal devices of analogy and public interest are approved, despotism of the *mujtahid* is encouraged.[24] Thus, al-Marzūqī uses a Ẓāhirī argument to reject analogy and public interest. Ẓāhirīs claimed the jurist had no authority to legislate. Since analogy and public interest provide the jurist with an authority of legislation, they should not be considered sources of law at all.

As an alternative, al-Marzūqī suggests an Islamic collective ethics that should be the basis of legislation. According to him, consensus can conciliate the Qurʾān and the Sunna on the one side and the world and history on the other.[25] This legislative consensus is expected to by-pass schools held responsible for the spiritual disunity of the *umma*. Al-Marzūqī's consensus does not bear the meaning it conveyed in traditional *uṣūl al-fiqh* which denotes the consensus of jurists in a specific time (*ijmāʿ*).

More than anything, al-Marzūqī is critical of the juristic authority in the manner of Arkoun. To undermine it, he was led to question the methods of traditional jurists by having recourse to argument from change and from universality. On the one hand, he asserts science is always changing and therefore logical premises of *uṣūl* should be changed. On the other, since, today, most Muslims are not Arabic speaking peoples, legal hermeneutics and legislation should not rely exclusively on Arabic language. He asserts that Islamic law and ethics should be universal.[26]

III. Al-Būṭī's Approach

In al-Būṭī's view, *uṣūl*'s task consists in explaining legal texts and rules.[27] As a discipline, it is based on a set of unchanging linguistic

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[23] *Ibid*., 92-93.
[24] *Ibid*., 88.
[25] *Ibid*., 129.
[26] *Ibid*., 217-219.
[27] *Ibid*., 159.

and logical principles. Since the premises cannot be renewed, the outcomes cannot be renewed neither. Thus, he rules out any renewal of *uṣūl al-fiqh*'s methodology. For him, changing *uṣūl al-fiqh* implies changing the convention of Arabic language which would undermine the reception of God's legal norms. Al-Būṭī does not elaborate on the logical part and makes Arabic his main argument against change. It is the case that *uṣūl al-fiqh* is unchangeable, al-Būṭī explains, because no one is allowed to change the Arabic convention. For example, *uṣūl al-fiqh* states that the imperative form implies obligation unless proven otherwise. Al-Būṭī argues that such a rule is established within the Arabic convention of speech. Here, al-Būṭī ignores the long evolution of *uṣūl al-fiqh* until al-Shāfiʿī and deals with its history as a static one.

In addition, he perceives the relationship between the speaker (the divine legislator) and the receiver (the Muslim community) as a relationship of subordination. The speaker entrusts the receiver with the meaning of his ideas and the receiver should preserve the intended meanings of the speaker.[28] Al-Būṭī does not explicitly adopt the thesis of the divine origin of language, but it is underlying his argument. For if he thinks language is a human convention, he would have been forced to admit that language evolves. By the same token, al-Būṭī would conceive the convention of language as based on interaction rather than on subordination. His Ashʿarī leanings[29] explain his adherence to a conception of an Omni-Legislator God (*al-Ḥākim huwa Allāh waḥdah*[ii]).

For al-Būṭī, proponents of a modernist legal hermeneutics are dismissed for lack of a comprehensive and deep knowledge of *uṣūl*.[30] It is obvious that al-Būṭī, by introducing this *ad hominem* argument, tries to delegitimize his adversary. Muslim jurists and the majority of Muslims do not consider intellectuals as religious scholars, *ʿulamāʾ*. Sacred knowledge is the privilege of the jurists. Accordingly, al-Būṭī seems little interested in bridging the gap between him and his adversary. Further, he accuses his adversary of spreading doubt about *sharīʿa*. Indeed, al-Būṭī insists on the ill-intended modernist calls to renewal. For him, renewing *uṣūl al-fiqh* would undermine *sharīʿa*

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28 *Ibid*., 176.

29 *Ibid*., 168-169.

30 *Ibid*., 163.

because the certainty of one relates to the certainty of the other.[31] Reforming *uṣūl al-fiqh*, that is the foundations of Islamic law, would lead to change the regulations of *sharīʿa*. One can notice here al-Būṭī's use of a classical juristic mode of legal reasoning: blocking the means to mischief, *sadd al-dharāʾiʿ*. Anything that might lead to evil should be stopped. Since a new legal hermeneutics would threaten the very existence of Islamic law, it should be denied.

How should a modern scholar deal with *uṣūl al-fiqh*? In al-Būṭī's stance, today, like in any other time, the jurists should endorse the conventional rules in *uṣūl al-fiqh* and use them to understand the legal texts. A modern jurist is expected to renew only his application of these rules. Al-Būṭī describes the current status of *uṣūl al-fiqh* as an old building that requires re-engagement. Modern scholars should reform the damaged parts of its structure, strengthen it, and renew the style (of writing about it). As a traditional jurist, he subscribes to a superficial approach that maintains the whole edifice. Nothing should be renewed in the contents.[32] However, al-Būṭī admits that modern scholars, provided they have the required knowledge, have a possibility of weighing different standpoints of early scholars, *tarjīḥ*. This is a step back in time after ʿAbduh's attempt to struggle with the *tarjīḥ* mentality. After all, ʿAbduh promoted a revival of *ijtihād* spirit that brings about independent legal reasoning.

