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## ARAB MODERNISTS AGAINST IMĀM ASH-SHĀFI‘Ī: A CRITICAL ANALYSIS

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### ABSTRACT

*The Companions of the Prophet ﷺ established the methods of understanding and interpreting divine texts, as they formed the foundations of Ijtihād. However, Imām Ash-Shāfi‘ī رحاب was the first Muslim scholar to write the principles of Islamic jurisprudence (Usūl al-Fiqh). Yet, Arab modernists in their attempts to devalue the rules of reading, understanding and interpreting divine texts, attack Imām Ash-Shāfi‘ī and accuse him of “innovating” in the religion by “inventing” Usūl al-Fiqh. Likewise, they have accused him of “imprisoning” the Muslim intellect and mind regarding the authority of the divine texts as he bound it to methodology. Moreover, they accused him of having cooperated with the Umayyads. By attacking Imām Ash-Shāfi‘ī, Arab modernists seek to create an epistemological divide with the heritage of Usūl al-Fiqh as well with semantics and the rules governing the Arabic language. They aim to radically change the interpretation of the Qur’ān and Sunnah in order to get a free and fluid “modern Islamic jurisprudence”. This study uses inductive, comparative and critical analysis methods to assess the credibility of these allegations against Imām Ash-Shāfi‘ī and to evaluate their scientific basis. This study proves that these allegations are unfounded. It demonstrates first that Imām Ash-Shāfi‘ī did not innovate in religion. Second, it reveals that the Companions themselves established the rules of Usūl al-Fiqh, the hierarchy of sources, rules of interpretation (Dalīl) and shaped the conditions of Ijtihād. Third, this study proves that Imām Ash-Shāfi‘ī did not achieve an epistemological move from the reasoning of the Arabic rhetoric of Ijtihād and its cognitive system. Fourth, this study verifies that Imām Ash-Shāfi‘ī did not cooperate with the Umayyads. On the other hand, this study exposes the Arab modernists who, by accusing and devaluing Imām Ash-Shāfi‘ī and his contributions, are subjective and have transgressed the scientific methods and ethics.*

**KEYWORDS:** Imām Ash-Shāfi‘ī, Arab Modernism, Usūl al-Fiqh, Arabic language, Modernism.

## 1. INTRODUCTION

Scholars from different Islamic schools of law honor the various contributions of Imām Ash-Shāfi‘ī رحمته to Islamic epistemology. Imām Aḥmad رحمته considered him the reviver (*Mujaddid*) of the second century (Al- Dhahabī, 1985). Imām Aḥmad also said:” No one holds an inkwell and a pen except that Imām Ash-Shāfi‘ī has a favor on his neck” (Al-Khaṭṭābī, nd). Al-Rāzī رحمته found that great scholars from various areas of expertise honored Imām Ash-Shāfi‘ī in different ways, so he concluded: “The scholars’ praise for Imām Ash-Shāfi‘ī is more than one can cover” (2008). However, Arab modernists while adhering to the norms of modernism are fighting to devalue the huge contributions of Imām Ash-Shāfi‘ī to Islamic heritage and scholarship. This group violates the standards and ethics of scientific investigation in their quest to attack Usūl al-Fiqh. Instead of discussing the core elements of this branch of knowledge, they turned to personalize their criticism against the person of Imām Ash-Shāfi‘ī رحمته.

This paper sheds light on particular aspects of the attack on Imām Ash-Shāfi‘ī, following the standards of scientific analyses and critics, as well as adhering to the ethics of knowledge. The paper discusses the importance of Usūl al-Fiqh and traces back its history and background. In addition, it highlights the contribution of Imām Ash-Shāfi‘ī to this branch of knowledge. Furthermore, the paper refutes a set of accusations put by Arab modernists against Imām Ash-Shāfi‘ī. First, the accusation that Imām Ash-Shāfi‘ī “invented” the branch of Usūl al-Fiqh. Second, the accusation that he aimed to enforce Arabism as well as to indoctrinate the Muslim intellect with the rules of Arab understanding and interpretation. Third, they accuse him of “innovating” conditions for Ijtihād in order to get rid of the plurality of interpretations of the divine texts. Fourth, Arab modernists accuse Imām Ash-Shāfi‘ī of having wrong political tendencies as they accuse him of cooperating with the Umayyads. In the end, the paper provides recommendations for future investigations related to Imām Ash-Shāfi‘ī رحمته.

## 2. REVIEW OF LITERATURE

Contemporary literature displays two trends in dealing with Imām Ash-Shāfi‘ī رحمته. The first one consists of the Arab modernists and shares the following features (Al-Qūshṭī, 2016) : subjectivity, secularism, relativity of truth, epistemological divide with the past, historicism, unconditioned way of *ta’weel*, new understanding and interpretations of the divine texts, adopting Western tools and methods in reading and interpreting the Qur’ān and Sunnah and in evaluating Muslim scholars’ heritage as it adopts the view that nothing is sacred including the Qur’ān and Sunnah. Some of the most important figures in this trend are Muhammad Arkun, Adinus, Muhammad ‘Abid Al-Jābiri , Hasan Hanafi, Muhammad Shahrur, Nasr Abū Zaid, Jorj TarAbushti, Zakariah, Abd Al-Majid Al-

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Sharfi and others. Arab modernists distinguish themselves and define their understanding of modernism as, first, an idea against religion (Arkun 1998). Second, Arab modernists see modernism as an idea against past heritage Al-Ghamidi (2009). Third, they assume an epistemological divide with the history, origins and heritage (Adinus). Fourth, they argue for absolute liberation from the restrictions of religion, values, and social customs and traditions (Wafah 2001). Fifth, the call for the use of rationality against bland reproduction of the past *Taqīd*. To reflect the core aim of their intellectual projects, the two important figures among Arab modernists chose precise book titles to reflect the importance of rationality in criticizing the eastern mind. Al-Jabiri chose to use the term ‘Arab mind’ in three books (1989, 1990, 2009). Whereas Arkun chose to use the term ‘Islamic’ or ‘religious mind’ in two books (1991, 1998) in addition to other Arab modernists who use the same terminology such as Kamil (2010). However, the other Arab modernists using the term ‘Arab’ or ‘Muslim mind’ did not show a full, comprehensive and systematic intellectual project in criticizing the Arab and Muslim mind as Arkun and Al-Jabiri did.

