



The Role of ‘Abd al-Razzāq al-Sanhūrī in the Revival of Islamic Jurisprudence and the Codification of Modern Civil Laws

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Abstract

‘Abd al-Razzāq al-Sanhūrī, one of the most prominent jurists in the Islamic world, played a distinctive role in reviving Islamic jurisprudence (*fiqh*) and integrating it with modern legal systems. The central problem addressed in this study is how Islamic jurisprudence can serve as a source for the formulation of modern civil laws and how al-Sanhūrī’s efforts in this regard may be evaluated. The significance of this study derives from the fact that, despite the profound influence of al-Sanhūrī’s model on the development of civil codes in the Arab world, his approach has often been examined either descriptively or without a critical assessment of its potential and limitations. Accordingly, the principal question of this article is: To what extent did al-Sanhūrī’s project succeed in reconciling Islamic jurisprudence with modern law, and what capacities and limitations does this model possess for its continuation and adaptation under contemporary conditions?

Employing a descriptive–analytical methodology and drawing upon al-Sanhūrī’s principal works as well as sources in comparative law, this study examines the theoretical foundations, methodology, and practical implications of his legal thought. The findings demonstrate that, by emphasizing the renewal of *ijtihād* in Islamic jurisprudence, deriving general and transhistorical legal principles, distinguishing between religious belief and *Sharī‘a* as a body of law, and employing the comparative method, al-Sanhūrī succeeded in incorporating elements of Islamic jurisprudence into modern civil legislation and redefining it as a dynamic legal system. At the same time, the findings reveal certain conceptual ambiguities and the risk of reducing *Sharī‘a* to a merely legal system. Overall, the study concludes that al-Sanhūrī’s project constitutes an inspiring yet critically revisable model that requires further theoretical development in order to address the legal challenges of the contemporary world.

Keywords: ‘Abd al-Razzāq al-Sanhūrī; Islamic jurisprudence (*fiqh*); comparative law; civil law; Islamic legal system.

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1. Introduction

The codification and reconstruction of Islamic jurisprudence following the independence of Arab countries from Western colonial domination became one of the central issues in the fields of jurisprudence and law. Although many of these countries initially continued to adhere to laws inherited from the colonial period, they gradually pursued their reform and indigenization in response to their own cultural traditions, social practices, and societal needs. In this context, Egypt came to be recognized as a pioneer in the development of modern civil legislation. Dr. Abd al-Razzaq al-Sanhuri, one of the most prominent jurists and legal scholars of the period, sought to draft a civil code for Egypt that would not merely replicate the French Civil Code, but would instead reflect the country's indigenous social and intellectual circumstances.

In pursuing this objective, al-Sanhuri encountered various challenges, including fundamental disagreements over the sources of legislation. Some religious scholars advocated complete reliance on Islamic jurisprudence, whereas other critics accused him of distancing himself from, and even being hostile toward, Islamic law. Such allegations raised serious questions concerning al-Sanhuri's actual position toward Islamic jurisprudence and its role within the legislative system.

The significance of examining al-Sanhuri's thought lies in the fact that he was not merely a legal theorist; rather, as a legislator and social reformer, he directly participated in the process of drafting civil laws in countries such as Egypt and Iraq and developed a lasting model for other Arab legal systems. Nevertheless, an assessment of his legacy cannot be confined to a historical perspective. A fundamental question in contemporary comparative legal scholarship is whether al-Sanhuri's model for integrating Islamic jurisprudence with modern law still possesses the capacity to provide a basis for innovation in contemporary legislation and to address the complex legal challenges of the twenty-first century. Accordingly, this study adopts a descriptive-analytical approach and draws upon primary jurisprudential sources and legislative texts to demonstrate that al-Sanhuri's project was not merely an individual endeavor, but rather a turning point in the history of interaction between Islamic Shari'a and modern law. The study also seeks to highlight the limitations and critical questions surrounding the continued applicability of this model while reconsidering its potential contributions to such fields as the codification of Islamic jurisprudence, comparative law, and the legal identity of Muslim societies.

