

The Historical Presence and Methodological Use of Nawazil Books in Writing the History of the Central Maghreb: The Book Al-Durar al-Maknuna fi Nawazil Mazuna by al-Maghili as a Model.

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Abstract:

History has many auxiliary sciences. Each one contributes to its field and opens a new space for analysis and discussion. It enables the scholar to see aspects that may remain obscure or marginalized if history remains closed upon itself and confined to its own method. For this reason, several sciences provide the historian with valuable data and information. One of them is the science of nawazil. Since nawazil books are closely connected with the general course of societies, they have acquired an important place among historians. Scholars also point to the gaps they fill in our sources. They extend bridges toward historical material and allow deeper inquiry into public life in the Islamic Maghreb in general and the Central Maghreb in particular.

Accordingly, the study of the nawazil encyclopedia, Al-Durar al-Maknuna fi Nawazil Mazuna, by Abu Zakariyya Yahya al-Maghili, is important. It is one of the main pillars of nawazil books. When it is approached through sound methodological foundations, it leads the researcher beyond a simple understanding of the mechanisms of nawazil books. This is what the present article seeks to examine.

Keywords: nawazil; methodology; historical material; Central Maghreb; Al-Durar al-Maknuna; nawazil books.

Introduction:

Praise be to God, who revealed the Qur'an as law and method and made the Sunnah its explanation and clarification. Through them, the features of rulings became clear, and the lawful and the unlawful were distinguished. The favor was then completed, and the blessing was perfected for this community through the permanence of the eternal Sharia and the continuity of its validity for every time and place. Its source does not dry up, and its giving does not cease. It meets the needs of every age and the requirements of every era. No event occurs without a ruling in the Sharia. No new case arises without the scholars and jurists having an opinion on it, either by reference to the texts or by ijtihad.

The breadth of this heritage is due to the great number of facts and events, which are endless. The many texts cannot explicitly contain all such occurrences. This requires ijtihad in order to establish rulings for new issues in light of fiqh. Fiqh thus formed one of the most prominent components of

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scholarly life in the history of Islamic civilization.

There is no doubt that Islamic history represents a vast resource for research and knowledge. It includes legal and historical sources, as well as biographical works. These sources help researchers and students study aspects of life in the Islamic world, especially in the Central Maghreb.

One of the branches that calls for study is the historical presence of nawazil books and the way they are used methodologically in modern studies. We therefore chose to examine this topic through *Al-Durar al-Maknuna fi Nawazil Mazuna* by Abu Zakariyya Yahya al-Maghili. We relied on the data contained in this work, because this source may reveal several aspects, especially for the period in which the author served. It is therefore necessary to use its material. For this reason, the present work focuses on the historical presence and methodological use of *Al-Durar al-Maknuna* in modern studies. The book contains important scholarly and legal material. It records the historical movement of the period in which the author lived, namely the ninth century AH/fifteenth century CE. It also collected many nawazil that occurred in his time. This is especially significant because he held the office of judge. This was an important office. The person who held it and worked in it could observe social issues in a way that others could not. His source is therefore a fundamental source among nawazil writings. It benefits both the jurist and the historian. A nawazil case helps formulate the legal ruling for a new issue. At the same time, it often provides historical indications that are no less important than the legal ruling itself.

All of this encouraged researchers to enter the nawazil text. As a result, studies appeared whose basic foundation was formed from sources of nawazil fiqh. These sources had once been thought to be empty of historical value. Several university theses and dissertations began by excavating the nawazil source. For this reason, the corpus of *Al-Durar al-Maknuna fi Nawazil Mazuna* became an important historical source from which many works have drawn.

On this basis, we raise the following research question:

To what extent did the nawazil of *Al-Durar al-Maknuna fi Nawazil Mazuna* contribute to enriching historical studies and revealing aspects of life in the Central Maghreb?