Concerning Imām Ash-Shāfi‘ī, this trend does not deal intensively with his selected opinions in jurisprudence or his Fatwas; rather they are trying to criticize his theory of knowledge, his rules of reading, understanding and interpreting divine texts. In addition, they are trying to dismantle the whole block of sources of authority that Imām Ash-Shāfi‘ī discussed, namely transmitted evidences (*Naqliyyah*) and rational ones (*Aqliyyah*). They attack the methodology and epistemology that Imām Ash-Shāfi‘ī enforced to understand Islam and its sources of authority.

Unfortunately, this trend commits a breach of the scientific spirit and ethics by attacking the person of Imām Ash-Shāfi‘ī <sup>رحمته</sup> instead of discussing the issues under criticism. As alleged by Ali Mabruk, that Imām Ash-Shāfi‘ī did not seek religious knowledge for Allāh’s sake but for the sake of making wealth. For this reason, he cooperated with the Umayyads. A faction of Arab modernists go so far as to compare Imām Ash-Shāfi‘ī <sup>رحمته</sup> to Paul in the sense that Imām Ash-Shāfi‘ī distorted the meanings of Qur’ān just as Paul distorted the tenets of Christianity (Al-Tarabushti , 2010).

The second trend of literature concerning Imām Ash-Shāfi‘ī consists of researchers and academicians who tried to defend Imām Ash-Shāfi‘ī. This second trend varies from superficial attempts of refuting the claims of Arab modernists to deep analyses, as it varies from just being an emotional reaction to support Imām Ash-Shāfi‘ī, to in-depth refutations. The most important literature in this genre are ‘*Al-Janayah ‘Ala Shaaf’ii Hiwar ‘Ilmi Hadi‘ ma’ Rafidhi ‘Ilmi Al-Fiqh wa al-Usul*’ by Merwan ibn Aziz al-Kurdi (2018); ‘*Jinayat Uzun*’ by Hakam al-Mutairi , (2010) and ‘*Mawqif al-Ittijah al-Hadathi mina al-Imām Ash-Shāfi‘ī*’, by Ahmad Al-Qushti (2016). These three books deal directly with the issue of Imām Ash-Shāfi‘ī. However, the first one mixed

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discussions between the whole science of Usūl al-Fiqh and the science of Ḥadīth as well as the discussion of many Fiqh issues that are not related specifically to Imām Ash-Shāfi‘ī, even if the Imām has his own selected opinions on them. In addition, the author focused only with the Arab modernist ‘Ōzon to answer his attack on Imām Ash-Shāfi‘ī. The second book also deals directly with ‘Ōzon. For this, this paper did not mention ‘Ōzon. The third book is rather a good summary of some aspects of the debates on the contemporary dispute on Imām Ash-Shāfi‘ī. Other than these three major books, authors from different backgrounds approach the issues related to the debate on Imām Ash-Shāfi‘ī in a larger scope, where Imām Ash-Shāfi‘ī رحمته is not the core topic of the book or the research.

For this reason, this paper focuses on specific aspects of the debate among leading Arab modernist figures on Imām Ash-Shāfi‘ī رحمته. The contribution of this research is based on a new understanding of the debate on Imām Ash-Shāfi‘ī among the Arab modernists, with a focus on refuting the charges against Imām Ash-Shāfi‘ī of “innovating” in religion. In addition, it demonstrated that the Arab modernists’ allegations against him are not established on a scientific investigation of his legacy. To prove his innocence, the research concentrates on tracing the rules of Usūl al-Fiqh back to times before Imām Ash-Shāfi‘ī. Moreover, it discusses aspects of the conditions of Ijtihād and stipulations for the position of Mujtahid, with a special concern on the condition of expertise in the Arabic language. In the same way, this research traces back those conditions and stipulations to before Imām Ash-Shāfi‘ī رحمته.

### 3. RESEARCH METHODOLOGY

The research uses inductive and analytical methods to investigate the origin of Usūl al-Fiqh and to position Imām Ash-Shāfi‘ī’s status within the history of Usūl al-Fiqh. In addition, this research uses comparative methods to address the accusations of Arab modernists on the topic and to compare them to expert scholars in the field. Then, this research uses critical analyses methods to evaluate the Arab modernists’ works.

### 4. DISCUSSION

#### 4.1 The Importance of Principles of Islamic jurisprudence and the Arrival of Imām Ash-Shāfi‘ī رحمته

The aim of Usūl al-Fiqh is to know the ways to reach the Sharī’ah rulings (Al-Ghazalī 1993), as it helps to understand what Allāh and His Messenger ﷺ intend in the Qur’ān and Sunnah Ibn Taymiyyah (nd). Moreover, Imām Ash-Shāfi‘ī set proficiency in this branch of knowledge as the first condition of Ijtihād. Al-Subki رحمته said: “Every scholar is under the level of Ijtihād except those who profoundly master Usūl al-Fiqh” (1995). This Islamic branch of knowledge holds its importance also in contemporary intellectual debates. For this, modern Muslim philosophers such

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as Taha Abd Al-Rahman devoted part of their intellectual project to discuss the importance of Usūl al-Fiqh (nd).