From this perspective, numerous studies have sought to examine the intellectual and legislative legacy of Abd al-Razzaq al-Sanhuri. Among them, Guy Bechor, focusing on the colonial and postcolonial contexts, interprets

al-Sanhuri's project as part of the broader process of state-building and legal engineering in the Middle East (Bechor, 2007). Omar Shalakany, adopting a critical perspective, presents al-Sanhuri not merely as a legal reformer but as a participant in the discourse of modernity and the mechanisms of power in the Arab world (Shalakany, 2005). Osama Arabi places greater emphasis on the jurisprudential and *ijtihādī* dimensions of his thought and highlights the flexible capacities of Islamic law within al-Sanhuri's project (Arabi, 2001). Finally, Ind Hill, through an examination of the historical context of Egypt, describes al-Sanhuri as the principal architect of the modern civil code and emphasizes his contribution to bridging Islamic jurisprudence and modern law (Hill, 1987).

Despite this valuable body of scholarship, most previous studies have either remained within a historical and descriptive framework or have addressed the political and social implications only at a general level. Consequently, there is still a lack of systematic research capable of simultaneously examining the theoretical and legislative dimensions of al-Sanhuri's thought, assessing the effectiveness of his model in confronting contemporary legal challenges—including globalization, emerging technologies, and transformations in the international legal order—and ultimately clarifying the limitations and future potential of his project from an analytical perspective. This article seeks to address this research gap by offering a critical and updated reconsideration of al-Sanhuri's intellectual and legislative legacy.

2. Historical Background and Scholarly Legacy of Abd al-Razzaq al-Sanhuri

Abd al-Razzaq al-Sanhuri (1895–1971) was one of the most prominent jurists and legal scholars in the Arab world. He was born in Alexandria into a poor family and spent his childhood as an orphan. After completing his elementary education and becoming familiar with classical Arabic literary texts, he received his LL.B. from the Khedivial School of Law in Cairo in 1917 and joined the Public Prosecution in Mansoura. His participation in the 1919 Egyptian Revolution led to his exile by the British authorities. In 1921, he traveled to France to pursue his studies at the University of Lyon, where he completed two doctoral dissertations: one in law, which received an award for the best dissertation, and another in political science focusing on the jurisprudence of the caliphate.

His return to Egypt marked the beginning of a highly productive period of teaching and scholarly research. In 1935, at the invitation of the Iraqi government, he founded the Baghdad Law School, prepared the draft of the Iraqi Civil Code, and established the *Iraqi Judicial Review*. He subsequently became dean of the Faculty of Law in Egypt and participated in international forums on comparative law. In addition to his academic activities, al-Sanhuri

served in various judicial and ministerial positions in Egypt; however, political pressures repeatedly forced him out of public office. In the following decades, through visits to newly independent Arab countries, he played an important role in drafting and developing their civil codes. Nevertheless, during the rule of Gamal Abdel Nasser, he was placed under political restrictions and remained largely excluded from public life until his death (Abduh, 2011, p. 13).

2.1. Analysis of the Scholarly and Legislative Achievements

Abd al-Razzaq al-Sanhuri is regarded as one of the most prominent legal thinkers in the Arab world and one of the most influential figures in the process of reconstructing and modernizing the legal systems of Muslim countries. The significance of al-Sanhuri's thought lies not only in his theoretical stature but also in the direct connection he established between the production of legal knowledge and legislative practice. His intellectual project was founded on the premise that Islamic jurisprudence, when subjected to *ijtihādī* and comparative reinterpretation, could serve as an effective source for the formulation of modern civil laws. Accordingly, al-Sanhuri's scholarly works may be understood as a systematic effort to reconcile the Islamic jurisprudential tradition with the legal requirements of the contemporary world.

