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Article

Jurisprudential renewal in social Nawāzil: A study of al-Mahdi al-Wazzani's legal responses

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Abstract: This study explores the role of *Fiqh al-Nawāzil* (jurisprudence of contextual legal cases) in promoting jurisprudential renewal, focusing on the Moroccan jurist Al-Mahdi Al-Wazzani, who lived during the pre-colonial period. It examines his legal responses to key social and legal issues, particularly in areas such as family, marriage, custody, and health. Using a descriptive and analytical approach, the study draws on selected cases from Al-Wazzani's principal works—*Al-Miʿyār al-Jadīd*, *Al-Minaḥ al-Sāmiyya*, and *Tuḥfat al-Akyās*—to analyze the renewal tools he used, including custom (*ʿurf*), public interest (*maṣlaḥa*), and established practice (*jarayān al-ʿamal*). These examples illustrate his balanced approach, combining commitment to Mālikī jurisprudence with openness to evolving social realities. The findings show that his *fatwas* reflect a model of legal reasoning grounded in the higher objectives (*maqāṣid*) of Islamic law, while being responsive to practical needs. His influence is evident in modern Moroccan legislation, especially in areas like labour rights, marriage, and child custody. The study affirms the enduring value of *Fiqh al-Nawāzil* as a tool for legal reform and calls for deeper scholarly engagement with its socially rooted legal insights.

Keywords: Jurisprudential renewal, Nawāzil Al-Mahdi, Al-Wazzani, Mālikī Fiqh, custom (ʿUrf)

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1. *Introduction*

Islamic jurisprudence is not merely a collection of theoretical opinions confined to books; it is a practical framework of legal reasoning that guides the life of Muslims, addressing contemporary challenges and emerging issues. Jurists have consistently enriched Islamic law by engaging with new questions that arise in every era. Through diligent study, analysis, and systematic compilation, they have developed jurisprudence into a detailed and adaptable discipline, ensuring its relevance to real-life applications. A prime example of this dynamic interaction is *Fiqh al-Nawazil* (the jurisprudence of emerging issues), which tackles complex and urgent societal questions. This branch of jurisprudence responds to individual concerns and societal affairs within their practical contexts, evolving across time and space to accommodate shifting norms and practices. As *Al-Mahdi Al-Wazzani* observes in the introduction to his book *Tuḥfat Akyās al-Nās*: *"I have seen some customs change, and the rulings move with them when they are transformed (Al-Wazzani, 2001, p. 39)".*

1.1. Reasons for Selecting the Topic & Research Significance

This study explores *Jurisprudential Renewal in Social Nawazil: The Approach of Al-Mahdi Al-Wazzani* to achieve two interrelated objectives. First, it investigates how Islamic legal renewal (*tajdīd fiqhī*) responded to *nawāzil*—unprecedented sociolegal cases—in pre-colonial Morocco, revealing how adaptive legal mechanisms enriched the civilizational fabric of Islamic jurisprudence. Second, it critically examines Al-Wazzani's distinctive methodology, particularly his context-sensitive *ijtihād*, which skillfully reconciled textual legal principles with the evolving realities of Moroccan society.

The significance of this research lies in its focused analysis of *Al-Wazzani's fatwas* as exemplars of *Maliki* jurisprudential innovation. As the foremost Moroccan *mujtahid* of his time, *Al-Wazzani* developed pioneering approaches—especially in works such as *Al-Miʿyār al-Jadīd* and *Al-Minah al-Sāmiyya*—addressing issues related to family law, marital norms, and the rural–urban sociocultural continuum. His rulings on *nawāzil* offer a dynamic model of legal adaptation that:

(1) preserved the continuity of jurisprudential tradition while engaging social transformation;
(2) mediated between formal legal scholarship and local customary practice (*ʿurf*);
(3) prefigured later debates on Islamic legal reform.

By analyzing *Tuḥfat al-Akyās* and related texts, this study offers key insights into the epistemological foundations of legal renewal during critical periods of societal change.

1.2. Research Methodology

This study employs a descriptive-analytical methodology grounded in both historical and jurisprudential analysis. It begins by identifying and categorizing a representative selection of social nawāzil (novel sociolegal cases) as addressed by *Al-Mahdi Al-Wazzani* in his key works—particularly *Al-Miʿyār al-Jadīd*, *Al-Minah al-Sāmiyya*, and *Tuḥfat al-Akyās*. The descriptive dimension focuses on presenting the factual contours of these *nawāzil*, including their social contexts, triggering circumstances, and practical consequences in Moroccan society during the late pre-colonial period. The analytical component interrogates *Al-Wazzani's* responses to these nawāzil through a close reading of his legal reasoning *(ijtihād)*, evidentiary use, and methodological approach. It engages in comparative analysis with other Maliki jurists—both classical and contemporary—to uncover the degrees of alignment, divergence, or

renewal that characterize his jurisprudential position. This includes critical reflection on the interpretive tools he employed, such as ʿurf (custom), maṣlaḥa (public interest), and analogical reasoning *(qiyās),* and how these tools were recalibrated in response to the evolving social landscape.

The study is also informed by an epistemological lens, which seeks to uncover the deeper assumptions and knowledge structures that underpin *Al-Wazzani's approach* to social change. By synthesizing these descriptive and analytical elements, the research ultimately aims to extract the salient features of jurisprudential renewal that define *Al-Wazzani's response* to social *nawāzil*. These features are not only central to understanding his contribution to Maliki thought but also offer a valuable model for rethinking Islamic legal methodology in contemporary reformist contexts.