1: The Importance of Nawazil Books as a Source in Historical Studies:

Books of fatwas and nawazil have received increasing attention in contemporary writing. This is because they provide possibilities for filling some gaps surrounding the history of Central Maghreb society. They also sometimes provide useful information at the level of reports and details of events¹. Although a nawazil case is legal in nature, it acquires an important dimension in historical studies. This appears in the fact that the length of the question and the answer reflects precise historical conditions. These texts are marked by spontaneity, because they did not issue from an official authority and were not colored by an ideological or political position². The terms nawazil, fatwas, answers, and legal questions are used to refer to one type of legal writing. These works dealt with the details of people's daily affairs³. Their importance increases because they provide the researcher with rich and unique material that other sources do not offer. If legal nawazil are used according to clear methodological conditions, they can open for the historian the possibility of widening his view of the elements that may have governed the development of facts and events⁴. They also contain issues related to the religious, spiritual, and scholarly life of societies. Traditional sources do not always make it possible to address such topics⁵. The importance of fatwas also lies in the possibility of considering them a form of writing history by and through the mufti. The researcher thus finds the case on which the fatwa was issued ready and officially documented. There is usually little doubt about whether it occurred, because it often ends with a seal and is dated by day, month, and year⁶.

They are therefore a record of events that took place between two parties, the questioner and the respondent. Through them, the historian can resolve the historical problem of the event under

consideration. This is especially true because those responsible for issuing fatwas were first and foremost scholars and specialists, regardless of the differences in their methods or the complexity of their terminology⁷. Scholars of fatwa also dealt with nawazil in a normative manner. They searched for the legal texts that supported the case and the fatwa. The historian, however, is primarily concerned with the social and political backgrounds of nawazil.

It is often said that the question is more important than the answer in nawazil. The question reflects, to some extent, the concerns and mentality of the questioner, who is usually a member of society. The answer, by contrast, reflects the mentality of the jurist⁸. In this context, the German orientalist Joseph Schacht, in his study of the development of Islamic law, considered nawazil books a large mine. He held that researchers should return to it and benefit from it in most historical studies on the Islamic West⁹.

Dr. Ibrahim al-Qadiri Boutchich considers that books of nawazil, ahkam, and hisba treatises help reveal important aspects of historical events. He states that 'nawazil books are among the most important sources that make it possible to fill the gaps affecting Islamic history. These texts are called nawazil, ahkam, ajwiba, and masa'il'¹⁰. Accordingly, failing to take these texts into account may lead the researcher into methodological pitfalls and to inaccurate conclusions. The use of nawazil also raises a precise problem related to what is real and what is hypothetical. This is due to the data they provide on matters of hisba, disputes over water and land, crops, and partnership problems in trade¹¹, as well as agriculture, usurpation, jihad, residence in the land of unbelievers, and other matters. They also contain legal documents and the names of witnesses. All this is an indicator of the validity and historicity of the content of the nawazil. Researchers have therefore agreed on their importance in historical research. Most of those who have worked on them have emphasized the difficulty of separating social reality from the hypothetical dimension within them¹².

The call to use legal nawazil and clarify them historically is based on the valuable material they provide. This material touches the depth of social, economic, and religious issues. It offers a methodological ground that frees historical writing from traditional sources and from the stereotyped method. This is because the fiqh of nawazil is known for its vitality and its connection with renewed real events¹³. It also responds to people's concerns in their various life activities. It provides precise information capable of illuminating important aspects of the history of the inhabitants of the Islamic Maghreb, across its public and elite classes and across its groups, including Arabs, Berbers, and dhimmis.

We should also not forget the questions of petitioners concerning new events and urgent matters. They usually move away from the purely theoretical side of fiqh. They portray forms of the petitioners' lives. They also sometimes present events that historians neglected, because historians usually focused on political affairs and on matters related to rule and princes¹⁴.

