

Jurisprudential and Administrative Governance of Educational Endowments: A Study of Social Impact Through the Nawāzil of 'Al-Mi'yār al-Mu'rib' by al-Wansharīsī

الحوكمة الفقهية والإدارية للأوقاف التعليمية: دراسة في الأثر الاجتماعي من خلال نوازل "المعيار المعرب" للونشريسي (ت914هـ)

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الملخص:

يسعى هذا البحث إلى تحليل الأسس الفقهية والقانونية التي حكمت الأوقاف التعليمية في الغرب الإسلامي، مستكشفاً الأبعاد التشريعية والاجتماعية من خلال نوازل كتاب "المعيار". يتناول البحث كيف عالج فقهاء المالكية التحديات الإدارية والمالية لهذه المؤسسات، مبرزاً دور الفقه كأداة للحوكمة الرشيدة وضبط الحقوق والالتزامات بين أطراف العلاقة الوقفية. ويكشف التحليل عن أن الوقف لم يكن مجرد آلية تمويل، بل نظاماً متكاملًا لإدارة الموارد، وتشكيل النخب العلمية، وضمان استقلالية المؤسسة التعليمية. كما يبرز البحث المرونة الفقهية في الموازنة بين شروط الواقفين ومتطلبات الواقع المتغير، ويقدم رؤية تراثية يمكن أن تسهم في مواجهة التحديات المعاصرة التي تواجه منظومة الأوقاف.

الكلمات المفتاحية: الوقف التعليمي؛ فقه النوازل؛ التشريع المالي الإسلامي؛ تاريخ القانون؛ الحوكمة الوقفية.

Abstract:

This research aims to analyze the legal and jurisprudential foundations that governed educational endowments in the Islamic West, exploring the legislative and social dimensions through the Nawazil in "Al-Mi'yar." It examines how Maliki jurists addressed administrative and financial challenges, highlighting the role of fiqh as a tool for good governance and defining rights and obligations. The analysis reveals that endowment was not just a funding mechanism but an integrated system for resource management, shaping scholarly elites, and ensuring educational autonomy. The research highlights jurisprudential flexibility in balancing Endowers' conditions with changing realities, offering heritage-based insights for contemporary endowment challenges.

Key words: Educational Endowment; Fiqh al-Nawazil; Islamic Financial Legislation; History of Law; Endowment Governance.

Introduction:

In Islamic civilization, the endowment (waqf) system constituted the cornerstone in the construction of its scientific and social edifice. It served as a vital conduit that facilitated the financial and administrative independence of educational institutions, enabling them to fulfill their mission far from the vicissitudes of politics and the pressures of authority.

This research investigates the hypothesis that the endowment functioned not merely as a financing mechanism, but rather as an integrated social and economic system that wove a network of relationships between endowers (wāqifūn), scholars, students, and the community at large. It explores how this system laid the foundation for a comprehensive scholarly renaissance whose impact extended for centuries, by providing material security, stimulating research, and ensuring the continuity of intellectual output. Furthermore, the study examines how the establishment of these endowments fostered a robust sphere of social and intellectual life, raising critical questions regarding its administrative independence and the degree to which it was controlled by the ruling authorities.

Scholarly discourse frequently examines this structure as a foundational element in debates concerning pre-modern Islamic civil society. While the endowment undeniably presented a decentralized model for delivering public goods—often operating parallel to exclusive political patronage—the extent of its political autonomy remains a subject of historical inquiry. By providing institutional financial independence, it functioned as a vital component in the socioeconomic fabric of Islamic civilization¹.

In this context, the Islamic West, with its distinguished Mālikī school of jurisprudence, emerges as a particularly rich field for studying the practical applications of the endowment. This is especially true when examined through the lens of fiqh al-nawāzil—the applied jurisprudence of contextual, emerging issues—which reflected lived reality in all its complexity and challenges.

The book "Al-Mi'yār al-Mu'rib wa-l-Jāmi' al-Mughrib 'an Fatāwā Ahl Ifrīqiyah wa-l-Andalus wa-l-Maghrib" by Imam Aḥmad ibn Yaḥyā al-Wansharīsī (d. 914 AH) is the most comprehensive work compiled in this domain. It is not merely a jurisprudential encyclopedia but a rich historical and social register. Through its practical legal opinions (fatāwā), known as nawāzil, it documents how jurisprudence interacted with the evolving realities of its time and how jurists addressed the problems confronting endowment institutions, particularly the educational endowments that formed the intellectual lifeblood of those lands. This positions the text as more than a legal code; it functions as a socio-legal archive, a repository of contextual legal rulings from which a "thick description" of a society's legal, economic, and social life can be reconstructed, allowing for a study of law-in-action rather than just prescriptive legal theory.

Research Problem

The central problem of this research lies in the fact that studies on educational endowments often rely on texts of normative jurisprudence or general historical documentation, which can present an idealized or static picture. In contrast, the treasure trove of living information and practical details remains confined within the compendia of nawāzil, which have not yet been sufficiently utilized to uncover the true social dynamics that governed these institutions. Scholarly literature frequently indicates a methodological gap

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between the idealized models presented in normative fiqh manuals and the practical, administrative realities of the endowment. Historiographical studies of the Islamic West suggest that while theoretical texts established the legal boundaries, the living dynamics and operational challenges of these institutions are most authentically captured in the Nawāzil².

Hence, this research seeks to plumb the depths of this reality through the fatāwā of Al-Mi'yār, attempting to answer fundamental questions: How did Mālikī jurists, through the mechanism of nawāzil, address the practical—financial, administrative, and social—challenges that confronted educational endowments? What do these fatāwā reveal about the social structure of the endowment institution and the nature of the relationship between its parties: the endower (wāqif), the supervisor (nāẓir), the beneficiary (whether student or teacher), and the ruling authority? And how did these fatāwā contribute to shaping the identity of the "seeker of knowledge" and regulating the entire educational sphere?