Among al-Sanhuri's numerous writings, three works—*Al-Wasīṭ fī Sharḥ al-Qānūn al-Madani*, *Nazariyyat al-'Aqd*, and *Maṣādir al-Ḥaqq fī al-Fiqh al-Islāmī*—occupy a central position in explaining his legal thought and represent different dimensions of his scholarly and legislative project. *Al-Wasīṭ*, regarded as the most comprehensive comparative commentary on the Egyptian Civil Code, is not merely a legislative commentary but rather a legal encyclopedia in which the principles of civil law are analyzed through continuous reference to Islamic jurisprudence and Western legal systems. This work played a decisive role in institutionalizing the comparative method in civil law throughout the Arab world and became a major reference for judges and legal scholars (al-Sanhuri, 2000, p. 1).

Alongside this work, *Nazariyyat al-'Aqd* reflects the theoretical and conceptual dimension of al-Sanhuri's thought in the field of the law of obligations. In this work, al-Sanhuri presents the contract not merely as a legal institution but as a fundamental instrument for regulating social relations in modern society. Through his analysis of concepts such as will, consent, legal capacity, cause, and subject matter, he establishes a systematic connection between modern legal theories and the foundations of Islamic jurisprudence. The significance of this work lies in its demonstration that many of the principles underlying modern contract theory have deep roots in Islamic jurisprudence and that, through *ijtihādī* reinterpretation, these principles can be

reconstructed within contemporary legal systems (al-Sanhuri, 1998, p. 25).

The third work, *Maṣādir al-Ḥaqq fī al-Fiqh al-Islāmī*, provides a theoretical complement to the preceding two works and examines the foundations of rights within Islamic jurisprudence. By analyzing the sources through which rights arise and comparing them with Western legal theories, al-Sanhuri demonstrates that Islamic jurisprudence possesses a coherent and sophisticated structure concerning rights, obligations, and financial relations. This work played an important role in reinforcing the position of Islamic jurisprudence as one of the major legal traditions of the world and subsequently provided a foundation for numerous studies in comparative law (al-Sanhuri, 1997, p. 5).

Overall, these works demonstrate that al-Sanhuri's scholarly and legislative achievements were not merely a collection of theoretical writings; rather, they constituted a coherent project aimed at revitalizing Islamic jurisprudence, advancing comparative legal studies, and developing modern civil legislation in the Arab world.

2.2. The Impact of His Education and Professional Career on His Thought

Abd al-Razzaq al-Sanhuri's educational and professional experiences had a significant influence on the formation of his legal theories and approaches. In 1921, he traveled to France to pursue further studies and, under the influence of scholars such as Édouard Lambert, became acquainted with comparative law and modern methods of legal codification. This period of study, particularly at the University of Lyon, provided him with an opportunity to engage with complex legal questions and the challenges involved in reconciling Islamic law with modern Western legal systems. His doctoral dissertation, entitled *Al-Quyūd al-Ta'āqudiyya 'alā Hurriyyat al-'Amal fī al-Qaḍā' al-Injilīzī* [Contractual Restrictions on Freedom of Employment in English Law], which received the award for the best doctoral dissertation, demonstrated his ability to analyze and critically evaluate different legal systems.

During this period, al-Sanhuri criticized attitudes of intellectual dependency toward Western civilization and challenged Orientalist interpretations and secular theories concerning the Islamic caliphate. This critical orientation not only strengthened his Islamic intellectual identity but also laid the foundation for his efforts to construct a bridge between Islamic legal traditions and modern legislation. By emphasizing the necessity of preserving Islamic principles within new legal frameworks, he demonstrated that Western legal achievements could be utilized without undermining the fundamental principles of Islam.