After this clear call for the arbitration of Sharia in the various aspects of life, there is no doubt that giving the new nawazil of every age their appropriate legal rulings falls primarily within the task of renewing historical writing and reviving what it has touched¹⁵.

What supports this methodological step is that the most famous legal nawazil in the Islamic Maghreb all belong geographically to the Central Maghreb. This applies to those that reached us complete and to those that reached us within major collections. These collections provided a long list of Central Maghreb jurists who belonged to the Maliki school. The relationship between Maliki fiqh and Central Maghreb society was summarized in questions and answers that revealed deep interaction with social conditions, concerns, and issues. This gave the Maliki school its Maghrebi dimension¹⁶. Thus, we see that fiqh and nawazil arose together. Nawazil were not separate from fiqh. The two remained closely linked. When a nawazil case occurred, jurists derived a legal ruling for it. Legal nawazil help us know the conditions of society in the Central Maghreb, because they provide questions related

to the interaction and activity of its components. They also include issues connected with the religious, spiritual, and scholarly life of society.

2: Al-Maghili: His Biography and His Work:

A: Biography of Abu Zakariyya Yahya al-Maghili al-Mazuni (d. 883 AH / 1478 CE)

He is Yahya ibn Musa ibn Isa al-Maghili al-Mazuni. His kunya was Abu Zakariyya. This is the name by which he was known in the biographical works that transmitted his life¹⁷. It is also the name found on the first folio of all manuscript copies. He was among the scholars of the ninth century AH/fifteenth century CE. He was Maghili by tribe and Mazuni by homeland¹⁸. He was its judge, jurist, and learned scholar. Ahmad ibn Yahya al-Wansharisi added other titles for him in his commendation, saying: 'He is the flowing spring of the great scholars, from the known house of learning, the learned authority, the well-grounded Maliki jurist, the capable legal theorist, the hadith scholar, the exegete, the well-informed researcher, the benefactor of students, the reference of judges and muftis, and the shaykh of the leading scholars in the Maghrebi lands during the ninth/fifteenth century'¹⁹

Al-Mazuni grew up in a house of knowledge and religion. He was raised among scholars and assumed the office of judge, following his fathers and forefathers. Despite the political disturbances experienced by the Zayyanid state, he witnessed a remarkable scholarly movement that influenced later scholars. He formed a firm scholarly base, especially in the Maliki corpus and, above all, in the books of fiqh and its principles. His scholarly discussions and his citation of the statements of the imams of the school are strong evidence of his formation. They also show his leadership and distinction in his age. Nawazil came to him repeatedly, and people turned to him for guidance. This points to the breadth of his knowledge and to his ability to arrange legal rulings according to time, place, and circumstance, while taking into account the circumstances of the facts. His work is the best witness to this.

His teachers: He received knowledge from major imams, including the jurist Ibn Marzuq, Qasim al-Uqbani, Ibn Zaghu, Abu al-Abbas, and others.

His death: May God have mercy on him. He died in 883 AH / 1478 CE. His grave is well known in the al-Rahiba quarter near the present Bab al-Jiyad²⁰

B: Presentation of the Book: Al-Durar al-Maknuna fi Nawazil Mazuna

The jurist Yahya al-Mazuni mentioned the title of his book in the introduction, saying: '... and I named it Al-Durar al-Maknuna fi Nawazil Mazuna, and I ask God to make it beneficial ...'²¹. This is the agreed title. A common formula in biographical and tabaqat books is the phrase 'al-Mazuni in his Nawazil'. All the evidence confirms that Imam Yahya al-Mazuni is the author of the book. This appears through several points, including:

- The title of the book and the author's name appear on the front of the manuscript, according to the testimony of those who saw it.
- He himself declared the title of the book in the introduction.
- All those who wrote his biography, from the ninth/fifteenth century to the present, agreed that he authored Al-Durar, without objection.
- The name of the book is linked to the name of the author. This is the most important matter that preserved his mention across regions.