Research Objectives

This research seeks to achieve the following objectives:

1. To analyze and classify the jurisprudential nawāzil related to educational endowments (schools, students, teachers, books, stipends) contained in al-Wansharīsī's Al-Mi'yār.
2. To deduce the social and economic dimensions latent within these fatāwā, such as the criteria for eligibility for the endowment, mechanisms for managing financial crises, and regulations for conduct within the educational institution.
3. To highlight the jurisprudential methodologies adopted by the jurists of Al-Mi'yār in balancing the conditions stipulated by endowers with the requirements of a changing reality, such as the principles of public interest (maṣlaḥa), custom ('urf), and the jurisprudence of priorities (fiqh al-awlawiyyāt).
4. To connect the heritage-based jurisprudence derived from the nawāzil with the contemporary challenges facing the educational endowment system in the Islamic world, and to present insights inspired by this heritage for its revitalization.

Significance of the Research

This study derives its importance from its ambition to move beyond a purely abstract jurisprudential analysis of rulings. It presents the book Al-Mi'yār as an anthropological and socio-historical source that reveals a living, breathing reality of the educational institution in the Islamic West. It is an attempt to read between the lines of the fatāwā to understand how the endowment was an effective tool in social engineering, in shaping scholarly elites, and in ensuring the sustainability of the educational enterprise. The study also gains significance from its endeavor to enrich the contemporary discourse on the reform and development of endowments by providing practical insights drawn from the Mālikī jurisprudential heritage. This heritage has proven throughout its history to possess a remarkable flexibility and capacity for adaptation to new circumstances, which may contribute to finding authentic solutions to current challenges.

Previous Studies

This study intersects with three primary fields of knowledge and reviews their existing literature as follows:

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First: Studies on Educational Endowments: Numerous modern studies have addressed the topic of educational endowments and their impact on Islamic civilization. For instance, a 2023 study by Mī'ād Āl Namlān, Hind bint Rabī'ah, and Hayfā' al-Suḥaym reviewed the types of educational endowments and their contemporary challenges, noting their historical diversity and positive impact. Similarly, a 2017 study by Manāl al-Sālim and Sārah al-Manqāsh analyzed the variety of these endowments and their role in achieving social justice and financial independence for educational institutions. These studies contribute to painting a panoramic picture of the importance of educational endowment, but they often lack the deep jurisprudential analysis, grounded in a specific geographical and temporal context, that the fiqh al-nawāzil provides and which this study aims to deliver.

Second: Studies on Fiqh al-Nawāzil: The jurisprudence of nawāzil has garnered significant attention from researchers as a unique source for social and legal history, particularly in the Islamic West. Key studies include Tawfīq al-Ghalbzūrī's (1981) "Fiqh al-Nawāzil fī al-Gharb al-Islāmī" [Al-Iḥyā' Journal, Issue 19], and Aḥmad Khuwayldī's (2011) "Al-Wāqī'iyyah fī al-Ijtihād al-Fiqhī 'inda al-Mālikiyyah". These academic inquiries have systematically underscored the traits of "realism" (wāqī'iyyah) and "locality" (maḥalliyyah) inherent in the Mālikī school's nawāzil literature. As these studies demonstrate, this is particularly manifested in the Maghribī jurisprudential adherence to prevailing local practice ('Amal) and custom ('Urf), which strictly prioritized socially integrated, actual events over hypothetical or abstract opinions. Despite the importance of these studies in elucidating the methodology of fiqh al-nawāzil, they rarely focus independently and in detail on the educational endowment sector, instead addressing scattered issues from various chapters of jurisprudence.

Third: Studies on al-Wansharīsī's Al-Mi'yār: The book Al-Mi'yār has received considerable attention from researchers. Prominent works include Al-'Arabī al-'Ayyāt's (2021) study "Al-Ta'rīkh min khilāl kutub al-Nawāzil al-Fiqhiyyah: Al-Mi'yār al-Mu'rib unamūdhan", which highlighted its indispensable value as a historical source. In addition, Nūḥ Mu'adhdhin and Qandūz Māḥī's (2021) research "Al-Takhrīj 'alā al-Qawā'id 'inda al-Mālikiyyah min khilāl Nawāzil al-Mi'yār" focused on extracting jurisprudential maxims from the text. While these scholarly efforts are commendable in exploring the book's historical and jurisprudential dimensions, no independent study has been dedicated to systematically combining an analysis of the nawāzil of educational endowments in Al-Mi'yār with a deduction of their social impact.

Therefore, the research gap that this study seeks to fill lies in the systematic connection between these three chapters: using fiqh al-nawāzil, through its most important source in the Islamic West, Al-Mi'yār, not only to extract jurisprudential rulings but to analyze the profound social impact of educational endowments and to offer a socio-jurisprudential reading of this rich heritage.

Research Methodology

To achieve the research objectives, an integrated methodology will be adopted, combining:

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- The Qualitative Analysis: This involves describing the nawāzil extracted from Al-Mi'yār and classifying them thematically, followed by an analysis of their jurisprudential, legal, and social content.
- The Inductive Method: This is used to extract the social significations, jurisprudential principles, and administrative maxims latent within the fatāwā, which were not always explicitly stated by the jurists.
- The Comparative Jurisprudential Method: This is employed when analyzing nawāzil that contain multiple answers from different jurists, in order to highlight the diversity of viewpoints and the foundations upon which each jurist constructed his response.