Before Imām Ash-Shāfi‘ī رحمته wrote *Ar-Risālah*, scholars since the days of the Companions used to use a variety of rules of interpretation and methods of Ijtihād. As Imām al-Juwayni رحمته referred in his *Burhān*: “We know that the Fatwas of the scholars of the Companions on new facts (after the life of the Prophet ﷺ) exceed the textual rulings (provided by the Qur’ān and Sunnah). An excess that cannot be limited by counting or contained by limits” (1997). Furthermore, after a discussion of the history of Ijtihād, Abū Sulaymān, a contemporary academician, concludes:

“... it is clear from this presentation that jurisprudential thought, with its natural and scientific requirements, was available to the scholars of the Companions... Their Ijtihād in Fiqh issues formed the scientific and methodological foundations of the thought of Usūl al-Fiqh. Later Muslim scholars discovered this thought of Usūl al-Fiqh” (1982).

In the lifetime of the Prophet ﷺ, the Companions used to make Ijtihād in understanding and interpreting commands of the Qur’ān and Sunnah. They used to make Ijtihād in applying these commands, especially when they were far from the presence of the Prophet ﷺ (Al-‘Ayni 1999). After endorsing their own Ijtihād, the Companions used to come back to the Prophet ﷺ and convey their Ijtihād to him, in order to either ratify it or adjust it (Abū Ya‘la 1990), Al-Shirāzi (1403AH), Al-Sam’ani (1999). Moreover, Ibn Ḥajar رحمته has affirmed that the Companions made Ijtihād in the presence of the Prophet ﷺ not only in his absence (1986). Noting here, that the issue of using Ijtihād at the time of the Prophet ﷺ is a controversial issue among Muslim scholars Al-Juwayni (nd), Al-Rāzi (1997), Al-Ghazālī (1992), Al-‘Ómīdi (nd).

It is true that from a pure Fiqh point of view, the issues upon which the Companions applied Ijtihād are not of great importance as Al-Rāzi رحمته pointed out (1997). However, the various occasions of the Companions’ Ijtihād are important in proving that the Companions did proceed to do Ijtihād according to a specific methodology and systematic approach while the Prophet ﷺ was still alive Al-‘Ómīdi (ibid). This shows that the rules and regulations of understanding, interpreting and making Ijtihād that the scholars of Usūl al-Fiqh discuss were well known before Imām Ash-Shāfi‘ī رحمته wrote his various books on Usūl al-Fiqh. In this sense Ibn Taymiyyah رحمته said: “speaking about Usūl al-Fiqh and dividing it into Qur’ān, Sunnah, consensus, and Ijtihād al-Ra’y. In addition, to discussing the various ways that evidences indicate the Sharī’ah rulings are a well-known matter since the time of the Companions of Muhammad ﷺ and those who followed them, as well as they were known among Muslim scholars. The Companions were more established in

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this branch of knowledge [Usūl al-Fiqh] and other branches of Islamic knowledge than who come after them” (nd), Ibn Al-Qayyim (1983), An-Nawawī (1392 AH).

To support this claim, here are two examples of the Companions’ Ijtihād in the lifetime of the Prophet ﷺ. First, when the verse of *Tayyammum* [the dry ritual of purification] came down to release some difficult situations where a Muslim cannot take ablution or a shower, ‘Ammār ibn Yāsir رضى الله عنه made an analogy Qiyās with full washing in case of Janābah [state of ritual impurity]. He rolled on the ground so that the dust reached all of his body like in the case of a full water wash. However, the Prophet ﷺ rectified his understanding of the verse to show him that *Tayyammum* concerns only the face and the hand, Al-Bukhārī (1422 AH).

Second, when the Prophet ﷺ told the Companions not to pray ‘Asr prayer except in the quarters of Banu Qurayyah Al-Bukhārī (Ibid), the Companions held different views in understanding and interpreting the command of the Prophet ﷺ Ibn ‘Abd Al-Bar (1994). While some of them claimed that the Prophet ﷺ, meant that they go there, others took the literal meaning of that command and they postponed the ‘Asr prayer to after sundown. In the end, the Prophet ﷺ did not blame the process of Ijtihād of both. With such narrations, Muslim scholars support their claim that the Companions used to make Ijtihād in the lifetime of Prophet ﷺ Ibn Al-Jawzī (1997), Ibn Al-Mulaqqin (2008), An-Nawawī (Ibid). In addition, to many other situations where the Companions had used a variety of methods in their Ijtihād whether they used deduction or induction, or consensus [Ijmā’] or analogy [Qiyās]. On the other hand, the Companions used a variety of methods to unveil the reality of the apparent conflicts of some divine texts whether by showing abrogation [Naskh], or by showing the place of general [‘Āmm] and specific [Khāṣ], or cases of absolute [Muṭlaq] and specific [Muqayyad].

The reports above show that Imām Ash-Shāfi‘ī رحمه الله did not invent Usūl al-Fiqh from nothing, as he did not innovate in the religion or try to “put the Muslim intellect in a prison” as the Arab modernists claim. In this sense, Al-Subkī رحمه الله refuted the criticism against Imām Ash-Shāfi‘ī and the stipulation of Usūl al-Fiqh for the Mujtahid. He said: “If you say, the scholars of the Companions and those of the Followers and the followers of the Followers were among the greatest Mujtahids and this knowledge (Usūl al-Fiqh) did not exist until Imām Ash-Shāfi‘ī came and wrote on it. So how could you stipulate it as a required knowledge for the Ijtihād? I say: The Companions and their Followers were familiar with Usūl al-Fiqh by their natural character as they were familiar by nature with Arabic grammar before Al-Khalīl and Sibawayh came” (1995).