There is no indication of the date on which Al-Durar was written or of the period that its composition required. Some researchers mention the existence of a note on one manuscript copy indicating that he began compiling it in 1441 CE. I was not able to consult this note. In the introduction to his book, al-Mazuni also disclosed several reasons that motivated him to write it. Among them was his long occupation with the office of judgeship and fatwa. He said, may God have mercy on him: 'When I was tested with the office of judgeship in the prime of youth ... and the nawazil of disputants became numerous before me, and the complaints of the wronged came to me one after another ...'. Another

reason was that his father, Abu Imran Musa, had intended to begin a similar work. Death and fate came before the realization of that intention. This led the son, Abu Zakariyya Yahya, to take upon himself the fulfillment of this desire. These and other reasons explain why he wrote the book.

3: The Position of Al-Durar al-Maknuna fi Nawazil Mazuna in Historical Studies:

Al-Durar al-Maknuna fi Nawazil Mazuna is regarded as one of the most important nawazil books known in the Islamic Maghreb in general and in the Central Maghreb in particular. Its importance does not lie only in its inclusion of theoretical fiqh texts. It also lies in the fact that it presents the outcome of the theoretical experience of the mufti or judge, transferred to the sites of action in society through application and implementation. For this reason, Al-Durar fills a major gap in the objective sources for the history of the Islamic West in general and the Central Maghreb in particular. The general conditions of any age have a direct reflection on scholarly writing and nawazil compilation. Al-Mazuni is not an exception to this rule. The general conditions that he lived through are reflected in his work. It contains a large and extensive body of nawazil and fatwas that are useful in historical research and studies. However, their study and analysis require a long time for those who are not specialists in fiqh. As for the historical information contained in Al-Durar, it is politically limited, but rich and varied with regard to social and economic life.

4: The Importance of the Book as a Source for Studying Political History:

The historian Abu al-Qasim Saadallah summarized the political situation during al-Mazuni's age by saying that, although Yahya al-Mazuni did not write Al-Durar al-Maknuna fi Nawazil Mazuna in order for it to be a political book, he included in it issues of the age, fatwas of jurists, and nawazil that reveal political, economic, and social life in the western part of the Central Maghreb. They also reveal the conditions that prevailed under the Zayyanid state, especially since al-Mazuni lived under three kings of this state and witnessed the repeated Hafsid attacks against the Zayyanids, which reached Tlemcen²²

An example of this appears when al-Mazuni was asked about a man whose people moved to fight the enemy and besiege him in his fortress. This man wanted to go with them accompanied by his wife because he needed her for necessities. He answered: 'If this man who goes out with his wife travels with an army in which safety is generally expected, then he may do so. Women used to go out to military expeditions in the time of the Prophet, whether on land or at sea. If the army is small and safety from destruction is not assured, then he should not take her out, for fear that she may fall into the hands of the enemy. The consequences of that are not hidden'²³. This is evidence that the lands of the Central Maghreb witnessed strife and political disturbances as a result of raids against them. Security decreased and fear spread. This required repeated confrontation and resistance as a result of Hafsid attacks from the east and Marinid attacks from the west.

Al-Mazuni sometimes tried to expand his answer and give a brief account of the situation under discussion. An example is his opinion on the families of those captured in war. He said: 'Some jurists of our land were asked about the children and women of the people of war when they were captured, if they had fought with their elders. Do they have the same ruling as adult males? What if they did nothing except carry stones to fight them?' He answered: 'Know that the prohibition against fighting children and women was stated in absolute terms and was not restricted to one situation rather than another. However, our scholars acted in this matter with precise consideration. They said that whoever from these two groups fights us and repels us, whether on foot or mounted, with a weapon or a stick, may be fought by us. If we did not do so and left them to harm us, they would kill us'²⁴. This also indicates the disturbance that the Central Maghreb experienced during the period in which al-Mazuni lived. It is also possible to benefit from some remarks contained in Al-Durar in order to know the age of the Zayyanid state and some of its prominent figures, especially those whom al-Mazuni knew. Among them was Abu Thabit Muhammad V al-Mutawakkil ala Allah ibn Abi Zayyan