1.3. Problematic of the Topic

This research centers on the problem of *social nawāzil*—emergent sociolegal cases—and the jurisprudential challenges they pose. These *nawāzil* offer a critical lens through which to understand the lived realities of individuals within their evolving social environments. Islamic jurisprudence, by its nature, cannot remain static in the face of such transformations. It is thus incumbent upon jurists specializing in social issues to respond to these developments through context-sensitive legal reasoning (*ijtihād*), guided both by the normative foundations of the law and by the pressing needs of the society they serve. Accordingly, this study addresses a set of interrelated questions: What are the distinctive features of jurisprudential renewal as reflected in *Al-Wazzani's treatment* of social *nawāzil?* How are these features manifested in the practical structure of his legal responses? And to what extent do his rulings resonate with or anticipate contemporary social realities? These guiding questions form the core of the research problem and shape the trajectory of the study's analysis.

1.4. Research Outline

This study is structured into two main sections, each comprising several subtopics. The first section is theoretical in nature; it explores the concept of jurisprudential renewal (*tajdīd fiqhī*) and identifies its defining features as they appear in *Al-Mahdi Al-Wazzani's* treatment of *social nawāzil*. This section will also examine the methodological underpinnings of his legal thought and its responsiveness to societal change.

The second section adopts a more applied approach, presenting practical examples of jurisprudential renewal as found in *Al-Wazzani's* legal writings. It focuses on his treatment of *nawāzil* related to rural life, local customs (*ʿurf*), marriage, family dynamics, and other socially rooted issues. These case studies aim to illustrate how his *fatwas* reflected an adaptive and contextually grounded model of legal reasoning.

I. Jurisprudential Renewal and Its Features in the Social Nawāzil of the Scholar Al-Mahdi Al-Wazzani

Al-Mahdi al-Wazzani (d. 1924) occupies a distinguished place among contemporary Moroccan jurists, particularly for his unique ability to reconcile the enduring foundations of Islamic law with the evolving demands of society. His legal responses—whether addressing general inquiries or urgent social crises—were deeply informed by his sensitivity to temporal customs, societal transformations, and emerging

circumstances (*nawāzil*) that required fresh jurisprudential insight. His contribution to Islamic legal thought is rooted in two foundational pillars. The first is his rigorous scholarly formation in the intellectual heart of Fez, where he served as a mufti, educator, and public jurist. *Al-Wazzani* lived through a transitional era—from the final decades preceding the French protectorate to the reign of Sultan Moulay Youssef—coinciding with a critical phase in the history of the Qarawiyyin University, which shaped his legal orientation and responsiveness to public needs.

The second pillar of his renewal lies in his methodological dialogue with the Maliki tradition. He built upon the juristic legacy of authoritative figures such as Ibn Rushd al-Jadd (d. 520 AH), al-Burzuli (d. 741 AH), and al-Wansharisi (d. 914 AH), all while engaging critically with the fatwas of his contemporaries. This dual inheritance enabled him to synthesize classical legal reasoning with the sociocultural realities of his own time, resulting in a jurisprudence marked by both fidelity to tradition and contextual innovation.

Importantly, *Al-Wazzani* did not operate in isolation from his community or its lived experiences. He was an embedded observer of his society—keenly attentive to the rhythms of daily life, the tensions between urban and rural norms, and the interplay of custom (*ʿurf*), law, and social practice. His engagement with these realities is reflected in his principal works, foremost among them *al-Miʿyār al-Jadīd*, which Omar al-Jidi described as "superior to *Al-Wansharisi*'s *al-Miʿyār al-Muʿarrab* in value, due especially to its transmission of the fatwas of later Moroccan scholars (Al-Jidi, 1987, p. 10).". This encyclopedic compilation addresses a wide range of issues affecting both urban dwellers in Fez and the rural population in its environs.

Other significant works include *al-Minah al-Sāmiyya fī al-Nawāzil al-Fiqhiyya*—a concise yet profound exploration of pressing legal questions—and *Tuḥfat al-Akyās bi-Sharḥ ʿAmaliyyat Fās*, which reflects his nuanced engagement with practical legal procedures in Moroccan civil life. These texts collectively demonstrate Al-Wazzani's capacity to transform legal discourse into a living response to changing societal needs, and they embody the ethos of jurisprudential renewal (*tajdīd fiqhī*) that this research seeks to elucidate.

The signs of jurisprudential innovation were clearly evident in the legal rulings of the scholar Mahdi *Al-Wazzani*, reflecting his profound understanding of Islamic law as a discipline that embraces both the immutable *(al-thawābit)* and the mutable *(al-mutaghayyirāt)*. He recognized that much of classical jurisprudence had been formulated within historical and socio-cultural contexts distinct from his own, and thus required a contextualized and discerning approach. In his legal opinions, he remained closely attuned to contemporary events and responsive to emerging issues affecting society and its surrounding environment. *Al-Wazzani* persistently sought appropriate solutions to these challenges, exercising independent reasoning *(ijtihād)* by interpreting texts, deriving rulings, and employing analogical reasoning *(qiyās)* grounded in established jurisprudential principles. His commitment to truth and accuracy in legal reasoning was evident in his efforts to achieve public benefit (*maṣlaḥa*) and prevent harm (*mafsada*).