From this, we see what Imām Ash-Shāfi‘ī did for Usūl al-Fiqh is like what Sibawayh did for Arabic grammar. The latter wrote the rules of Arabic grammar, he was the first to knock the door

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of writing in this field but he was not the inventor of the rules of the Arabic language. Arabic rules and grammar existed before him and they were the Arabs' nature. In the same way, Imām Ash-Shāfi'ī did not originate a new knowledge from nowhere, but he has the honor to be the first Muslim scholar to compile books on Usūl al-Fiqh Al-Bayhaqī (1997), Al-Rāzī (nd), Ibn Taymiyyah (Ibid). In this way, no one can say that people were not thinking and were not debating before Aristotle. People were thinking and deducing as well as they were used to debating and arguing and to objecting by nature, however, people did not have full and accurate rules and logic for what they were exercising until Aristotle came. In the same way, Arab poets used to compose great poems before al-Farahidī provided the various *Buhur al-sh'iar* of Arabic poetry. For this al-Fakhr al-Rāzī said after mentioning Aristotle and al-Farahidi:

“... in the same way, people used to talk about Usūl al-Fiqh, argue and object, but, they did not have a complete referred law in knowing the evidences of Sharī'ah, the way to oppose those evidences and the way of selection. Ash-Shāfi'ī deduced the principles of Usūl al-Fiqh...” (Ibid).

In addition, what refutes the Arab modernists' claim that Imām Ash-Shāfi'ī رحمته did innovate in religion is that Imām Ash-Shāfi'ī wrote his famous book of Usūl al-Fiqh *Al-Risālah* as an answer to the request of Imām 'Abd Al-Raḥmān ibn Maḥdī, who asked him to write for him about various topics of Usūl al-Fiqh Al-Bayhaqī (1991) Al-Baghdādī (2001). It becomes clear that scholars around Imām Ash-Shāfi'ī were aware about the various issues of interpretation and Ijtihād; however, they did not have a textbook or a reference that gathered these various aspects concerning the knowledge of understanding, interpreting the Qur'ān and Sunnah and the ways of Ijtihād as well.

Imām Ash-Shāfi'ī رحمته wrote a variety of books on different issues of Usūl al-Fiqh, such as *Al-Risālah*, *Ahkām al-Qur'ān*, *Ikhtilāf al-Hadith*, *Ibtal al-Istihsan* and *Jima' al-'Ilm*. His masterpiece on Usūl al-Fiqh is *Al-Risālah*, a book that Imām Ash-Shāfi'ī wrote twice as al-Rāzī discussed (Ibid): once in Bagdad and the second time when he stayed in Egypt.

In addition to the request of 'Abd Al-Raḥmān ibn Maḥdī, Imām Ash-Shāfi'ī رحمته wrote on the topic of Usūl al-Fiqh and Ijtihād because of the following reasons: First, Imām Ash-Shāfi'ī witnessed the creation of both schools; first, the school of Ḥadīth in Madīnah, and second, the school of *Ra'y* in Iraq. He studied both schools in both their levels, general rules and details of Fiqh and Fatwa. Therefore, he wrote to define the sound rules of interpretation in both schools. Second, he observed the shortcomings of some scholars in relaying on Ḥadīth Mursal and Munqaṭi', where he found that many of these types of Ḥadīth have no origin in the sound Sunnah. Therefore, he put stipulations to support Fatwas and selected opinions with such types of evidences. Third, he observed that some of the general rules of Ijtihād were not clear in some groups of scholars. Such

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as the independence of the Sunnah in providing new rulings and laws not found in the Qur'ān. Fourth, he observed that there were debates on Ḥadīth al-‘Ahād as in his discussion with Muhammad ibn Al-Ḥasan al-Shaybānī the disciple of Imām Abū Ḥanīfah. Fifth, he observed that some of the Followers who spread outside Madīnah used Ijtihād in issues where the Prophet ﷺ already provided legal rulings. However, those narrations (Aḥadīth) did not reach these Followers or even Companions. Consequently, people after that followed the opinions and Ijtihād of those scholars thinking that these Aḥadīth are either abrogated [Manṣūkh] or weak [D’āifah].

Thus, Imām Ash-Shāfi‘ī ر.ه. showed that the Companions and the scholars after them always sought the strongest evidence and that some narrations of the Prophet ﷺ have been reported only by a few Companions and were not known by the Followers. In this way, the Followers issued Ijtihād according to other rules of Usūl al-Fiqh. It is observed, that at the time of Imām Ash-Shāfi‘ī, the scholars of Ḥadīth put great efforts in collecting the narrations of the Prophet ﷺ. The result of such collections of the narrations of the Prophet ﷺ have revealed that some of the previous Ijtihād contradicted higher levels of evidences. For this reason, Imām Ash-Shāfi‘ī has discussed the issue of Taqlīd. Sixth, Imām Ash-Shāfi‘ī observed that some scholars wrongly spread the use of Ra’y and Istihsān linking them to the right rules of analogy [Qiyās] that the Lawgiver had authorized. In this sense, he discussed the issue of the soundness of Istihsān.

This section concludes that Usūl al-Fiqh and Ijtihād are traced back to times before Imām Ash-Shāfi‘ī ر.ه. and proves that the rules, regulations and provisions of understanding and Ijtihād are traced to the time of the Prophet ﷺ. In addition, it demonstrates that the Companions practically applied rules of Usūl al-Fiqh and ensued into Ijtihād. The following section provides evidences that the Companions were the first to establish the epistemology of Ijtihād.

#### 4.2 Ijtihād among the Companions

Ibn Taymiyyah ر.ه. said: “The Companions are the best-established scholars in Ijtihād” (Ibid), they were Arabs by nature and they understood and used the methods and techniques of Ijtihād. In the contemporary way of writing in Usūl al-Fiqh, the first chapter deals with the source of evidences. The literature shows that Muslim scholars divide the evidences into two groups: First, agreed upon evidences or transmitted evidences [Manqūl] and second un-transmitted sources that they call rational evidences [Ma’qūl]. They order the first group into the following; the Qur’ān then the Sunnah then comes the consensus Ijmā’ and last the analogy [Qiyās]. These are the four transmitted source of evidences [Manqūl]. After that come, a set of other un-transmitted sources that they call rational evidences Ma’qūl such as Istihsān, Maṣlahah Mursalah ... etc.