(d. 866 AH). He brought the jurist Yahya al-Mazuni to Tlemcen and made him the mufti of his court and his adviser in the matters presented to him in 871 AH²⁵. This figure is among the historically obscure personalities who can be revived in contemporary studies. Recent years have witnessed a useful effort to shed light on al-Mazuni's nawazil, especially since Al-Durar has not been fully edited. Yet the political aspect of the work has remained rare, or even scarce, in modern studies, apart from the indications provided by Professor Farid Qammuh in his edition of the questions on jihad, oaths, and vows in his master's thesis entitled *Al-Durar al-Maknuna fi Nawazil Mazuna*.

5: The Importance of the Book as a Source for Studying the Social Aspect

Al-Durar is an inexhaustible spring for studying social life in the lands of the Central Maghreb. Through the social questions treated in the book, the researcher can learn some facts about society. The source contains valuable information that occupies an important part of its chapters. Some of it deals with marriage. Other parts deal with divorce, dowry, and claims related to deferred dowry²⁶. We also find living images of social dealings in the societies of the Islamic Maghreb. This appears through the nawazil transmitted by the author of Al-Durar. These nawazil describe serious social problems from which the society of the ninth/fifteenth century suffered, such as theft, injustice, usurpation, harm, arms smuggling, rape, and other matters. In this context, the hadith scholar Muhammad ibn Marzuq, in a letter answering the jurist Yahya al-Mazuni about a question that the latter had sent concerning the condition of the Central Maghreb, said: 'May you be rewarded, O abundant sea and remaining scholar among the observers in those regions and lands. Were it not for the presence of people like you there, those lands would have become empty and would have turned into desolate wastelands. Strive there with the utmost effort. Your inquiries have stirred in us stagnant minds, and have awakened ambitions that were asleep in the intoxication of sleep and laziness. He said: I wonder who in this world receives the benefit of such knowledge. May God help you in what He has entrusted to you, preserve you, and care for you'²⁷

In another question, al-Mazuni asked his shaykh Abu al-Fadl, saying: 'My master, you know that our land is full of falsehood and usurpations. A person is asked there for what is not due from him, and he is imprisoned for it. His condition forces him to deal in goods that he gives to the oppressor so that the oppressor may leave him alone. Then, when a transaction involving a commodity at its price is requested, he claims coercion and pressure. May I, my master, follow the exceptional ruling in this issue?' This describes the deteriorated social conditions that prevailed during the ninth/fifteenth century. In general, what can be taken from Al-Durar includes the ideas, beliefs, and customs that prevailed. Some of them contradicted public ethics. One example is the phenomenon of slaves, which had spread widely, and the bad treatment they received. They were treated by their masters as if they were irrational animals without legal responsibility²⁸. For this reason, we see that the Al-Durar corpus has great importance for writing the history of social classes, even those described as marginalized. One researcher relied on the Al-Durar corpus to write the history of the social aspect, including the category of slaves, in an article entitled *Nawazil of Social and Political Fiqh in the Islamic Maghreb: Al-Durar al-Maknuna as a Model*²⁹

6: The Importance of the Book as a Source for Economic Studies:

Through the nawazil of Al-Durar, the researcher can learn about many principles of transactions and sales that were practiced in the Central Maghreb in particular. These include the conditions of sale, defects in the sold item, the documentation of sale in the presence of specialists, and the manner of dealing with rented shops and their rents, especially in times of weak trade. They also include the causes of the annulment of lease contracts and other matters³⁰.