Research Plan

Following this introduction, the research is divided into an integrated, systematic structure that begins with a methodological prologue aimed at defining the fundamental terminology and grounding the core concepts of the study. Thereafter, the main body of the research is divided into four principal sections. The first section analyzes the financial and administrative governance of educational endowments through nawāzil concerning crisis management and the authority of the supervisor. The second section examines the social impact of the endowment and its role in constructing the identity of beneficiaries and regulating the educational sphere. The third section sheds light on the flexibility of Mālikī fiqh in reconciling text and public interest, by reviewing nawāzil on adapting Endowers' conditions and the role of custom. In the fourth section, the research presents a reading of yesterday's nawāzil in light of today's challenges, drawing from them practical solutions for activating contemporary endowments. Finally, the study concludes with a comprehensive summary of the findings and the scientific and practical recommendations reached.

1. Defining Terminology and Rooting Core Concepts

A study in any field of knowledge cannot proceed soundly until its terminology is defined and its concepts are controlled, as these are the keys to accessing its substance. Accordingly, this section is dedicated to clarifying the meaning of the three terms upon which the structure of this research is built.

1.1 The Concept of "Educational Endowments"

Linguistically, the term endowment is defined as "detention" and "prevention"³. In jurisprudential terminology, it is defined as "the inalienation of the corpus and the dedication of its usufruct to a charitable purpose"⁴. It is, therefore, a contract whereby a person alienates something from their ownership as a form of charity, such that the Endower's right to dispose of it is severed, and its benefits are directed to a charitable cause as an act of devotion to God Almighty. The underlying theological motivation is the establishment of a sustainable charity (ṣadaqa jāriyah), a good deed whose rewards continue to accrue even after the Endower's death.

The term "educational endowments" (al-awqāf al-ta'līmiyyah) is a specification of this general concept and can be defined as: any fixed or movable assets, such as real estate or capital, designated for expenditure on a specific or general area related to the educational or research process. This broad definition encompasses everything that serves knowledge and education, from the construction of institutions like schools, libraries, and Sufi educational

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centers (zawāyā), through the provision of human resources by paying the stipends of teachers and grants for students, to the supply of material necessities such as books, tools, stationery, and equipment. These endowments were the vital artery that nourished the scholarly movement in Islamic civilization, ensuring its continuity and flourishing.

1.2 The Concept of " al-Nawāzil"

Linguistically, a nāzilah is one of the severe calamities of time that descends upon a people⁵. In jurisprudential terminology, scholars' definitions vary, though they are close in substance. It is defined as "new occurrences for which there is no prior text or juristic reasoning"⁶, or as "emergent issues that require a ruling from Islamic law"⁷. Fiqh al-nawāzil, therefore, is the applied jurisprudence that deals with occurring incidents, where the jurist strives to find a legal ruling for them based on the principles of Sharia and its comprehensive legal maxims.

The jurisprudence of nawāzil in the Mālikī school, particularly in the Islamic West, was distinguished by characteristics that made it a unique source not only for jurisprudence but also for social history. Among its most prominent features are⁸:

- **Realism (al-wāqī'iyyah):** Mālikī jurists, emulating Imam Mālik himself, were keen to issue fatāwā on cases that had actually occurred and were reluctant to delve into hypothetical matters, which made their legal opinions closely tied to lived reality.
- **Locality (al-maḥalliyyah):** A nāzilah is often linked to a specific place, time, and context, and the fatāwā frequently mention details of the incident and the names of its parties, transforming them into historical, social, and economic documents.

This emphasis on realism and locality reveals a distinct legal epistemology. Unlike schools that might prioritize abstract analogical reasoning (qiyās) from textual sources alone, the Mālikī practice documented in Al-Mi'yār elevates lived reality (al-wāqī') to an essential variable in the contextual application of the law (Taḥqīq al-Manāt). This approach constitutes an empirically grounded legal methodology where the facts of the case are not merely an object of the law, but a fundamental input into the legal reasoning process itself.

1.3 Biography of Imam al-Wansharīsī (d. 914 AH) and Introduction to his Book "Al-Mi'yār al-Mu'rib"

He is the jurist-imam, the standard-bearer of the Mālikī school in his age, Abū al-'Abbās Aḥmad ibn Yaḥyā ibn Muḥammad ibn 'Abd al-Wāḥid al-Wansharīsī, of Tlemcen by origin and upbringing, and of Fes by residence and burial. He was born in the Wansharis mountains in Algeria around the year 834 AH, moved to Tlemcen where he studied under its great scholars, and then settled in Fes, where he took the lead in teaching and issuing fatāwā until his death in the year 914 AH⁹.

His book, Al-Mi'yār al-Mu'rib wa-l-Jāmi' al-Mughrib 'an Fatāwā Ahl Ifrīqiyah wa-l-Andalus wa-l-Maghrib, is the pearl of his works and the greatest compilation ever produced in the field of Mālikī fiqh al-nawāzil. Over decades, al-Wansharīsī gathered in it the fatāwā of hundreds of jurists from the various metropolises of the Islamic West (Qayrawan, Tlemcen, Cordoba, Fes, and others) spanning eight centuries. His role was not limited to compilation; he also arranged, compared, commented, and weighed the opinions, which made the book an indispensable reference for judges and jurisconsults (muftīs), and a primary source for understanding the social, economic, and cultural life in the Islamic West through the eyes of

its jurists¹⁰. The value of Al-Mi'yār transcends its status as a jurisprudential compendium to become a living record of an entire society, making it the ideal source for this study.