For al-Būṭī, there is no way that Ibn Taymiyya and Ibn Khaldūn made a revolution in the history of Islamic law. Al-Būṭī refutes al-Marzūqī's claim that Ibn Taymiyya and Ibn Khaldūn made a revolution in *uṣūl al-fiqh*. At this point, he advanced several counter-arguments; Ibn Taymiyya's *uṣūl* draws on the methodology of the Shāfiʿī school with further insistence on the pre-eminence of traditions. Using the watchword of traditionnalisation, he stood against an increasing logicisiation of Shāfiʿī *uṣūl*. In his time, Ibn Taymiyya resisted the renewal of *uṣūl al-fiqh*. As for Ibn Khaldūn, he was not an *uṣūlī* in any sense. It is true that he was a Mālikī jurist and judge by profession, but his leanings were much more passionate for history than any other subject. He left no particular reflection on *uṣūl al-fiqh* which could be seen as innovative. By putting Ibn Taymiyya and Ibn Khaldūn in their real contexts, al-Būṭī uses evidence from their writ-

[31] *Ibid*., 174.

[32] *Ibid*., 164.

ings.[33] His point is that both medieval scholars adhere to the mainstream Sunnī schools.

In contrast to al-Marzūqī's rejection of *maqāṣid*, al-Būṭī firmly defended its significance in *uṣūl al-fiqh*. Not that he would make it a starting point of any renewal. In al-Būṭī's perspective, *maqāṣid* are the higher objectives of public interest as manifestations of Allah's judgments. The public interest is also a divine gift. Here, al-Būṭī endorses a typical occasionalist Ashʿarī argument. He denies that the public interest is inherent in human transactions and considers it an instrument of God's will.[34] Therefore, his view is that *maqāṣid* only show the wisdom of *sharīʿa*. The higher objectives of Islamic law are based on the traditional sources of *uṣūl al-fiqh*, mainly the Qurʾān and the Sunna.

At the end of the debate, a major locus of divergence emerges: whether juristic authority should be maintained or not. Al-Būṭī strongly reacts against al-Marzūqī's call to replace juristic schools with popular will. The jurist sees the danger of turning down the juristic authority in favour of ethics. His mistrust of the public will, beyond traditional law, constitutes the cornerstone of his rebuttal Al-Būṭī counter-argues that the people are divergent and unable to agree on their interests.[35] For this reason, he believes they need *sharīʿa*, the only perfect and universal expression of human welfare. Since *sharīʿa* requires specific traditional rules of understanding,[36] maintaining the authority of the jurists is essential.

For al-Būṭī, the fates of *sharīʿa* and *uṣūl al-fiqh* are inseparable. He compares the reading of *sharīʿa* texts to reading *The Republic* of Plato. One needs linguistic tools that belong to the same period to understand these texts. However, modern readers do not read *The Republic* with the same kit of tools since the Antiquity. Hermeneutics evolve as culture and society develop.

Conclusion

In sum, the philosopher and the jurist could not reach a meeting point in this controversy over the renewal of Islamic legal hermeneutics. Al-Būṭī does not give any concession to modernity as the latter

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[33] *Ibid*., 233-244.

[34] *Ibid*., 250.

[35] *Ibid*., 250.

[36] *Ibid*., 294.

seems to depose him from his authority. To maintain religious knowledge sacred, he sticks to arguments from authority and classical Arabic. Al-Būṭī suspects modernity and closes all gates that could challenge the legacy. He makes a step backward, compared to ʿAbduh's approach.

Despite al-Marzūqī's efforts to shake the jurist's position, the much awaited debate did not lead to any progress on the issue. The philosopher wanted to push ʿAbduh's legal reform too far. Not only does he insist on ethics as a replacement of legal formalism, but urges to dismiss juristic authority. He argues for a new Islamic legal hermeneutics without traditional *uṣūl al-fiqh*. Rejecting his project, al-Būṭī glorifies traditional *uṣūl*.

It has been shown that *maqāṣid* model, as promoted by traditional jurists does not contain any possibilities of radical renewal for philosophers. On the one hand, it is based on a traditional dogma of Ashʿarism where ethics justifies law rather than inspires it. On the other, *maqāṣid* derive from Muslim traditions. Accordingly, opening the gate of *maqāṣid* does not lead to reform. In this respect, al-Marzūqī's criticism of the *maqāṣid* model is an unconventional idea that deserves attention. It shows that the ethics of law, thought to be appealing to philosophers, fail to respond to their expectations.

In a rather blunt way, this clash informs us about the legal reform of *uṣūl*. A compromise between philosophers and jurists on *uṣūl al-fiqh* seems to be unreachable. The philosopher, being the proponent of renewal, challenges the traditional jurist who endorses the function of opponent. Since the beginning of the dispute, a peculiar situation took place. The proponent became the opponent, defending his good intentions to bring about change in the *uṣūl al-fiqh*. By the same token, al-Būṭī endorses the role of the proponent and the guardian of *uṣūl al-fiqh*. To use juridical terms, legal reform is a plaintiff that ends as a defendant. Here lies the importance of this debate. It depicts the current state of the legal reform as "a suspicious cause." Jurists do not seem eager to change their methods and enjoy the eternal status of plaintiffs, supported by the confidence of the religious authority.

The question whether to renew *uṣūl al-fiqh* becomes who speaks for *uṣūl al-fiqh*? Al-Būṭī recuperates the main argument of the traditionnists which consists in discrediting the religious knowledge of the modernists. The Muslim jurists' suspicion towards philosophers

with regard to the renewal of Islamic law seems to considerably increase. In contrast, al-Marzūqī makes audacious attempts to renew *uṣūl* and questions the whole traditional *uṣūl al-fiqh*. He attempts to reform *uṣūl* outside the box, taking further al-Turābī's reformist endeavour. Thus, the philosopher pursues a radical way of revising the whole legacy of *uṣūl*.

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