In the field of taxes, it is possible to benefit from the information concerning the collectors of customs dues who stood at the gates of cities to take levies from trade. The text also provides valuable information on the way agricultural lands were leased. The texts also point to notable commercial

activity in the Islamic West in general and in the Central Maghreb in particular. This appears through the main means used to organize commercial exchange, especially coins, measures, and weights. These are matters on which those interested in Al-Durar have focused in various studies, as well as in relation to commercial transactions. Among the studies that dealt with an economic aspect through Al-Durar is the study of Gherdaoui Nouredine on the agricultural aspect, entitled Agricultural Systems in the Central Maghreb during the Zayyanid Period through the Nawazil of al-Mazuni.

7: Methodological Obstacles in Studying Al-Durar:

The studies that we were able to examine³¹ agreed on a methodological concern shared by the researchers who made Al-Durar al-Maknuna a source base for their theses and studies. In this part, we identify the main methodological problems that we observed in some studies that used Al-Durar in particular. It must be noted that these difficulties go back to the nawazil text itself. It was established for the purpose of issuing fatwa, not for the purpose of history. It usually presents the question and the answer in a purely legal language. This places the researcher before several problems, especially when transforming legal material into a historical form. On this point, Muhammad Fatha explains the reluctance of researchers to rely on nawazil literature in historical studies by the difficulty of transforming its texts into flexible historical material³². There is also the problem of determining the time of the nawazil case, because it is often not contemporary with the facts. The book was not written literally at the same time as the events. Omar Belbachira summarized the difficulties facing those who work on nawazil in general as follows³³:

- A: The problem of dating the nawazil case: He confirms that most of the nawazil books on which he relied did not include the date on which the question was raised. This makes it difficult to benefit from them and forces the researcher to make greater effort.
- B: Determining the place of the nawazil case: This is also one of the elements that al-Mazuni's nawazil often lack, especially because every region and town has its own characteristics.
- C: The problem of the real and the hypothetical in the nawazil case: Not all nawazil are real. Some are merely conjectural and hypothetical.

Conclusion:

On the basis of this study, we conclude that nawazil provide researchers with information related to certain events and controversial customs that occurred within society. They also reveal the types of relations that connected society, as well as the forms of communication, tension, and disturbance in people's lives. This allowed scholars to penetrate some deeper aspects of social and economic life in the medieval period. It also enabled them to contribute to filling some gaps in the history of the Islamic West.

The historical use of nawazil sources is highly useful when the researcher handles their material properly. This material does not disclose its content except through methodological steps that soften it and make it suitable for use. These steps allow the scholar to be confident when using its cases historically.

Studies that have worked with these sources have been able to follow a sound scholarly path. They show that nawazil can become a broad scientific material from which the researcher can extract documented information.

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²⁷ - Ismail ibn Musa ibn Uthman al-Hamidi, Marginal Notes on the Commentary on al-Sanusi's al-Kubra, 1st ed., Mustafa al-Babi al-Halabi and Sons Press, Egypt, 1993, vol. 1, p. 84.

²⁸ - Omar Anwar al-Zaydani, previous reference, p. 37.

²⁹ - Qammouh Farid, previous reference, p. 46.

³⁰ - Dhanun Taha, Studies in the Civilization and History of al-Andalus, Dar al-Madar al-Islami, Benghazi, Libya, 2004, p. 113.

³¹ - Ibrahim al-Qadiri Boutchich adds that, through his work with university theses completed by researchers at different academic levels and dealing with the economic and social history of the medieval West, he was able to identify a set of problems that they faced. See: Ibrahim al-Qadiri Boutchich, "Legal Nawazil in University Theses: Trends, Knowledge Contributions, and Methodological Problems," Usur Jadida, nos. 16-17, 2014-2015, p. 56.

³² - Massoud Kerboua, previous reference, p. 63.

³³ - Omar Belbachira, Aspects of Social, Economic, and Intellectual Life in the Central and Far Maghreb (6th-9th AH / 12th-15th CE) through Al-Mi'yar by al-Wansharisi, doctoral dissertation, University of Oran, 2009-2010, p. 332.