2. Financial and Administrative Governance of Educational Endowments: The Jurisprudence of Priorities in Times of Crisis

The nawāzil of Al-Mi'yār reveal that educational endowments were not static charitable institutions, but living economic entities that faced real financial and administrative challenges, from fluctuating revenues to the necessity of maintenance, and from the pressures of authority to the need to make investment decisions. The jurists confronted these challenges with a developed, practical jurisprudence—what might today be termed governance and risk management—as they sought to ensure the sustainability of the endowment institution and the realization of its ultimate objectives by establishing clear protocols for crisis management, affirming the endowment's autonomy, and activating its assets.

2.1 Managing Financial Crises Amidst Declining Endowment Revenue

The recurrence of nawāzil related to shortfalls in revenue and the inability to cover stipends clearly indicates that endowment income was volatile and not always guaranteed. This forced jurists to develop practical mechanisms to manage these financial risks. Their fatāwā were not just legal rulings but advanced strategies for risk management in a non-profit institution, aimed at ensuring its survival by protecting its core functions and managing beneficiary expectations during times of economic contraction. These strategies are manifest in three main principles derived from the nawāzil.

First: The Principle of Priority by Precedence (al-awlawiyyah bi-l-sabq): In a nāzilah concerning the Grand Mosque of al-Madīnah al-Bayḍā' that was presented to the jurist 'Abd Allāh al-'Abdūsī, the question was how to distribute the revenue after it became insufficient to cover both old and newly created stipends (for a book reader, an exegete) as well as an increase in the imam's stipend. Al-'Abdūsī's response was decisive: "There is no proportional sharing... rather, the holders of the old stipends are given precedence and are paid first"¹¹. This ruling establishes a clear administrative principle that protects acquired rights and institutional stability. The original positions upon which the endowment was founded are the essence of its existence, while functions created from a surplus are considered secondary and must be the first to bear the burden of a financial shortfall, thereby ensuring the institution's core structure does not collapse.

Second: The Principle of Priority by Necessity (al-awlawiyyah bi-l-ḍarūrah): A nāzilah from the jurist Khalaf ibn Abī Bakr ibn Ni'mah concerning a school whose revenue was insufficient to meet the stipends of the imam, muezzin, teacher, professor, students, custodian, and gatekeeper, introduces another equally important principle. He ruled that the "custodian and the gatekeeper" should be paid first and receive their full stipends before anyone else, reasoning that they are "ancillary to the maintenance of the building, which cannot be complete without them." The need for sweeping, furnishing, fuel, and the opening and closing of the door are essential for the school to function as a viable place for study and residence¹². What remains after securing these vital functions is then subject to proportional sharing among the other beneficiaries. This prioritization reflects a deep understanding of the

institution's operational needs and presents a model for setting priorities based on the functions most critical for service continuity.

Third: The Principle of Proportional Distribution and Partnership (al-muḥāṣṣah wa-l-sharākah): In a lengthy Fes nāzilah, one of the most complex in this chapter, a dispute arose over who should bear the shortfall in the revenue of an endowment designated for a school: should the deficit fall on the students alone, or should everyone share it proportionally? The opinions of the senior jurists of Fes and Tlemcen varied, revealing the richness of the jurisprudential debate. One group, including Abū al-'Abbās al-Qabbāb, held that the salaried employees (the jurist, the professor, the servants) should be paid before the students, because what the former receive is "remuneration" (ijārah) for work, while what the students receive is "a kindness and assistance" (rifq wa-i'ānah). In contrast, another group, led by Ibrāhīm al-Yaznāsānī, presented a powerful argument for proportional sharing among all, even going so far as to suggest prioritizing the students over others, because the school was originally built for them, their work (study and attendance) is the greatest of works, and taking a wage for teaching jurisprudence and leading prayer is disfavored (makrūh) in the Mālikī school, unlike receiving assistance for seeking knowledge¹³. This debate does not just determine a financial distribution mechanism; it redefines the nature of the relationship between the beneficiaries and the endowment. Are they employees or partners? The preference for proportional sharing implies that all are partners in the revenue, profiting together and losing together, which reinforces a sense of belonging to the institution and shared responsibility.

2.2 The Authority of the Nāzir and the Role of the Ruler in Endowment Management

The awqāf did not operate in a political vacuum; a dialectical relationship existed between them and the ruling authority. Set against the historical backdrop of the Marinid dynasty's systemic efforts to centralize fiscal control and appropriate agrarian and endowed revenues, a nāzilah concerning a Sultan's decree (ḡahīr) reveals a critical aspect of this dynamic, representing an external political intervention in the internal financial affairs of an endowment. The Sultan had issued a patent (barā'ah) authorizing one of the beneficiaries of a school's stipend to complete his share from the "surplus" (wafr) in a special manner, to the exclusion of the other deserving recipients¹⁴.

The response of the jurist al-'Abdūsī to this nāzilah was a categorical rejection of this measure, affirming a firmly established jurisprudential and administrative principle: this surplus "is the right of all, attached to them. It should either be entirely held back for repairs, or it should be entirely disbursed to everyone who has a right in it from among the stipend holders. Your taking of it by special designation is not permissible for you in any way or circumstance"¹⁵. This response is not merely a financial fatwā; it is a powerful declaration of the legal autonomy of the endowment and the supremacy of jurisprudential principles (such as justice in distribution and non-discrimination) over political will. This act demonstrates a pre-modern Islamic system of checks and balances, where the jurist functions as a constitutional guardian of the endowment institution, and Sharia serves as a higher law that binds even the ruler. This specific ruling is not an isolated incident; rather, it epitomizes a broader, documented historical tension between an expanding state apparatus seeking financial hegemony and semi-autonomous civil institutions fighting to retain their legal integrity¹⁶, with

the jurists emerging as guardians of the endowment's integrity against potential overreach by the authorities.