His rulings thus embodied the model of a jurist who did not rigidly adhere to the literal text in the derivation of legal judgments, but rather accounted for temporal shifts and the evolving conditions of society. Through this dynamic methodology, he demonstrated that Islamic jurisprudence is firmly rooted in enduring principles and rules, yet remains responsive and adaptable in its interpretive methods and practical applications. It addresses the needs of people, responds to their aspirations, and fulfills their worldly and spiritual hopes—both in the present and in the future (Al-Wazzani, 2014, Vol. 11, p. 90). When we explore the features of legal innovation in the social rulings of the scholar *Mahdi Al-Wazzani*, we find them encapsulated in three key dimensions that permeate his entire juristic output on social matters:

1. **Consideration of the purposes and circumstances of people:**
   Al-Wazzani, guided by the overarching objectives of Sharia, emphasized the principle of moderation as a foundational value. He strove to present solutions consistent with legal evidence and the principles governing fatwas, while also accounting for the concrete realities and contextual specificities of each case. His rulings were anchored in the insights of leading jurists who stressed the importance of attending to people's goals and social conditions. In his *Nawāzil* (*al-Miʿyār al-Jadīd*), he cited al-ʿAbdūsī's assertion: "The jurist should consider the goals and circumstances of people and base his rulings on these considerations. Any jurist who looks solely at the texts without considering the diverse objectives and customs is mistaken (Al-Wazzani, 2014, Vol. 11, p. 90)."
   Al-Wazzani was attentive to the prevailing values of his society, responding to them either by affirming and reinforcing beneficial practices or by correcting what was improper. He distinguished between rural and urban contexts and recognized the influence of time and place on legal rulings—an approach that reflects a nuanced and context-aware *ijtihād* aligned with the maqāṣid of Islamic law.
   His legal methodology reflected the jurisprudential maxim: "The ruling follows its cause, in both its existence and non-existence." (*Al-Mi'yar al-Jadid*, Vol. 1, p. 92; Vol. 2, p. 241; Vol. 3, p. 469; Vol. 8, p. 259; Vol. 9, p. 253) He highlighted the absence of this dynamic principle in many rulings that mistakenly treated causes as fixed and unchanging, thereby neglecting the necessity of adapting rulings to shifting social needs. Al-Wazzani maintained that when the interests that justified a ruling no longer exist, the ruling itself should change accordingly. His social fatwas embody a model of jurisprudential renewal rooted in the real needs of people, while preserving the foundational values of society—as al-Shāṭibī expressed it: "preserving the goals of creation", provided such aims do not contradict the established principles and norms of Sharia.

2. **Consideration of customs (*ʿurf*):**
   Al-Wazzani firmly upheld the significance of taking into account prevailing customs when issuing legal judgments. He censured jurists and judges who disregarded local customs in their rulings, considering such behaviour both misleading and harmful. He stated:
   "Customs that reveal people's objectives differ according to time and place. Therefore, every judge and jurist must account for this. It is impermissible to issue rulings uniformly without regard

to the customs involved in each specific case. Every case requires its own formulation. A ruling may be valid in one time or place due to a particular custom, but changing circumstances may necessitate a different ruling. This is a matter of scholarly consensus; otherwise, the ruling would be imposed in a manner alien to the people's intentions and lived realities, and that is misguidance (Al-Wazzani, 2014, Vol. 3, p. 277)."

He further attributed to scholars the condemnation of those who rigidly applied school-based rulings without contextual awareness:
"The scholars said that specific legal issues have rulings particular to them. They also warned that applying inherited rulings from a legal school without considering the customs and circumstances of the region is a form of corruption (Al-Wazzani, 2014, Vol. 3, p. 286)."

3. **Preference for prevailing practices (*mā jarā bihi al-ʿamal*):**
   In his social rulings, Al-Wazzani frequently resorted to *mā jarā bihi al-ʿamal*- the standard practices recognized by the community- as a dynamic bridge between Islamic jurisprudence and the lived realities of society (Al-Wazzani, 2014, Vol. 9, pp. 328–329). He viewed this principle as essential to developing a locally grounded jurisprudence, especially in addressing the needs of rural communities. For him, legal innovation through prevailing practices was key to resolving practical issues and responding to the social structures on the ground. He advocated for its continued use and renewal.
   He maintained that if a practice was ongoing and provided a recognized benefit, it could be upheld. Otherwise, prevailing scholarly opinions and community norms should be followed (Al-Sri, 1996, pp. 4, 112; Riyad, 1996, p. 516; Ibrahim, 2000, p. 298). Moroccan jurisprudence - especially since the Marinid era- has benefited from this principle, notably in the application of *Fāsī* legal practices, with the city of Fez serving as a leading model for both legal education and the administration of justice. These practices were used to resolve local disputes and were extended to rural and urban contexts alike. When novel issues emerged for which prevailing rulings were inadequate, jurists turned to the legal tradition - including lesser-known opinions- seeking practical solutions grounded in evolving customs and societal realities (Al-Rumaili, 2017, p. 582).

From the above, we can conclude that the general features distinguishing the legal innovation in the social rulings of Al-Wazzani are centred on (1) consideration of the purposes of people and their concrete circumstances, (2) respect for prevailing customs, and (3) preference for what is established through practice and ongoing application. In the next section, we will explore how these features materialized in concrete social contexts, and their broader impact on contemporary life.

II. Practical Manifestations of Jurisprudential Renewal in Al-Mahdi Al-Wazzani's Social Nawazil (Legal Responsa)

Social *nawazil* occupy a prominent place in the jurisprudential work of Al-Mahdi Al-Wazzani, both in terms of their subject matter and the legal questions they raise regarding Morocco's social conditions during the pre-colonial era. These legal responsa are distinguished by features of renewal that enriched

jurisprudence on multiple social levels. They reflect the three foundational pillars previously discussed: the objectives of Sharia (*maqāṣid*), the consideration of custom (*ʿurf*), and the application of prevailing legal practice (*mā jarā bihi al-ʿamal*).

The scope of these *nawazil* extends to a wide range of family and social issues—pertaining to women, children, and men—including matters of marriage and the conditions necessary for building a secure and healthy society in both rural and urban contexts.

In addressing these issues, *Al-Wazzani* presented jurisprudential cases that illustrate the dynamic interaction between legal reasoning and the broader civilizational context. At the same time, he remained grounded in the principles of the Mālikī school, upholding its foundational methodologies while taking into account the evolving needs and circumstances of society across time and place.

The following section explores selected examples that embody these characteristics of jurisprudential renewal.