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The Companions' discussion about the source of the Islamic jurisprudence reveals that they were the first to fix the order and hierarchy of evidences for the Muslim intellect. Imām An-Nasā'ī رحمته reports in the *Sunan Al-Kubrā* that the Guided Caliph 'Umar رضي الله عنه wrote to the judge Shurayh:

“If a case comes to you that you find its command in the Qur'ān, so issue your judgment accordingly. If the case is not in the Qur'ān, seek for the Sunnah of the Prophet ﷺ. If you have a case that is neither in the Qur'ān nor in the Sunnah, so seek the consensus of people and go with it. However, if you find a case that is neither in the Qur'ān, nor in the Sunnah, nor a scholar preceded you to discuss it, then you can choose between two options. First, you can make your own Ijtihād and so you go on the process. Second, you hold back ...” (2001), Al-Bayhaqī (2003).

In addition to this, Ibn Mas'ūd رضي الله عنه said:

“... [If] anyone of you comes across a case; he has to seek its ruling in the Book of Allāh. If a case is not in the Book of Allāh, then he seeks the judgment of the Prophet ﷺ. If the current case is neither in the Book of Allāh nor in the rulings of the Prophet ﷺ, the person has to judge with the consensus of righteous scholars. However, if the case is neither in the Book of Allāh, nor the judgment of the Prophet ﷺ nor in the consensus of righteous scholars then he has to make Ijtihād of his opinion...” ‘Abd Al-Razzāq (1403 AH), Al-Ṭabarānī (1994).

These two texts prove that the first generation provided the current known order of evidences as they declared the hierarchy of Ijtihād sources. This hierarchical organization suggests that anyone who gives a Fatwa or a judgment according to his own Ijtihād and then discovers later that he has contradicted one of the three levels of sources and evidences, he has to drop his Ijtihād and change it according to the superior hierarchy of evidences. Imām Ash-Shāfi'ī رحمته in his *Ar-Risālah* reported various cases where Companions changed their Ijtihād once they came to know about evidences of a higher level. As an example, when the Guided Caliph 'Umar رضي الله عنه opted to put a ceiling for the dowry of marriage. Then a woman exposed the Guided Caliph with the evidence from the Book of Allāh that there can be no ceiling on that matter. Accordingly, 'Umar رضي الله عنه concealed his Ijtihād and went back to the Qur'ān, Ibn Manṣūr (1982), Al-Ṭahāwī (1994), Al-Dārimī (2000).

Another example concerning also the Guided Caliph 'Umar رضي الله عنه, when he issued a Fatwa that a person's wife does not inherit from the Diyah blood issue money, Al-Ḍaḥḥāk ibn Sufyān told him that Prophet ﷺ wrote to him about the and that the person's wife does inherit in this case.

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Consequently, ‘Umar رضي الله عنه went back to the higher level of evidences than his own Ijtihād Abū Dāwūd (2009), At-Tirmithī (1998), and Ibn Abī Shaybah (1997). Imām Ash-Shāfi‘ī رحمته explains that by saying:

“... when what opposed his own view reached him, he went back to the ruling of the Prophet ﷺ and left his own one. This was the way ‘Umar رضي الله عنه was in all his affairs and such must be people” (1940).

These reports from ‘Umar رضي الله عنه are not exclusive to him, many Companions have dealt with the level of sources in the same hierarchical way. Such as Abū Mūsā al-‘Ash‘arī رضي الله عنه in one issue of inheritance Al-Bukhārī (Ibid). Then Ibn Mas‘ūd رضي الله عنه corrected him with a narration from the Prophet ﷺ and Abū Mūsā رضي الله عنه changed his Ijtihād. Likewise, Ibn ‘Abbās رضي الله عنه changed his Ijtihād on Ṣarf exchange as Al-Khaṭīb al-Baghdādī reported (nd).

Such reports show that Imām Ash-Shāfi‘ī رحمته did not imprison the Muslim intellect in “the prison” of divine texts as alleged by modernists. Equally, they show clearly that the Companions themselves had fixed the matter of evidence hierarchy among the sources of Sharī‘ah and they confirm that the texts of Qur’ān and Sunnah have the last word over all kind of intellectual efforts and all types of Ijtihād, Ash-Shāfi‘ī (Ibid), Abū-Suleiman (Ibid).

On the other hand, the Companions were the first scholars to establish the authority of analogy (Qiyās). ‘Umar رضي الله عنه as reported by Al-Bayhaqī رحمته wrote to Shurayh:

“... then have understanding about the cases that are neither in Qur’ān nor in Sunnah. In this case use analogy among things and know the things that are alike and similar, and incline to the more beloved to Allāh in your consideration and most comparable to the truth...” (Ibid).

In practice, books of Ḥadīth and Usūl al-Fiqh are rich with many examples where the Companions used Qiyās . Al-Juwānī رحمته exposes the Companions’ use of Qiyās by saying:” and we know that the Companions used analogy in exceptional cases and normal ones. As we certainly know that they used to conjoin the new case to the original text when an effective reason is revealed...”.

What disturbed Arab modernists in the issue of analogy is that it is built upon two major pillars: the first is the ‘Aṣl origin and the second is the Far’ the new case. Arkun accused Imām Ash-Shāfi‘ī رحمته and scholars of Usūl al-Fiqh to have enclosed the Muslim mind in the myth of origin. This is because modernism is based on a non-origin approach to development and a divide with the past to build the future. In addition, Arab modernists see that the effective reason [‘Illah] in analogy is a means to “imprison Muslims in the original text”, Shahrur (2000). This means that the

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intellect does not work on the Usūl, rather the Qiyās that Imām Ash-Shāfi‘ī [allegedly] invented reduces the intellectual efforts to deal only with the Far’ Tarabushti (Ibid).