2.3 The Disposition of Endowment Assets: Between Stagnation and Development

The endowment is often viewed as a rigid system focused on preserving the endowed asset and prohibiting its disposal. However, the nawāzil of Al-Mi'yār present a more flexible and dynamic picture, where jurists move from merely "preserving the principal" to "maximizing the social impact" of the usufruct. This purpose-driven (maqāsidī) vision is clearly manifest in a nāzilah concerning endowed Qur'ans (maṣāḥif) that was presented to the jurist Muḥammad ibn Qāsim al-Qūrī. After recovering valuable Qur'ans that had been looted, al-Qūrī did not content himself with the traditional fatwā of storing them in a treasury. Instead, he proposed multiple options that reflect a profound understanding of the objectives of the endowment:

1. **The First Option (Preservation):** Gathering them in a single treasury, which he considered "suboptimal" (marjūḥ).
2. **The Second Option (Generalizing the Benefit):** Distributing them among multiple treasuries and different locations, so that their benefit could reach the largest possible number of people, which he considered "the preferable" (al-rājiḥ).
3. **The Third Option (Reinvesting the Principal):** This was the most audacious option, where he proposed "endowing some of them and selling the rest, and spending the proceeds on what has a general benefit... such as building and repairing bridges... or ransoming captives"¹⁷.

The proposal to sell endowed Qur'ans to finance infrastructure projects or liberate prisoners represents a paradigm shift in endowment thought. It signifies that the ultimate objective of the endowment (doing good and earning divine reward) can transcend the specific physical form of the endowment (the Qur'ans) if circumstances and priorities change. This fatwā represents an early form of asset reallocation or socially responsible investing, where the jurist acts as a strategic manager seeking to maximize the "charitable return" for both the Endower and the community. It demonstrates a highly sophisticated, purpose-driven jurisprudence that moves from a rigid focus on the physical asset to a dynamic focus on maximizing the Endower's intended impact.

Another nāzilah reinforces this approach, distinguishing between books of science and endowed Qur'ans. The former are "by their nature a form of endowment," and it is permissible to take them out of their designated place to be used elsewhere, because the purpose is the dissemination of knowledge. As for Qur'ans, the Endower's condition is followed more strictly due to their special sanctity¹⁸. This distinction clarifies that jurists adapted rulings based on the nature of the endowed asset and its purpose, lending great flexibility to the endowment system.

3. The Social Impact in Shaping Beneficiary Identity and Regulating the Educational Sphere

Educational endowments were not merely passive sources of funding; they were active instruments of social engineering, used by jurists and the community to shape the identity of the scholarly elite, regulate behavior within the educational space, and entrench

certain values. The nawāzil reveal that access to endowment resources (such as lodging and grants) was not an absolute right but was conditional upon the beneficiaries' adherence to a set of stringent academic and behavioral standards. This transformed the endowment institution into a mechanism for social selection, filtration, and control.

3.1 Endowment as a Tool for Defining and Shaping the Identity of the "Seeker of Knowledge"

The nawāzil go beyond simply defining formal eligibility criteria to collectively sketch an ideal social identity for the "professional seeker of knowledge." This ideal student is not a casual learner but a dedicated and devoted individual from whom tangible results are expected. By controlling access to resources, the endowment system acted as a gatekeeper, actively shaping a scholarly class, excluding those deemed unproductive or not serious, and thereby professionalizing the pursuit of knowledge. This process is clearly evident in a number of nawāzil:

- **On the Conditions for Residence in a School:** In his response concerning those who reside in a school for non-scholarly purposes, the jurist al-'Abdūsī does not merely require their expulsion but sets out a precise list of who is entitled to reside there: "Only he may reside in the school who has reached twenty years of age or more, has begun to read and engage in advanced religious studies to the best of his ability, attends the recitation of the Qur'anic portion (ḥizb) in the morning and evening, and attends the sessions of its reciters, adhering to this constantly"¹⁹. More importantly, he establishes a performance evaluation mechanism: if a student "resides in it for ten years and his excellence (najābatuhu) does not become apparent, he is to be forcibly removed, because he is rendering the endowment idle"²⁰. Here, the endowment not only supports the student but demands productivity (najābah) and holds him accountable for it. This system functioned as a meritocratic filter, transforming the pursuit of knowledge into a professionalized career path with clear performance metrics.
- **On the Conditions for a Student's Entitlement to Endowment Funds:** The jurist al-Mawwāq provides an even stricter definition. When asked about endowments for "poor students" and whether someone who attends knowledge circles occasionally but is occupied with teaching children or a trade is eligible, his response was that taking endowment funds for one who "has reached a limit where he neither grows in himself nor causes others to grow" is not permissible. He then sets elite criteria for eligibility: "None should take from a endowment for students of knowledge except one whose understanding is sharp, whose perception is good, whose character is pure, and who has dedicated himself to benefiting and being of benefit (tajarrada li-an yantafi'a wa-yanfa)"²¹. The conditions of "dedication" and "being of benefit" transform the student from a mere recipient of knowledge into a scholar-in-the-making, expected to contribute to the enrichment of scholarly life.
- **On the Endowment for Foreign Students:** In a nāzilah concerning Professor Abū Sa'īd ibn Lubb, he is asked about an endowment for "foreign students of knowledge" and whether it includes one who limits himself to reciting the Qur'an. The response draws a sharp distinction: "A student is not one who limits himself to the study of the Qur'an alone; rather, a student is one who has embarked upon learning and studying

knowledge and frequents its people"²². This definition excludes the Qur'an memorizer who has not engaged in the study of other sciences (such as jurisprudence, language, and hadith) from the category of specialized "students of knowledge," reflecting a hierarchy of knowledge and a channeling of endowment resources toward advanced scholarly disciplines.