1. The Woman's Share in Effort and Labour

Among the social issues that *Al-Mahdi Al-Wazzani* addressed—particularly those concerning women in both rural and urban contexts—was the matter of a woman's share in effort and labour (*ʿamal*). In Arabic, the word *ʿamal* denotes work and exertion, broadly encompassing all forms of productive activity through which one earns a livelihood (Ibn Manẓūr, n.d., entry "saʿā").

This issue was especially prevalent among the people of the Ghamara Mountains in northern Morocco. In that region, a customary belief held that when a husband died, his wife was entitled to inherit half of the estate, while the remaining half would be distributed according to Islamic inheritance law. The justification for this practice lay in the wife's active contribution to the accumulation of the family's wealth through her labour during the marriage (Al-Maki, 1999, p. 59). Supporters of this view based their position on the opinion of the Mālikī jurist Abū al-ʿAbbās Aḥmad ibn al-Ḥasan, known as Ibn ʿArḍūn (d. 992 AH), a prominent Moroccan scholar of the tenth century AH. In contrast, the scholars of Fez opposed this view, arguing that a wife's contribution should be compensated by a wage, not through a share in the inheritance.

After presenting the traditional view of Ibn ʿArḍūn—who ruled that rural women were entitled to a share of the harvest due to their labour—*Al-Wazzani* referenced other scholars who supported this position, such as Al-Quri, Ibn Khāju, and Sidi Aḥmad al-Baʿl. These scholars maintained that labor formed the basis of financial entitlement, and Al-Wazzani did not reject their reasoning (Al-Wazzānī, 2014, p. 276). However, the novelty in *Al-Wazzani's approach* lay in his refusal to generalize this ruling to other regions—especially urban areas. He restricted the application of this opinion to the context of the mountain communities, in line with their specific customs, and did not consider it binding elsewhere. This stance reflects his method of contextual jurisprudence, grounded in local realities and aligned with the broader principles of custom ('urf) and public interest (maṣlaḥa).

Al-Wazzani's legal reasoning was shaped by social circumstances, and he drew upon the rulings of other jurists who had issued independent legal opinions based on the objectives of Sharia and societal needs. For instance, Sheikh al-Rahūnī, in his commentary, discussed the case of a wife who managed her husband's property and livestock. Upon his death, she might claim a share of the estate—a quarter or an eighth—based on her labour and management. He cited the poetry of Abū Zayd al-Fāsī that referred to *"the service of women in the countryside"*, and invoked the fatwa of Sidi ʿAbd al-Qādir al-Fāsī, concluding:

> *"From this, we derive the ruling agreed upon by the scholars of Fez and the jurists of the mountains. And God knows best (Al-Wazzānī, 2014, p. 276) ."*

In terms of contemporary jurisprudential renewal, Al-Wazzani's approach has found resonance in modern Moroccan legal practice. Current Moroccan jurisprudence recognizes labour and effort as customary legal grounds (*ʿurf*) that enable family members who contributed to joint wealth to claim their financial rights. Moroccan courts have adopted two approaches:

- One limits this right to rural wives, in continuity with traditional practice.
- The other extends it to include both rural and urban wives, treating labour and contribution equally across regions.

The Moroccan Family Code reflects aspects of this discussion, especially in Article 49, which addresses cases where spouses agree on the management, investment, and distribution of property acquired during marriage. While this legal arrangement resembles wage compensation, it differs from partnership or labour-based entitlements, as envisioned in Al-Wazzani's jurisprudence on social matters.

2. Vaccination of Children

Al-Wazzani's legal responses demonstrated his deep engagement with the social reality of his time, particularly his concern for the health and safety of the people. One notable example of this is his stance on the vaccination of children, which he viewed as an essential public health measure. *Al-Wazzani* recognized vaccination, or inoculation, as a critical social benefit that directly impacted the lives of individuals and the health of families. He acknowledged it as one of the most effective methods for preventing infectious diseases among both children and adults. His rulings on this issue emerged during a period when smallpox was ravaging populations worldwide, causing the death of two out of every ten children in Europe, with many survivors suffering permanent blindness (Al-Mohandis, 1981, p. 123).

Thus, he stated:

> *"Know that vaccination is valid at all stages of life. It should be administered to anyone who has not contracted natural smallpox. For children, vaccination should occur from the fourth to the sixth month or shortly after birth if smallpox is widespread. If the individual is a young person, adult, or elderly, there is no harm in vaccinating them. Vaccination does not cause the child to fall ill (Al-Wazzani, 2014, Vol. 1, pp. 363–364)".*

Al-Wazzani's fatwas on vaccination represented a jurisprudential renewal that took into account the objectives of Sharia, particularly the protection of life and the welfare of individuals, after the traditional fatwa from Sheikh Muhammad Al-Ish (d. 1882), a prominent Maliki scholar, which declared vaccination impermissible. He argued:

> *"It is not permissible for the guardian of the child, nor for anyone else, to perform this act, even if the guardian fears harm from an oppressor. It introduces harm and jeopardizes the child's life and limbs, even if the safety is achieved. It is a practice of the Magians, who claim it lengthens life and wards off fate. If it results in the child's death, it would be considered intentional murder (Al-Wazzani, 2014, p. 129)".*

Al-Wazzani refuted this traditional view and corrected it by emphasizing the importance of activating the social benefit and preserving the child's health from harm, in line with the medical needs of society. He said:

> *"The fact is that smallpox is a disease that affects children as one of the incidental ailments. Bloodletting in the prescribed manner is a permissible treatment according to Sharia, either after the disease has occurred or to prevent it, in order to preserve health. What is the difference between this and bloodletting or cupping to prevent the damage that could lead to death, as guided by divine wisdom (Al-Wazzani, 2014, p. 130) ".*

In his responses to this issue, Al-Wazzani also paid attention to the values prevailing in his society, carefully distinguishing between correct and incorrect views of other scholars. He stated:

> *"It seems permissible, though I am not aware of a direct text on this particular issue. It is a recent occurrence that happened in Egypt about eighty years ago, and it had been practiced in the Roman Empire long before that. It then appeared in some parts of Morocco about ten years ago. The essence of the matter is that it is a treatment to avoid the harm of a disease, carried out in a way that does not pose any harm, and there is no known adverse consequence from it"*

From the jurisprudential innovations of the prominent scholar *Al-Mahdi Al-Wazzani* in his handling of this social issue, we can extract the following key principles:

A. Moderation and Balance in Considering People's Needs and Circumstances

Al-Wazzani's approach was characterized by a keen awareness of the social context in which he lived. He was firm in dealing with human necessities, particularly those relevant to his time and environment. He criticized those with fanciful or extremist views who opposed the beneficial practice of vaccination. He said:

> *"It is surprising that although vaccination is widespread and its benefits are evident, some people still neglect it and reject its medicinal value, leaving their children unvaccinated until they contract smallpox, which leads to the death of their children, causing grief to the parents. It is*

incumbent upon the authorities to be vigilant and punish those who refuse to comply with the vaccination order and do not observe it (Al-Wazzani, 2014, pp. 132–133)".

B. Activating the Principles of Legal Objectives, such as the principle of "Preventing Harm Takes Precedence Over Achieving Benefit", *Al-Wazzani* applied the maqasid (objectives) of Sharia, ensuring the welfare of the people and the preservation of their health and life. He said:

"All treatments, such as bloodletting and administering medications, may carry risks and can cause harm. If the benefit outweighs the harm, then it is permissible; if the harm is likely, it is prohibited. If the harm and benefit are equal, it is also prohibited, because preventing harm takes precedence over achieving benefits. Yes, it is not permissible for the guardian of a child to undertake such actions unless they are performed by a skilled practitioner, whose proficiency is known and whose work has been observed to produce beneficial results. If the skilled practitioner performs such actions and harm results, including death, without negligence on their part, there is no liability or retribution. This is the correct ruling on this issue (Al-Wazzani, 2014, Vol. 1, pp. 360)".

These jurisprudential innovations had a significant impact on dispelling the anxiety and fear in society regarding vaccination. *Al-Wazzani's legal* opinion was a refreshing renewal, rationally explained. As highlighted in the previous text, he stated:

"If the benefit is certain, then it is permissible, and authorities should punish those who refuse to follow the vaccination order. If the harm outweighs the benefit, it is prohibited. If the harm and benefit are equal, it is also prohibited, as preventing harm is more important than achieving benefits (Al-Wazzani, 2014, Vol. 1, pp. 132–133)".

In his fatwas, *Al-Wazzani* revived the application of texts that facilitate ease and remove the psychological burden and anxiety that the Moroccan society, and other contemporary societies, were experiencing. This was especially true during times when vaccination was met with scepticism and even resistance. Some countries were forced to make it mandatory, such as Britain and Wales in 1853 under the Vaccination Act, which imposed fines on parents who did not vaccinate their children before they reached three months old. In France, smallpox affected 80% of children by the end of the 18th century, with 10% of those infected dying, and many others suffering from blindness or severe scarring. In 1811, Emperor Napoleon Bonaparte vaccinated his only legitimate son, the heir Napoleon II, two months after birth, encouraging the French to adopt vaccination. The infection rates subsequently decreased significantly (Al-Sisi, 2021, p. 283).

This issue resurfaced in the 21st century when the world developed vaccines against the coronavirus. People were once again apprehensive, with a considerable number of citizens in England opposing the vaccine, just as in previous centuries. Similar resistance was observed in other parts of the world. Despite this, media campaigns on social networks warned of the potential harmful side effects of the vaccine, even though government officials, medical institutions, and vaccine specialists assured the public that the vaccine was safe and had passed all the necessary scientific steps (Al-Sisi, 2021, p. 283). This

demonstrates the ongoing need for jurisprudential renewal and the revival of the principle of moderation to address new social issues, such as vaccination. It helps to dispel social anxieties, as seen in the case of vaccination, by alleviating doubts and scepticism among its opponents, and correcting any extreme ideologies that may oppose its benefits. This is in line with the principles of Sharia and its requirements, as highlighted by Al-Wazzani in his rulings, while acknowledging that each era and society has its own unique circumstances and causes.

4. ***The Validity of Marriage Based on Public Hearing (al-ssamaʿ al Fāshī)***

Among the social and familial issues addressed by Al-Mahdi Al-Wazzani is his support for a customary practice known in Fes as *(al-ssamaʿ al Fāshī)* or "marriage by public hearing. This form of marriage is recognized by the community through the widespread public awareness of the engagement and associated customary gestures, such as the exchange of symbolic gifts like henna or soap during holidays and festive occasions. In such cases, an agreement is reached between the woman's guardian and the prospective husband, and their mutual consent is made public, often becoming common knowledge among neighbours and the wider community. Al-Wazzani affirmed the validity of this practice, considering it aligned with the principles of prevailing local custom (*ʿurf*) and established legal practice (*mā jarā bihi al-ʿamal*).

> A legal dispute often arises in situations where the marriage has been publicized in this customary way—through gifts and communal acknowledgment—but before the actual consummation (*al-bināʾ*) takes place, the couple either separates through divorce or one party dies. The question then emerges regarding the legal consequences of the union: Should the woman receive her full *mahr* (dowry)? Is she entitled to inheritance rights? In such cases, one party might argue that the marriage was never formally concluded, while the other insists that the public acknowledgment and customary practices constitute a binding marital contract. Al-Wazzani's legal reasoning supports the latter view, validating the marriage based on the strength of public recognition and the authority of local social practice, thereby safeguarding the rights of the woman and affirming the communal dimensions of marital legitimacy (Al-Wazzānī, 2011, p. 48).