In the same way, the Companions were the first to establish the other sources of evidences such as Al-Maṣlahah Al-Rāzī (Ibid), Al-Shāṭibī (1995). Al-Shanqīṭī (1410 AH), Maqāṣid al-Sharī’ah (Ibn Taymiyah (Ibid), Al-Shāṭibī (Ibid) and other rational source of evidence.

Furthermore, scholars consider the chapter concerning implications of words [Dalīl al-Alfāz] as the second most important chapter in Usūl al-Fiqh and Ijtihād. This chapter deals with commands and prohibition [Amr wa Nahy], general and specific [‘Ām wa Khāṣ] and with absolute and qualified [Mutlaq wa Muqayyad]. Al-Shāṭibī (Ibid) considers those issues the most important ones in the process of Ijtihād. He argues that the Arabs were most concerned with the meanings of words as well as they worked on words to establish meanings. He follows the argument that for this reason, the Companions were the most qualified persons to understand the meanings of the divine texts. In addition, to the fact that they received the divine texts from the words of the Prophet ﷺ. Books of Usūl al-Fiqh and books of Ḥadīth provide a variety of examples where the Companions used the rules of interpretation and implication of the words of the divine texts. For example, the Companions showed that a command entails an obligation at the first level Abū Ya’la (1990), Al-Rāzī (Ibid). As they displayed that the general [‘Ām] has special words Al-‘Ōmidī (nd).

The above illustration demonstrates that the Companions were the first to deal with the issue of Sharī’ah sources of evidence, rules of interpretation and implications Dalīl and the issues related to the Ijtihād and Mujtahid. In addition, these examples show that Imām Ash-Shāfi‘ī رحمة الله عليه did not invent his epistemology to build a conspiracy against the Muslim intellect or to imprison the Muslim mind in “the prison” of divine texts and in the myth of origin.

#### 4.3 Arab Modernists and Imām Ash-Shāfi‘ī رحمة الله عليه

Arab modernists in their literature seek to devalue Muslim scholars who helped build the foundations of Islamic epistemology and the origin of the main branches of knowledge. They direct their struggle against four major Muslim scholars who can be considered the founding fathers of the Muslim theory of knowledge, namely: Imām Ash-Shāfi‘ī, for Usūl al-Fiqh; Imām Al-Bukhārī for collecting sound narrations; Sībawayh for Arabic grammar [Nahw] and Al-Jurjānī for Arabic rhetoric [Balāghah].

Abd Al-Majid al-Sharqi represents well the aim of his group of Arab modernists when he says that the great aim is to: “restrain from the pathologic attachment to the literalism [*harfiyat*] of the texts –especially the Qur’ānic text” (1991). This group wants to have a free reading and understanding

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of the divine texts, a reading that can lead to all variety of understandings and interpretations –an understanding that varies from one reader to another, according to the number of readers, as put by Arkun (2001). These methods of reading help them to get a very fluid Islamic jurisprudence: a modern jurisprudence that can fit all their needs, where prohibited matters can become allowed and where obligations can be removed, where even the issues related to the Islamic faith can be changed.

Nothing is fixed in the Arab modernism sphere; even the Islamic code of morals and ethics is questioned and then exchanged by modern un-coded modes. In their pursuit, Imām Ash-Shāfi‘ī رحمته seems to be the greatest obstacle, because he established the epistemology and the method of understanding and interpreting the divine texts. In this sense, Imām Ash-Shāfi‘ī رحمته has obviously put the rules of Ijtihād as well. To destroy the hierarchy of sources of evidence, the stipulations for the Mujtahid and the conditions of Ijtihād, Arab modernists started by confronting Imām Ash-Shāfi‘ī رحمته. In their attempt to do so, they trespass objectivity and scientific methods as well as fail to adhere to scientific ethics. The debates about Imām Ash-Shāfi‘ī رحمته in their literature turned into a personal attacks against his person.

Al-Jabiri, one prominent member of this group, while attempting to devalue Imām Ash-Shāfi‘ī رحمته, praised Imām Al-Shāṭibī رحمته in contrast. He thought that Al-Shāṭibī had created an epistemological divide and move away from Imām Ash-Shāfi‘ī رحمته and hence he put an end to the “invented” Usūl al-Fiqh of Imām Ash-Shāfi‘ī رحمته as he had put an end to the stipulations and methods of Ijtihād that “Imām Ash-Shāfi‘ī invented” (nd). What shows that Al-Jabiri did not understand Al-Shāṭibī, is that while he wanted to criticize Imām Ash-Shāfi‘ī رحمته and the scholars of Ijtihād after him, he claimed that these scholars rendered and reduced the Ijtihād in Sharī‘ah into an Ijtihād in the Arabic language. Ironically, Al-Shāṭibī is the most well-known Muslim scholar of all times to stipulate that the Mujtahid in Sharī‘ah must be a full Mujtahid in Arabic tongue. Al-Shāṭibī himself said: “it is indispensable for the Mujtahid in Sharī‘ah to reach the level of Ijtihād in the Arabic language...” (nd). On another occasion, Al-Shāṭibī declared that the Mujtahid in Sharī‘ah should understand Arabic language as the Arabs themselves used to understand their own language or at least the Mujtahid in Sharī‘ah should understand Arabic language as the great scholars of Arabic such as Sībawayh, al-Khalīl, al-Kisā‘ī and al-Farra’ (1996).