3.2 Regulating Conduct and Protecting the Sanctity of the Educational Space

The nawāzil show that the physical space of the endowment institution (the school, the mosque) is not just a location but a sacred space with a specific function that must not be violated. The rulings in this domain aim not only to regulate use but to entrench the principle that the institution's mission transcends its physical structure.

- **Prohibiting the Personal Exploitation of the School:** In the aforementioned nāzilah of al-'Abdūsī, the prohibition is not limited to non-students but extends to the students themselves. They are forbidden from using their rooms in the school for purposes that do not directly serve the educational goal, such as excessive storage or providing a resting place for married students who own houses outside. A student is also forbidden from "lending out a room under his control," and a person devoted to worship who has abandoned the pursuit of learning is barred from residing there, because the endowment "was only endowed for one who worships through the pursuit of Islamic scholarship"²³. All these rulings protect the function of the school as a place exclusively dedicated to the pursuit of knowledge.
- **Prioritizing Principle over Building:** A nāzilah from the jurist Aḥmad al-Qabbāb presents a radical position in this regard. When asked about a school whose rooms were empty and which was on the verge of ruin, and whether it was permissible to house people who did not meet the endowment's conditions in it out of public interest and to preserve the building, his response was an unequivocal rejection: "As for its being inhabited by one in whom the conditions of the endowment are not met, no. As for your excuse of fear of its ruin, what does it matter to you if it falls into ruin?"²⁴. This fatwā, which may seem harsh on the surface, carries a profound principle: preserving the identity, principles, and conditions of the endowment is higher and more important than preserving its physical walls. The building is merely a vessel; the essence of the endowment is its mission and its conditions, and to compromise on them is to demolish the true endowment, even if the structure remains standing.
- **Protecting the Public Space for Worship and Education:** The nāzilah concerning the prohibition of teaching young boys in mosques is a recurring theme²⁵. The reason is clear: to protect the mosque as a place of worship from the noise, play, and potential impurities that may accompany the presence of young children. This prohibition does not signify hostility toward the education of children but rather a regulation of spaces, assigning each activity its proper place: mosques for worship and higher learning, and primary schools (katātīb) for teaching the young. This reflects an awareness of the importance of preserving the sanctity of public places and their primary function.

4. The Flexibility of Mālikī Fiqh in Reconciling Text and Public Interest

One of the most prominent revelations of the nawāzil in Al-Mi'yār is the exceptional capacity of Mālikī jurisprudence to interact with changing reality and to balance the commitment to the texts of the Endowers with the realization of the public interest and the assurance of the endowment's continued benefit.

4.1 Adapting the Endower's Conditions When Impracticable: The Principle of "The Best Available Alternative"

The nāzilah concerning a piece of land endowed for a professor with ideal qualifications that "are not found today in anyone," which was presented to the jurist Ibn Marzūq, represents a classic case of this jurisprudential flexibility²⁶. The impossibility of fulfilling these conditions could have led to the "idleness of the endowment" and the loss of its benefit, which would contradict the original intent of the Endower who desired continuous reward.

Ibn Marzūq's fatwā was a practical and creative solution. He said: "It should be disbursed to the best person who can be found from among the people of the aforementioned place, and whenever someone better is found, it should be transferred to him"²⁷. This fatwā not only solves the immediate problem but also establishes a dynamic mechanism for the future. It is an embodiment of what can be called the "principle of the best available," which is a practical application of major jurisprudential maxims such as "the feasible does not fall away due to the unfeasible" and the principle of public interest (maṣlaḥa). This juristic maneuver indicates that the continuity of the endowment's operation and the realization of its public benefit (maṣlaḥa) is a higher goal than the literal adherence to a Endower's conditions that have become unrealistic. This demonstrates a legal system capable of self-correction to avoid stagnation and ensure the sustainability of the benefit.

4.2 The Role of Custom ('Urf) in Interpreting and Applying Endowment Conditions: A Social and Juristic Critique

The nāzilah concerning the annual duration of teaching, which al-Wansharīsī himself raised with his teachers, serves as a true test case for the role of custom ('urf) as a dynamic legislative source and a tool for social critique²⁸. A dispute had arisen over a dismissed teacher who demanded a full year's stipend (al-musānahah), arguing that the prevailing custom was to limit teaching to only two or three months a year, and that this amount of time was sufficient to merit the annual stipend. In the absence of an explicit text from the Endower specifying the duration of teaching, custom became the arbiter. But the question the jurists posed was: which custom is to be considered authoritative?

- **The Emergent Custom:** Represented by the dismissed teacher, which involved teaching for only a few months.
- **The Original Custom:** To which the jurists Ibrāhīm al-'Uqbānī and Muḥammad al-Sanūsī referred, asserting that "the custom of the people of the city in the past was to be engrossed in the pursuit of knowledge for the entire year," and that the current custom "is outside the purpose of the endower and the Sharia." Al-Sanūsī went so far as to say that what the teacher takes on this basis is "illicit gain (suḥt) that is not permissible for him"²⁹.

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This debate transcends a mere disagreement over which custom is more authoritative. It is, in its essence, a debate about social and academic values. The "old custom" represents a golden age of scholarly devotion, while the "new custom" represents a decline in standards and a utilitarian view of education. When jurists like al-Sanūsī and al-'Uqbānī insist on the original custom, they are not just presenting a jurisprudential argument; they are engaging in a scathing social critique. They are using the legal principle of 'urf to challenge what they see as a degradation of academic and ethical standards in their time, attempting to enforce a return to a higher, more committed standard. This reveals the role of the jurist as not just a legal technician but also a public moralist and a guardian of societal values.