Al-Wazzani referenced the opinions of several jurists who held a stricter view regarding the legal status of such marriages. According to scholars like Abū ʿAbd Allāh Muḥammad al-Tawwudi and al-Sharīf al-Muzdighi, if no formal contract (*ʿaqd*) had been established—despite mutual acceptance, a promise of marriage, and public gestures such as the exchange of gifts—then the union could not be considered a valid marriage under Islamic law. However, Al-Wazzani leaned toward affirming the local custom in Fes, favoring a more socially grounded interpretation. He invoked a practical jurisprudential maxim:

> *"If a guiding rationale is found for what has become customary, it is necessary to apply legal rulings in accordance with it, for abandoning an entrenched custom leads to corruption and widespread disorder (Al-Wazzani, 1911, Vol. 1, p. 71)".*

> *" In this way, Al-Wazzani demonstrated how juristic renewal could be grounded in societal reality, aiming to preserve social harmony while respecting the foundational principles of the Mālikī school (Al-Wazzānī, 2011, p. 50)".*

Al-Wazzani thus concluded that the marriage should be considered valid based on the public hearing (al-ssamaʿ al Fāshī), even if there was no formal agreement or contract between the parties. He wrote:

> *"The marriage is established by the widespread hearing that so-and-so married so-and-so, with the dowry agreed upon, and the customary gifts sent. It is a valid marriage, provided that their custom does not indicate that the marriage was not intended to be valid. Otherwise, there is no necessity, as their customs would invalidate the language and legal interpretation, and people's understanding would take precedence over formal legal structures (Al-Wazzānī, 2011, p. 50)".*

Al-Wazzani's legal stance was further reinforced by the opinion of the eminent Mālikī jurist Ibn ʿArafa (d. 803 AH), who stated: "If the claimant brings evidence of widespread public knowledge, reported by trustworthy individuals, that the marriage was announced and celebrated with customary signs—such as music and the use of incense—then the marriage is valid." *(Al-Wazzānī, 2011, p. 50)* This position affirms the weight of social customs in establishing legal effects, provided they are grounded in community recognition and moral credibility.

Similarly, the renowned scholar Muḥammad al-ʿArabī al-Zarhūnī (d. 1260 AH) supported this view. He observed that in the region of Zarhūn, it was customary for members of the community to be present during engagement gatherings, where they would hear details about the agreed-upon dowry and the exchange of traditional gifts, even if the formal marriage contract had not yet been finalized. In such cases, the public nature of the event served as a de facto declaration of marriage, making the man the legal husband and the woman his wife (Al-Zarhoni, 2018, Vol. 1, pp. 123–124).

These perspectives illustrate Al-Wazzani's broader jurisprudential approach: one that recognized the normative power of deeply rooted customs and integrated them into the framework of Islamic legal reasoning. His acknowledgment of public acknowledgment (al-ssamaʿ al Fāshī) as a legitimate ground for marital validity reflects his commitment to harmonizing legal principles with social practice in a way that upheld both justice and communal coherence.

Implications for Contemporary Family Law:

Al-Wazzani's approach to marriage based on public acknowledgment (samāʿ fāshī) closely aligns with principles later codified in the Moroccan Family Code (Moudawana). Specifically, Article 156 recognizes that, under certain conditions, a formal engagement may serve as a substitute for a marriage contract. This applies particularly in cases where a pregnancy occurs during the engagement period, and the couple seeks to attribute parentage to the fiancé. For this to be legally valid, the following conditions must be met:

1. The engagement was widely known and acknowledged by both families.
2. The bride's guardian had consented to the engagement.
3. The pregnancy occurred during the engagement period.

4. Both parties acknowledge that the pregnancy is the result of their mutual relationship.

This legal recognition mirrors the customary practice that Al-Wazzani observed in Fes, where public acknowledgment of the engagement—along with the exchange of customary gifts—was considered sufficient evidence of marital commitment, even in the absence of a formal written contract. His position reveals an early jurisprudential sensitivity to the role of social customs in shaping legal realities. The Moroccan legal system, by incorporating these customs into its codified framework, demonstrates how contemporary law can evolve in continuity with local traditions while safeguarding the foundational principles of the family institution.

4. The Integration of Non-Muslims into the Islamic Society

There is no doubt that Islamic jurisprudence (fiqh) is influenced by social changes, which cause rulings to evolve in accordance with the reasons behind them. This sometimes leads to disagreements among scholars, as exemplified by the debate between Al-Wazzani and Al-Wansharisi regarding the issue of "the integration of non-Muslims into the Islamic society."

Al-Wansharisi, in his *Al-Mi'yar Al-Mo'rib*, addressed the issue of the "integration of non-Muslims into the Islamic society" and mentioned a number of rulings related to the "People of the Covenant" (Ahl al-Dhimmah), such as Jews and Christians. He discussed their interaction from both an economic perspective, related to transactions, and a social perspective, related to matters such as neighborly relations and marriage. In his book *Al-Mi'yar Al-Jadid*, Al-Wazzani reported Al-Wansharisi's opinion, where he said: "As for the one who enters for trade and to seek the world and gather its wealth, this is a blemish that disqualifies him from being an imam or a witness... As for fishing with them and resorting to their judiciary, its ruling is a blemish and strong dislike, and it may even be impermissible because it diminishes the dignity of Islam and its people (Al-Wazzani, 2014, Vol. 3, p. 34) ".