Al-Sanhuri's professional activities in the Egyptian judiciary and subsequently in Iraq also had a profound influence on his intellectual outlook. As a public prosecutor and later as a professor of law, he was able to put his

theoretical ideas into practice. The drafting of the Iraqi Civil Code, which is regarded as one of the most significant examples of combining Islamic jurisprudence with Western legal principles, demonstrated his expertise in this field. Through the establishment of the Faculty of Law in Iraq and the publication of *Al-Qadā'*, he not only contributed to legal education but also promoted modern approaches to legal thought.

Ultimately, following his return to Egypt and his teaching career at Cairo University, al-Sanhuri emerged as one of the leading figures in the field of Islamic jurisprudence and legal reform. Through his role in drafting the Egyptian Civil Code of 1948, he exerted a profound influence on the country's legal system and demonstrated how Islamic principles could be integrated with the requirements of modern society. These efforts not only contributed to strengthening Islamic legal identity but also provided a foundation for new debates in comparative law.

Overall, al-Sanhuri's educational background and professional career contributed to the formation of a comprehensive and balanced approach to the relationship between Islamic jurisprudence and modern law, an approach that continues to exert considerable influence (al-Anas, 2023, p. 49).

2.3. A Comparison of His Legislative Projects in Different Countries

Abd al-Razzaq al-Sanhuri was one of the most prominent legal scholars in the Islamic and Arab worlds who, through combining Islamic jurisprudence with the principles of modern law, played a pivotal role in the development of the legal systems of Arab countries. The Egyptian Civil Code, one of his most comprehensive achievements, was based on three principal sources: the earlier Egyptian Civil Code, which had been largely influenced by French law; the principles of Islamic jurisprudence rooted in the Islamic legal tradition; and modern Western legislation, which provided legal instruments for responding to the needs of contemporary societies. By introducing Islamic jurisprudence as one of the principal sources of law, the Code established a connection between tradition and modernity and provided a model for other Arab legal systems.

In Iraq, al-Sanhuri pursued a similar project, although under more complex circumstances. Drawing upon sources such as the *Majallat al-Ahkām al-'Adliyya*, which was based primarily on Hanafi jurisprudence, as well as comparative principles derived from Western legal systems, he succeeded in developing a legal framework that preserved Islamic legal identity while responding to emerging economic and social needs. The Iraqi Civil Code, with its coherent and integrative structure, subsequently became an influential model not only for Iraq but also for other Arab countries.

Al-Sanhuri also played an influential role in the development of legislation in

several Arab countries, including Libya, Kuwait, Syria, and the United Arab Emirates. By developing a deep understanding of the needs of these societies and the challenges confronting them, he contributed to legal frameworks that combined the principles of Islamic jurisprudence with modern legal instruments, thereby responding both to cultural traditions and to the requirements of social and economic development. These efforts not only strengthened the position of Islamic law within modern legal systems but also demonstrated that Islamic jurisprudence could respond flexibly to the needs of contemporary societies ('Imāra, 2010, pp. 17, 91).

Al-Sanhuri's comparative and innovative approach to legislative drafting in different countries provided a lasting model for scholars and lawmakers. His works demonstrate how the intellectual and legal heritage of Islamic jurisprudence can be employed as a dynamic and living resource for addressing modern challenges without abandoning historical and cultural identity. These achievements established al-Sanhuri as one of the pioneers of Islamic and comparative law, whose intellectual legacy continues to provide an important source of inspiration for subsequent generations.

3. Stages in Al-Sanhuri's Development of Islamic Legislation

Throughout his professional career, Abd al-Razzaq al-Sanhuri pursued three major stages in the incorporation of Islamic jurisprudence into the legal systems of Arab countries. These stages consisted of: first, the utilization of Islamic jurisprudence in the Egyptian Civil Code; second, the integration of Islamic jurisprudence with Western law in the Iraqi Civil Code; and, ultimately, the promotion of Islamic jurisprudence as a principal foundation for legislation in Arab countries. Each stage involved particular challenges and opportunities and constituted an important component of al-Sanhuri's broader intellectual and practical project.