5. Reading Yesterday's Nawāzil in Light of Today's Challenges

Delving into the jurisprudence of nawāzil is not merely a journey into the history of fiqh; it is an extended dialogue with the heritage to draw wisdom for addressing the issues of the present. Many of the challenges that faced educational endowments in the era of al-Wansharīsī still resonate in our contemporary reality, albeit in different forms. The practical and realistic jurisprudence of Al-Mi'yār offers us models and insights that can serve as a starting point for renewing endowment thought and activating its developmental role today.

5.1 Evaluating the Juristic Stance in "Al-Mi'yār" vis-à-vis Contemporary Endowment Challenges

Modern studies indicate that endowments in the Islamic world face grave challenges, summarized as low returns, inadequate governance, legislative stagnation, and a lack of public awareness, among others³⁰. By rereading the nawāzil of Al-Mi'yār in light of these challenges, we find that Mālikī jurists confronted the roots of these problems and offered practical solutions:

- **In the Face of Low Returns and Weak Financing:** The nawāzil on proportional sharing and the setting of priorities³¹ present integrated historical models for managing financial crises and distributing scarce resources with efficiency and justice. They establish a "jurisprudence of endowment priorities" that can guide the spending policies of contemporary endowment institutions, ensuring that core functions are secured before expanding into secondary activities.
- **In the Face of Governance and Oversight Problems:** The nāzilah of the Sultan's decree³² and the nāzilah on the dismissal of the supervisor³³ address pivotal issues in governance: the autonomy of the endowment from political interference and the necessity of holding the supervisor accountable when negligence is proven. The jurist al-'Abdūsī's rejection of the Sultan's order, and the jurist Faraj ibn Lubb's affirmation that a supervisor is only dismissed for a legally valid reason (negligence and dereliction of duty), draw a clear framework for the independence of endowment decision-making and the necessity of its subjection to accountability—two essential pillars of any sound governance system.
- **In the Face of Stagnation due to Endowers' Conditions:** Overcoming modern 'legislative stagnation'³⁴ requires an analytical reconciliation of historical precedents that appear contradictory on the surface, such as the strict refusal to repurpose a ruined school³⁵ versus the flexible permission to sell endowed Qur'ans³⁶. A deep maqāṣidī

(purposive) analysis reveals a profound jurisprudential consistency. In the case of the school, the objective (maqṣid) was exclusive scholarship; housing commoners fundamentally undermined this mission, making the preservation of the physical structure irrelevant. Conversely, the objective of the Qur'ans was public utility; when overabundance caused stagnation, monetizing the surplus to fund critical infrastructure actualized the Endower's ultimate goal. Both rulings consistently prioritize the maqṣid over rigid adherence to the physical form. This paradigm shifts the focus from a literal adherence to the Endower's 'wording' to the realization of their ultimate 'purpose,' opening the door wide for contemporary ijtihād to develop endowment assets and adapt them to the needs of the age"³⁷.

5.2 Drawing Solutions from Fiqh al-Nawāzil to Revitalize Modern Educational Endowments

The principles derived from the jurisprudence of Al-Mi'yār are not mere historical artifacts; they are practical maxims that can inspire contemporary reform efforts:

- **Activating the Principle of Maṣlaḥa in Endowment Investment:** The jurisprudence of balancing interests that al-Qūrī practiced in the nāzilah of the Qur'ans can inspire today's endowment administrators to adopt more audacious investment and development methods. Instead of freezing unproductive endowment assets, they can seek out legally sanctioned formulas—such as substitution (istibdāl)³⁸, transfer (munāqalah)³⁹, and diminishing partnership (mushārakah mutanāqishah)⁴⁰—to transform them into income-generating assets, with their revenues directed toward achieving the developmental objectives that society needs today, such as spending on scientific research, technology, and innovation⁴¹.
- **Applying the Principle of "The Best Available Alternative" to Solve the Problem of Stalled Endowments:** Today, there is a large number of endowments whose benefit has been suspended because their conditions have become unrealistic or impossible to fulfill. Applying the principle of "disburse to the best who can be found" can liberate these endowments from their stagnation and return them to the circle of giving and benefit by finding the closest possible alternatives that achieve the essence of the Endower's intent.
- **Redefining the Identity of Beneficiaries to Serve Development:** Just as the nawāzil of Al-Mi'yār precisely defined the identity of the "student of knowledge" deserving of support, contemporary endowment institutions, especially educational ones, can strategically direct their resources to support specializations that serve national development priorities, nurture the gifted and innovative, and fund research that addresses society's pressing problems, instead of the random and undirected distribution of grants and aid.

Returning to the spirit of fiqh al-nawāzil, with its practical and purpose-driven ethos, is not a regression to the past. It is a recovery of methodological tools that have proven their effectiveness and can help us build a brighter future for the institution of endowment in the Islamic world.