Ironically also, while Al-Jabiri claimed this epistemological divide with Imām Ash-Shāfi‘ī رحمته, he praised Al-Shāṭibī as building a harmonious epistemological connection with Ibn Hazm (2009). Moreover, Al-Jabiri displays a real misunderstanding of the Muslim scholars’ epistemological heritage when he put Al-Shāṭibī in the same epistemological channel with Ibn Hazm (Ibid). What clearly differentiates Al-Shāṭibī from Ibn Hazm is Al-Shāṭibī’s clear criticism of the epistemology and methods that Ibn Hazm uses to deduce Maqāṣid al-Sharī‘ah. Al-Shāṭibī criticizes the Zahiri

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school of Ibn Hazm to have reduced the sources of Maqāṣid al-Sharī'ah to only the apparent meanings and the texts. Whereas Al-Shāṭibī extends the multiple sources of Maqāṣid al-Sharī'ah to include analogy [Qiyās] (Ibid), which is a source that Al-Jabiri and his group totally reject. In addition, Al-Shāṭibī criticized Ibn Hazm more than once in his various books (Ibid). This shows an aspect of the contradictions of Arab modernists, which is due to their weak Sharī'ah and Arabic background, a weakness that negatively affects their understanding of Muslim scholars' heritage on both epistemological and methodological levels. Additionally, the contradictions that are an associated feature of the Arab modernists are due to a weak methodology in dealing with the Islamic heritage, a methodology based on selecting whatever helps in reaching the goal even if it leads to methodological contradictions, Taha Abd Al-Rahman (nd).

Furthermore, the reader of *Al-Muwafaqāt* of Al-Shāṭibī can only say that while Al-Shāṭibī was building the pillars of his new approach, he was investing the full power of the Arabic rhetoric project of Imām Ash-Shāfi'ī رحمته, Al-Saghir (1415 AH). Additionally, if the fundamental element of Al-Shāṭibī's project of Maqāṣid is built upon considering the Sharī'ah's universal detailed injunctions and texts, it is to be said that Imām Ash-Shāfi'ī رحمته preceded Al-Shāṭibī to that. Al-Ghazālī رحمته reported that Imām Ash-Shāfi'ī رحمته while discussing the steps that a Mujtahid must follow, mentioned the following: "... if he did not find a consensus, he (the Mujtahid) while using analogy [Qiyās], should observe first the universals [*al-Kuliyyāt*] and prioritize them over the detailed rulings and texts [*Juz 'iyāt*] ..." (1400 AH). In the same way Al-Juwaynī reported similar accounts from Imām Ash-Shāfi'ī (1997).

While Arab modernists criticize the rules of the Arabic language and the various methods that Arabs used their language in, they proposed completely alien methods to the Arab tongue in order to understand and interpret the Qur'ān and Sunnah that are in Arabic. They propose a foreign Western methodology to understand the Arabic texts in order to connect Muslim heritage to the Western epistemology. They either propose structuralism or deconstruction theory Hamudah (1998). The first one centralizes the reader rather than the author under the theory of the death of the author, while the second will link the understanding of any text to the understanding of another text and the second one depends on the third text in an infinite chain of texts. The end of this method is that no text has meaning because we are waiting to get the entirety of the texts. According to both methods, the texts of the Qur'ān and Sunnah will end with no meaning intended by the Lawgiver, (Al-Sharqi, 1990).

Arab modernists while attacking the stipulation of expertise in the Arab language to understand and interpret the Qur'ān and Sunnah ended by fighting Imām Ash-Shāfi'ī رحمته himself and his own intentions. Nasr Abū Zaid exemplifies one of the extreme subjectivity in criticizing Imām Ash-

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Shāfi‘ī رحمته. He clearly stated that Imām Ash-Shāfi‘ī رحمته encouraged the Arab language for the only reason that he was a “tyrant who founded the pillars of Arabism ideology”. He said:

“While he (Imām Ash-Shāfi‘ī رحمته) established the Arabic origin of the Qur’ān ... he did it from an ideological perspective implied the context of the intellectual and cultural conflict ... he (Imām Ash-Shāfi‘ī رحمته) subscribed not only to Arabism, but also to Qurrashism” (1992).

In this simple way the author diminishes the totality of Imām Ash-Shāfi‘ī’s works, contributions and authority to both the Sharī’ah and Arabic language to a mere bad intention and insincerity towards Allāh in order to glorify the Arab tongue. While reading Abū Zaid’s opinions on Imām Ash-Shāfi‘ī رحمته it seems that he turns him out to be a racist like Hitler was concerning the German race. In addition to Abū Zaid, Al-Tarabushti also transgresses the borders of objectivity and ethics in dealing with Imām Ash-Shāfi‘ī رحمته; and due to his Christian background, Al-Tarabushti compares Imām Ash-Shāfi‘ī رحمته to Paul who corrupted Christianity (2010).

Amazingly enough from Abū Zaid, is his struggle throughout the book to devalue the contributions of Imām Ash-Shāfi‘ī رحمته to Islamic epistemology as he reduces Imām Ash-Shāfi‘ī’s efforts to a mere struggle for Arabic ideology and Qurrashism. Abū Zaid commented on the selected opinion of Imām Ash-Shāfi‘ī رحمته that there are no non-Arabic words in the Qur’ān by saying:

“... it was also (the selected opinion of Imām Ash-Shāfi‘ī ), a confirmation of the sovereignty and dominance of the tongue of Quraysh over the languages of the Arabic tongue. ... The reality is that this position is not free from an inclination towards Qurrashism” (Ibid).

By these words, Abū Zaid reduces a full chapter in the science of the Qur’ān into Qurrashism and racism. This issue of whether there are non-Arabic words in the Qur’ān or not is a controversial one among Muslim scholars and Imām Ash-Shāfi‘ī رحمته was not the only one who held such a view but it is the viewpoint of the majority of Muslim scholars Al-Zarkashi (1990), not as wrongly mentioned by Abū Zaid.