3.1. First Stage: The Use of Islamic Jurisprudence in the Egyptian Civil Code

The first stage involved the incorporation of Islamic jurisprudence into Egyptian legislation. The International Conference of Comparative Law held in The Hague, Netherlands, in 1932, coincided with the fiftieth anniversary of the establishment of the old Egyptian Civil Code. This provided al-Sanhuri with an opportunity to emphasize the need to reconsider the Egyptian Civil Code and restore the position of Islamic jurisprudence as a source of legislation. This effort was particularly significant in a context in which the authority of French law had been shaped by colonial conditions and foreign intervention. An examination of al-Sanhuri's works demonstrates that he consistently sought the most appropriate methods for developing modern legislation on the basis of

Islamic legal sources, not only in Egypt but throughout the Arab world. He was among the early advocates of unifying Arab civil law on the basis of the principles of Islamic Sharīʿa.

Among the principal reasons for the influence of Islamic jurisprudence on the Egyptian Civil Code was al-Sanhuri's incorporation of numerous Islamic legal rulings into the new legislation. Accordingly, the Egyptian Civil Code drew upon three principal sources:

1) The previous Egyptian Civil Code, which was largely derived from French law. 2) Modern Western legislation, including Germanic, Latin, and other legal traditions. 3) Islamic jurisprudence (*fiqh*).

Al-Sanhuri stated in this regard:

“Among these three sources, Islamic jurisprudence occupies a special position. The new Code has both drawn upon the texts of Islamic jurisprudence and derived new legal rulings from it. Moreover, it has established Islamic jurisprudence as an official source of civil law and placed it, after enacted legal provisions and custom, ahead of natural law and the principles of justice.”

3.1.1. The Codification of New Egyptian Laws and the Preservation of Islamic Jurisprudential Rules

Classical Islamic jurisprudence retained in the drafting of the new Egyptian legislation played an important role, particularly within the framework of the country's Civil Code. Al-Sanhuri and other lawmakers incorporated numerous jurisprudential principles and rulings into the structure of the new Civil Code. Thus, Islamic jurisprudence remained not merely an influential source but also a fundamental reference in the process of legal drafting and reform, to the extent that certain jurisprudential rulings and concepts were reconstructed and reconsidered within the framework of modern legislation.

These provisions included the sale by a person suffering from a terminal illness (Arts. 477–478), legal capacity (Arts. 48–119, 44–109), *shufʿa* or right of pre-emption (Arts. 935–948), gifts (*hiba*) (Arts. 486–504), payment of debts prior to the distribution of an estate (Arts. 891–899), *ghabn* or lesion in the sale of property belonging to a minor (Art. 845), the option of inspection (*khiyār al-ruʿyā*) (Arts. 419–422), the legal consequences of the destruction of the object of sale (Art. 437), planting trees on leased land, provisions concerning elevations and depressions of land (Arts. 856–869), party walls (Arts. 814–818), and limitation periods (Arts. 969–996).

3.1.2. The Introduction of New Jurisprudential Principles through the New Legislation

Some of the provisions derived from Islamic jurisprudence consisted of both

general legal principles and detailed rulings.

General principles: Among these general principles are the following:

The substantive orientation evident in many provisions reflects an affinity between Islamic jurisprudence and German legal thought. The new legislation adopted certain inherent tendencies characteristic of Latin legal systems while also using Islamic jurisprudence as a comparative standard.

1) The doctrine of abuse of rights (Art. 5), which was derived not only from Western legal systems but also from Islamic jurisprudence, particularly the jurisprudential principles concerning abusive exercise of rights.

2) The transfer of debt (Arts. 315–322), in relation to which Latin legal traditions were not followed, while German law was considered more compatible with Islamic jurisprudence; this approach consequently became one of the bases of the drafting process.