Conclusion

This research, through its analysis of the nawāzil of educational endowments in al-Wansharīsī's *Al-Mi'yār al-Mu'rib*, has arrived at a set of principal findings that paint a living and dynamic picture of the endowment institution in the Islamic West and reveal the depth of Mālikī jurisprudential thought in addressing real-world issues. These findings can be summarized in the following points:

- **The Endowment as an Integrated Economic System:** The nawāzil showed that educational endowments were not static assets but active economic entities with their own mechanisms for resource management, confronting financial crises, and setting spending priorities. Through their fatāwā, jurists developed practical risk-management protocols to ensure institutional sustainability, such as the principles of "priority by precedence," "priority by necessity," and "proportional sharing."
- **The Endowment as a Tool for Social Regulation and Elite Formation:** The study revealed that the endowment played a pivotal role in defining the identity of the "student of knowledge" and the criteria for his eligibility for support. Support was not an absolute right but was conditional upon seriousness, productivity, and ethical commitment, which transformed the endowment into an effective mechanism for selecting and shaping a dedicated and productive scholarly elite and for regulating behavior within the educational sphere.
- **The Autonomy of the Endowment Institution:** The nawāzil, especially the nāzilah of the Sultan's decree, highlighted the firm stance of the jurists in defending the financial and administrative autonomy of the endowment and their rejection of political interventions that contradicted the principles of justice and the Endowers' conditions. This entrenches the role of jurisprudence as a check on authority and a protector of civil society institutions.
- **The Flexibility and Purpose-Driven Nature of Mālikī Fiqh:** The flexibility of Mālikī jurisprudence and its capacity for adaptation were manifest in fatāwā that adapted Endowers' conditions when they became impossible to fulfill, prioritized public interest over literal adherence to the text, and employed custom as a vital source in interpreting and applying contracts. The jurists moved from a logic of "preserving the principal" to one of "maximizing the impact," as seen in the fatwā on selling some endowed Qur'ans for the public good.
- **Al-Mi'yār as a Source for Social and Legal History:** The research has proven that the book *Al-Mi'yār* is not merely a jurisprudential compendium but a first-rate historical, social, economic, and legal record, through which a near-complete picture of the reality of educational institutions and their daily challenges in the Islamic West can be reconstructed.

Recommendations

Based on the findings reached, the research offers the following recommendations:

Scientific Recommendations

1. A call for intensifying studies that take the books of jurisprudential nawāzil (such as *Al-Mi'yār* by al-Wansharīsī, *Nawāzil al-Burzulī*, and *al-Māzūnī*) as a primary source

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for studying the social and economic history of the Islamic world, and not limiting their use to the extraction of abstract jurisprudential rulings.

2. Encouraging comparative research between the fiqh al-nawāzil in different legal schools and across various geographical regions to study the impact of local context on the formation of jurisprudential solutions to endowment-related issues.

Practical Recommendations

1. **Developing Endowment Legislation:** A call for legislative bodies and contemporary endowment institutions to benefit from the flexibility inherent in Mālikī fiqh al-nawāzil (the principles of public interest, custom, and the jurisprudence of priorities) to develop the regulations governing endowments. This should allow for the development of their assets, the diversification of their investment formulas, and the adaptation of their expenditures to the pressing needs of the age, such as supporting scientific research, innovation, and entrepreneurship.
2. **Moving from Text to Purpose:** The necessity of adopting a purpose-driven (maqāsidī) jurisprudential approach in dealing with Endowers' conditions, one that focuses on achieving the Endower's ultimate "purpose" (divine reward and public benefit) instead of adhering literally to their "wording," especially in the case of old endowments whose benefit has been suspended due to changed circumstances.
3. **Strengthening Governance and Autonomy:** Working to build models of sound governance for endowment institutions that ensure transparency, accountability, and efficiency in administration, while emphasizing the need to protect the autonomy of endowment decision-making from unjustified pressures, inspired by the spirit of the fatāwā that defended the entity of the endowment.
4. **Developing Clear Strategies for Beneficiaries:** Modern educational endowment institutions should establish clear and directed criteria for selecting the beneficiaries of their grants and aid, in a manner that serves their strategic goals and the developmental priorities of the community, just as the jurists of Al-Mi'yār did in their definition of the identity of the "student of knowledge" worthy of support.

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34. Āl Namlān, Mī'ād bint 'Abd Allāh, et al., previously cited source, pp. 470-472.
35. Al-Wansharīsī, *Al-Mi'yār al-Mu'rib*, vol. 7, p. 86.
36. Ibid., vol. 7, p. 18.
37. 'Adlah 'Alī Ḥasan 'Alī, previously cited source, p. 1296.
38. *Istibdāl* (Substitution): A jurisprudential mechanism that permits the liquidation or sale of an unproductive or ruined endowment asset, using the proceeds to purchase a new, economically viable asset that serves as an endowment in its place. This ensures the continuity of the endowment's charitable utility (*manfa'ah*). For a detailed study on its developmental dimensions, see: Bā'alī, Khidīr, Sa'īd, and Rafīs Bāḥmad. "Istibdāl al-Awqāf: Al-Hukm al-Shar'ī wa-al-Ab'ād al-Tanmawīyyah," *Majallat Āfāq 'Ilmiyyah...* vol. 13, no. 5 (2021), pp. 673-691.
39. *Munāqalah* (Exchange/Transfer): The direct physical exchange or swap of a stagnant endowment property for another property of equal or greater value and utility. While similar to *Istibdāl*, it specifically involves a direct barter rather than a monetary sale, strictly preserving the Endower's ultimate intent. See: Ibn Qāḍī al-Jabal, *Al-Munāqalah wa-al-Istibdāl bi-al-Awqāf*, ed. Muḥammad Sulaymān al-Ashqar (Beirut: Mu'assasat al-Risālah, 2001), p. 103.
40. *Mushārahakah Mutanāqīshah* (Diminishing Partnership): A contemporary Islamic financial engineering instrument where the endowment enters into a joint ownership agreement with a financier (e.g., an Islamic bank) to develop an idle endowment property. The endowment gradually purchases the financier's equity share using the generated rental income until the endowment gains absolute ownership of the newly developed, income-generating asset. See: Ghaniyyah, "Al-Mushārahakah al-Mutanāqīshah al-Muntahiyah bi-al-Tamlīk ka-Āliyah li-Tanmiyat al-Waqf," *Majallat al-Tawāṣul*, no. 27 (2021), p. 172.

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