Al-Wansharisi's words indicate a significant difference between the Muslim community and the community of the People of the Covenant in various aspects, a reality imposed by the social conditions of his time. However, Al-Mahdi Al-Wazzani responded to him, relying on the principle of moderation, saying: "I say: Al-Wansharisi, may Allah have mercy on him, was too extreme in this response by categorically rejecting their testimony and the acceptance of their judges' decrees (Al-Wazzani, 2014, Vol. 3, p. 31)" He further stated: "This is preferable to the response of the author of *Al-Mi'yar* who declared the testimony of their righteous individuals and the decrees of their judges as absolutely unacceptable, for some say that the lands of Islam do not become Dar al-Harb (the land of war) simply because the disbelievers take control over them, but rather only when the practice of Islamic rituals is completely severed. As long as most of the Islamic rituals are still practiced there, it does not become Dar al-Harb (Al-Wazzani, 2014, Vol. 3, p. 29)".

Thus, *Al-Mahdi Al-Wazzani*'s stance on the rulings concerning the People of the Covenant was a moderate, innovative, and flexible approach to the integration of non-Muslims into Muslim society in his time, taking into account the prioritization of human welfare in line with the principles of the Maliki school and its jurisprudential efforts. He cited instances in his *Nawazil* to support dealing with the People

of the Covenant, consuming their food, and benefiting from their craftsmanship. He mentioned: "Imam Malik, may Allah have mercy on him, was asked about Roman cheese found in their homes, and it was said that they mix pig fat in it. He replied: 'I would not like to prohibit what is lawful, but if a person personally dislikes it, I do not see any harm in that (Al-Wazzani, 2014, Vol. 2, p. 429)".

He then applied this reasoning to other foods, such as sugar, saying:

> *"This is the Imam of Imams and the scholar of Madinah in the best of eras who did not declare Roman cheese unlawful, despite hearing that they mixed in it the impurity of the dead animal, and saw it as one of their foods that Allah had permitted us to eat. Therefore, sugar, which is claimed to be refined with blood, is more deserving of this ruling (Al-Wazzani, 2014, Vol. 2, p. 429)".*

Al-Wazzani also supported his viewpoint with a hadith from Abu Dawood, where Ibn Umar (may Allah be pleased with him) reported that: "The Messenger of Allah ﷺ was presented with a piece of cheese from Tabuk, made by the Christians, and he called for a knife, made the blessing, cut it, and ate it." (Abu Dawood, Hadith No. 3819) He also referred to the middle ground in Imam Malik's handling of the products of the People of the Covenant in the Islamic society and the benefit derived from them, stating:

> *"In Al-'Utbiyyah, it was reported that Malik, may Allah be pleased with him, was asked about cloth woven by the People of the Covenant, who handle it with their hands, and since they are considered impure, he said: 'There is no harm in it, and people have continued to use it (Al-Wazzani, 2014 , vol. 2, p. 429)".*

The disagreement between Al-Wazzani and Al-Wansharisi on this issue may have been influenced by the political and social climate of their times. The situation for non-Muslims in Al-Wazzani's era was more relaxed compared to that of Al-Wansharisi's, where political oppression prevailed. This contrast may have affected the application of rulings during that period. It is well known that during the 19th century, under Al-Wazzani's era, Jews and Christians were significantly integrated into Moroccan society. They were freely entering Muslim homes and freely practicing their religious and economic activities. However, this situation would change in the second half of the 20th century with the emergence of the Jewish nationalist project and the political pressures imposed on Jews by the Spanish and French colonial powers (Al-Bakkouri, *The Tribes of Ghmara*, 2017, p. 115).

5. ***Considering the Environment of the Custodial Child***

Custody (*ḥaḍāna*) was among the key social issues that the scholar Al-Mahdi Al-Wazzani addressed extensively in his legal opinions. His discussions covered a wide range of aspects, including the conditions for custody, eligibility, compensation, termination, and the child's overall well-being—such as living conditions, maintenance, and social challenges.

In a legal response addressed to the scholar Al-ʿAbbāsī, Al-Wazzani provided a comprehensive definition of custody, stating:

> *"Custody entails safeguarding the child in matters of residence, nourishment, clothing, bedding, and bodily hygiene (Al-Wazzani, 2014, vol. 4, p. 466)".*

He clarified that the custodian is not entitled to financial compensation unless he or she bears sole responsibility for these duties. These core responsibilities are obligatory for the custodian. However, *Al-Wazzani* made a distinction between essential custodial duties and auxiliary domestic tasks—such as cooking, grinding flour, weaving, or laundering clothes. These, he argued, are not mandatory upon the custodian. If performed, they should be compensated from the child's financial resources—unless the custodian voluntarily undertakes them without seeking remuneration.

This nuanced position reflects *Al-Wazzani*'s concern for both the welfare of the child and the fairness toward the custodian, recognizing the limits of unpaid labor and the economic rights of those who care for children, especially in challenging social conditions

Al-Wazzani also examined custodial issues through the lens of human need and the ethical responsibilities surrounding the care of vulnerable children, particularly orphans living in difficult social conditions. In several of his legal responses, he addressed complex cases that revealed the emotional and social struggles experienced by children under custody and the legal consequences that arose from such situations. One such case (Al-Wazzani, 2014, vol. 4, p. 449) involved an orphaned girl and her younger brother, who had been living under the care of their uncle in a rural area. Over time, the uncle grew displeased with the girl and sent a message to another uncle, asking him to take her in. The second uncle complied and took care of her for more than a year. Later, the first uncle demanded her return, arguing that she was needed to assist in caring for her younger brother, who remained in his custody. However, the girl refused to return, explaining that she had not been well treated by the first uncle and his wife, whereas the second uncle and his wife had shown her kindness and respect. The situation was further complicated by the fact that the first uncle had multiple children and stepchildren, and his house was often crowded with visitors. In contrast, the second uncle lived alone with his wife, offering a more peaceful and stable environment. A legal question arose: Did the first uncle retain the right to reclaim the girl—either to aid in the care of her brother or, as was implied, to marry her off to his son?