3) The principle of unforeseen circumstances (*hawādith ghayr al-mutarriqa*) or exceptional circumstances (Art. 147/2), which was incorporated into modern legislation. Accordingly, the new Code drew upon the Islamic jurisprudential doctrines of necessity (*darūra*) and legal excuse (*ʿudhr*).

Detailed rulings: Among the detailed provisions incorporated into the new legislation from Islamic jurisprudence were provisions concerning the contractual meeting (*majlis al-ʿaqd*) (Arts. 94–97), the lease of *waqf* property (Arts. 628–634), hoarding (*iḥtikār*) (Arts. 999–1014), and matters concerning the lease of agricultural land, including the destruction of crops and the termination of a lease following the death of the lessee in circumstances involving a recognized legal excuse.

Al-Sanhuri stated in this regard:

“This is the extent to which the new codification has reached in its adoption of the rulings of Islamic Sharīʿa.”

He further observed:

“However, in order for Islamic Sharīʿa to become the primary foundation of our Civil Code, a strong scholarly renaissance is required for the study of Islamic law in the light of comparative law.”

(al-Sanhuri, *Al-Wasīṭ fī Sharḥ al-Qānūn al-Madanī al-Jadīd*, Vol. 1, p. 60).

Elsewhere, al-Sanhuri states that those who claim that theories such as nullity, defects of consent, and rescission are entirely incompatible with Islamic Sharīʿa are, in fact, fundamentally mistaken regarding the nature of Islamic law. He emphasizes that Islamic Sharīʿa cannot be served through principles that are falsely attributed to it.

Al-Sanhuri also addresses the authority of Islamic jurisprudence within the Egyptian Civil Code, arguing that:

“This makes it necessary to study Sharī‘a from the perspective of comparative law, not merely from the standpoint of theoretical jurisprudence, but also from the perspective of practical application. In such circumstances, the jurist or judge is required, in the absence of an explicit legal text and established custom, to refer to the rulings of Islamic jurisprudence before resorting to the sources of natural law and the principles of justice.” (al-Sanhuri, 2000, Vol. 1, p. 60).

Al-Sanhuri did not stop at this stage. He went beyond the limitations of individual schools of jurisprudence and refused to restrict the principles of Sharī‘a to rulings agreed upon by particular schools. Instead, he regarded these principles as jurisprudential rulings that could be employed without adherence to any single legal school. He stated:

“Reference to Islamic jurisprudence in its established texts becomes obligatory when Islamic Sharī‘a is recognized as an official source of civil law. Accordingly, all schools of jurisprudence may be consulted and utilized, without the need to restrict oneself to determining the prevailing opinion within the Hanafi school.” (Ministry of Justice of Egypt, 1950, p. 191).

In other words, al-Sanhuri emphasized that there was no general necessity to confine the legislative process to the Hanafi school (al-Sanhuri, 2000, Vol. 1, p. 61).

Al-Sanhuri further explained the relationship between Islamic jurisprudence and the Egyptian Civil Code as follows:

“Despite all this, the Egyptian legislator has not yet taken a decisive step toward deriving the Civil Code from Islamic jurisprudence. In reality, the new Civil Code represents Western civil culture rather than Islamic legal culture. Although Islamic jurisprudence has been recognized as an official source of civil law, it occupies the third position after legal texts and custom. The policy adopted by the Egyptian legislator was one of gradualism, because Egyptian society had been influenced by Western civil laws for nearly a century and had consequently become distant from Islamic jurisprudence. This made recourse to Islamic jurisprudence difficult and resulted in instability in transactions and confusion in legal thought.”

Al-Sanhuri then referred to the prospect of a time when Islamic jurisprudence could become the principal source of civil law, stating:

“Wait until Islamic jurisprudence has acquired the necessary foundations for progress; and when jurisprudence completes its development, Egyptian civil culture will become an Islamic culture.” (al-Sanhuri, 1967, pp. 7–8).