Moreover, when Abū Zaid discusses the travels of Imām Ash-Shāfi‘ī رحمته to Egypt and settling there, he literally interprets the cause behind it: “that the governor of Egypt was a Qurashī and Hāshimī (Ibid).” Arab modernists in their fight against the person of Imām Ash-Shāfi‘ī رحمته are too blind to distinguish between historical facts. In this sense, Abū Zaid has accused Imām Ash-Shāfi‘ī رحمته of cooperating deliberately with the Umayyads. He said: “... but the most important expression of Ash-Shāfi‘ī’s inclination to Qurrashism, is that he was the only jurist of his time to deliberately cooperate with the Umayyads...” (Ibid).

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It is an astonishing statement, when the reader knows that the Umayyads collapsed in 132 AH and Imām Ash-Shāfi‘ī رحمته was born 18 years later in 150 AH in the same year when Imām Abū Ḥanīfah رحمته died. Another unreasonable claim in this statement is that while Abū Zaid himself declared that Imām Ash-Shāfi‘ī رحمته was the only jurist to cooperate with the Umayyads, he contradicts himself when before this he claimed that the two disciples of Abū Ḥanīfah, namely Abū Yūsuf and Muhammad ibn al-Hasan have preceded Imām Ash-Shāfi‘ī رحمته in cooperating with the Umayyads (Ibid). It is not only Abū Zaid who is mistaking history, on the other hand Hasan Hanafī declares that Imām Ash-Shāfi‘ī رحمته was a student and disciple of Imām Abū Ḥanīfah رحمته (2004) while all historians know that Imām Ash-Shāfi‘ī رحمته was born in the same year that Abū Ḥanīfah رحمته died. It is strange to see two Arab modernists falling into historical mistakes, where both of them did not know that Imām Ash-Shāfi‘ī رحمته was born 18 years after the collapse of the Umayyads and it was the same year Abū Ḥanīfah رحمته died.

Third, Arab modernists devalue the efforts of Imām Ash-Shāfi‘ī رحمته in books that are now published in several volumes. Nowadays, Masters, PhD theses and scientific papers and articles are published to study the various parts of Imām Ash-Shāfi‘ī’s heritage. However, Arab modernists in their quest to get a fluid understanding of the divine texts and a liberal ways of Ijtihād accuse Imām Ash-Shāfi‘ī رحمته of having imprisoned the Muslim mind in his theory of knowledge and his rules of interpretation Arkun (1998). As they accuse him of struggling for the sake of eliminating the intellectual and jurisprudential pluralism Arkun (Ibid), Abū Zaid (Ibid). Arkun goes far to say that because of Imām Ash-Shāfi‘ī’s stipulations of Ijtihād, the Muslim nation come to see that the Sharī‘ah is from a divine source (Ibid). Moreover, Nasr Abū Zaid accused Imām Ash-Shāfi‘ī that by his confirmation of the conditions of Ijtihād, he was able to make Muslims believe that religion and creed dominate all aspects of life (1995). Al-Marzuqī another Arab modernist goes further to accuse Imām Ash-Shāfi‘ī رحمته to have: “planned to steal the will of the nation” (2006) –astonishing declarations on the part of academicians and researchers!

What is more, is that Arab modernists accuse Imām Ash-Shāfi‘ī رحمته of establishing the duality of ‘Asl and Far’. Modernism is an epistemological divide with the past and hence with the origin as mentioned above. For modernism, there is no origin to go back for or to seek. For this Arkun sees that the Islamic idea is “prisoner and captive” of the idea of origin [‘Asl]. His attack against the idea of origin aims to establish the historicity of the divine texts (1999). While the duality of ‘Asl and Far’ is not the invention of Imām Ash-Shāfi‘ī رحمته, Arkun and his group want in reality to get rid of the understandings and interpretations of the three first generations. This is the noble first three generations of Islam who constitute the origin of the various way of understanding, interpreting the Qur’ān and Sunnah, as they represent the origin of the Islamic epistemology and the origin of its systematic thinking. On the other hand, the way of the three noble generations are

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the origins of the embodiment of the religious teaching in practice at the level of faith, worship, Islamic code of living and politics.

These four last accusations against Imām Ash-Shāfi‘ī رحمة الله عليه show clearly that Arab modernists turned their intellectual project into a war against Muslim scholars. They left the objectivity and scientific neutrality of research to jump in to personalization and prejudices.

## 5. CONCLUSION

This paper proved that the rules and maxims of Usūl al-Fiqh and conditions of Ijtihād are traced back to the Companions’ time. The paper displayed examples of the Companions’ methodology to understand the divine texts. Furthermore, it demonstrated that Imām Ash-Shāfi‘ī رحمة الله عليه did not innovate in religion and that scholars in his own generation were using the rules and regulations of Usūl al-Fiqh. Additionally, the paper evidenced the subjectivity of Arab modernists while dealing with the Muslim theory of knowledge as it provided with examples that they were unscientific in debating against Usūl al-Fiqh and Imām Ash-Shāfi‘ī رحمة الله عليه.

Due to the nature of academic papers, this study did not deal with other important issues involved by Arab modernists against Imām Ash-Shāfi‘ī رحمة الله عليه such as their subjective dealing with his lineage, his expertise and authority in both Sharī’ah and the Arabic language. In addition, this paper did not refute the claim of Arab modernists that Imām Ash-Shāfi‘ī رحمة الله عليه perpetrated “a coup against the Qur’ān in favor of the Sunnah”. Furthermore, the paper did not deal with specific treatment of this trend with specific rules and legal maxims claiming that Imām Ash-Shāfi‘ī رحمة الله عليه “invented” them, such as the rule that the Sharī’ah ruling is issued unconditionally to a particular case, but the ruling is generalized to similar cases [*Al-‘Ibrah bi ‘Umum al-Lafz la bi Khusus al-Sabab*]. For this, this paper opens the doors for other researchers to pursue the study and refute the various claims of this trend of Arab modernists against Imām Ash-Shāfi‘ī رحمة الله عليه, against other Muslim scholars and against Muslim heritage.

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