Al-Wazzani ruled that the first uncle had no right to reclaim the orphaned girl, presenting several justifications. First, the girl had already been placed under the care of the second uncle, and legal precedent holds that when a child is transferred to a more distant relative, the original custodian forfeits their custodial right. *Al-Wazzani* referred to established scholarly positions, noting that this principle is well recognized in Moroccan jurisprudence. For instance, in the Maliki school, it is stated that if a non-Muslim mother converts to Islam while having custody of her child, she forfeits that right. This opinion—attributed to Imam Malik—underscores the idea that custodial rights are not absolute and may lapse when certain relational or circumstantial changes occur.

Second, he emphasized the uncle's evident lack of affection toward the girl, as shown by his attempt to abandon her, which suggests emotional detachment and neglect. This aligns with the view of *Ibn 'Arafa*, who cited Al-Lakhmi in stating that if a custodian is known for harshness or indifference, while a more distant relative demonstrates compassion, then the latter should be given preference. Similarly, *Sheikh Mi'ara* held that the primary criterion for assigning custody should be the level of compassion exhibited by the custodian.

Third, *Al-Wazzani* noted the girl's emotional attachment to her second uncle and the potential psychological harm that could result from moving her to another household. He referenced the opinion of Sheikh Abu Ishaq Sidi Ibrahim bin Hilal, who stated that if custody was transferred for a valid reason, and that reason later ceased, the current arrangement should not be altered if the child has grown attached to the present custodian and transferring her would cause distress.

Fourth, the girl's own choice played a critical role in *Al-Wazzani*'s reasoning. He invoked the authority of Ibn al-Nadhim, who maintained that if the girl had reached an age where she could discern her best interest, her preference should be considered. Thus, her expressed desire to remain with the second uncle further validated his claim to custody over that of the first uncle.

Fifth and most importantly, *Al-Wazzani* pointed out that the first uncle's home environment failed to meet the essential condition of safety and protection. The presence of unrelated individuals (strangers) in the household posed a significant risk to the girl's well-being, and this alone rendered his claim to custody invalid. While the previous arguments favored the second uncle, this final consideration eliminated the first uncle's eligibility altogether. As the jurists have consistently affirmed, the custodian must be able to guarantee a secure and morally safe environment, especially for a young girl. In such cases, priority must be given to the custodian who offers the best conditions for the child's physical and emotional welfare (Al-Wazzani, 2014, vol. 4, pp. 449–450).

Al-Wazzani's legal reasoning was firmly grounded in the principle of child welfare and the importance of maintaining a socially and morally appropriate environment for the custodial child. He affirmed that it is not a valid justification to compel the orphan girl to return to her first uncle merely to assist in caring for her younger brother. Custody, in his view, should not be reduced to a utilitarian role at the expense of the child's dignity, emotional security, and stability. Moreover, the questioner had suggested a potential solution—that the younger brother could instead be sent to live with his sister at the second uncle's home. *Al-Wazzani* found this arrangement acceptable, as it aligned with the broader objective of preserving the well-being of both children without disrupting the girl's settled and nurturing environment. This flexibility illustrates the dynamic and child-centric approach *Al-Wazzani* adopted in his legal reasoning: the ultimate criterion in custody cases is what serves the best interests of the child, not merely lineage, prior arrangements, or logistical convenience (Al-Wazzani, 2014, vol. 4, pp. 449–450) .

In modern Moroccan law, there is a notable shift toward considering changes in the child's custody environment. Some courts have ruled against withdrawing a child's custody from her mother due to her remarriage, arguing that transferring the child to a different environment would likely cause her psychological harm. This has led to the prioritization of the child's best interests over those of the father, allowing the child to remain with her mother.

This aligns with Article 3 of the Convention on the Rights of the Child, which states:

> *"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration (Fghoul, 2020, p. 219)".*

Conclusion

In this research, we aimed to examine the interplay between legal novelties (*nawāzil*) and the renewal of jurisprudence, with a particular focus on responses to social issues and their contemporary applications. To this end, we analyzed the jurisprudential renewal evident in the *nawāzil* of the scholar *Al-Mahdi Al-Wazzani*, showcasing examples of his legal reasoning across diverse social contexts.

Signs of this renewal are especially apparent in cases dealing with social concerns, including the application of *maqāṣid* (higher objectives of the Sharia), the recognition of customary practice *('urf)*, and the prioritization of prevailing norms. We highlighted several of these manifestations, such as matters related to the family, child health, custody, and marriage, emphasizing their relevance to contemporary life.

These examples reveal that *Al-Wazzani* approached jurisprudential renewal as a necessary and dynamic response to societal transformations, one grounded in the principles of justice and moderation consistent with the Maliki school of thought, while also accommodating evolving customs and social realities. The changing social landscape of his time spurred the development and diversification of his legal responses.

It is also clear that modern Moroccan jurisprudence has incorporated elements of this juristic legacy, particularly in areas like labor and effort (kadaʾ and saʿāya), marriage, and custody—demonstrating a continuity between classical legal thought and contemporary legal frameworks.

Key Findings

1. The study of Al-Wazzani's social *nawāzil* revitalizes juristic reasoning and contributes to an integrative project that spans the religious, social, and judicial dimensions of law.

2. His *nawāzil* stand out for their innovative handling of both rural and urban social issues, offering insights that continue to inform modern codified jurisprudence.

3. Examining such legal responses—whether related to family, health, custody, or other domains—offers a valuable lens through which to understand the development of societies and the emergence of their challenges over time and space.

4. Jurisprudential novelties are deeply tied to the broader project of legal renewal, and must be understood within the framework of foundational objectives—such as the maxim *"Preventing harm takes precedence over bringing about benefit"*—which seek to preserve individual well-being and safeguard social order.

5. This research encourages renewed attention to the books of *nawāzil* in the jurisprudence of the Islamic West and the Maliki tradition, as they contain rich discussions of social issues addressed through nuanced juristic reasoning. These texts represent a vital cultural reservoir, often more socially informative than traditional historical records.

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