3.2. Second Stage: Integrating Islamic Jurisprudence and Western Law in the Iraqi Civil Code

The second stage involved the integration of Islamic jurisprudence with Western law. This stage began when al-Sanhuri traveled to Iraq at the invitation of the Iraqi government to draft the country's Civil Code. After conducting an extensive examination of Islamic jurisprudence across different sources and schools, al-Sanhuri employed it as a principal basis for drafting the Iraqi Civil Code. At this stage, he drew upon a range of sources, including the *Majallat al-Aḥkām al-ʿAdliyya*, the work *Murshid al-Ḥayrān*, Islamic jurisprudential texts from different schools, and the Egyptian Civil Code, which itself had incorporated modern drafting techniques and elements of Western legal systems.

This approach was one of the principal factors behind the expansion of his reputation as a scholar of Islamic jurisprudence and contributed to his subsequent authorship of the influential work *Maṣādir al-Ḥaqq fī al-Fiqh al-Islāmī*, which became an important foundation for comparing Islamic law with Western civil law ('Imāra, 2010, Vol. 1, p. 41).

He maintained that, in order to achieve an effective codification genuinely derived from Islamic jurisprudence, Islamic law—as practically applied through the Iraqi *Majalla*—should be combined with the legal culture of Western systems, as reflected in the Egyptian Civil Code. According to al-Sanhuri, although Islamic Shari'a constituted the primary foundation of Iraqi law, its relationship with the latest developments in Western legislation should also be strengthened so that the most suitable legal rules could be selected and subsequently evaluated in light of Islamic jurisprudential principles. Under this approach, most of the selected rules would retain a foundation in Islamic jurisprudence, which would ultimately determine their legal formulation. Provisions lacking a clear jurisprudential basis would either be interpreted in a manner compatible with an established school of jurisprudence or modified in accordance with changing social circumstances.

Al-Sanhuri explained the rationale behind this method by arguing that it offered two principal advantages. First, interpretation and explanation of legal texts would not remain dependent upon Western legal traditions. Second, deriving legal rules from Islamic jurisprudence would preserve their connection with their original source and thereby safeguard legal independence. In this way, Islamic jurisprudence would become an important component of comparative law, while *ijtihād* would be strengthened.

In the introduction to his work *Al-Itizāmāt*, he expressed this idea in the following terms:

“This is the Islamic Shari'a: if you stand upon its shoulders and follow its path, the legacy of this endeavor will be the infusion of a spirit of

independence into our jurisprudence, judiciary, and legislation. With this new light, we shall study the world and illuminate a part of global civilization through our law.” (al-Sanhuri, 1936, pp. 64–65).

3-3. The Third Stage: The Use of Islamic Jurisprudence as the Principal Basis for Legislation in Arab Countries

The third stage in the drafting of civil laws in Arab countries involved establishing Islamic jurisprudence as the basis for the formulation of civil legislation. This stage was regarded as a preliminary step toward the development of a unified Arab civil code derived directly from Islamic law. At this stage, the Egyptian Civil Code, which reflected Western legal culture, and the Iraqi Civil Code were to be used as models for classifying various legal issues and reconciling certain principles of Islamic jurisprudence with Western legal concepts.

Al-Sanhuri expressed his primary objective as follows:

“My aim was for the Arab countries to have a unified civil code derived directly from Islamic law. However, this objective is still very distant, and I am aware of the difficulties involved and the considerable time required to achieve it. I know that even if I devoted my entire life to this task, it would still not be sufficient. Although the path is difficult, I know that we must pass through two stages in order to reach this goal.”

Al-Sanhuri then explained these two stages:

1) Extracting those elements of Western legal culture that had emerged through its recent developments, as embodied in the drafting of the Egyptian Civil Code. 2) Placing Western civil legal culture alongside Islamic jurisprudence, as represented by the Iraqi Civil Code, particularly through the establishment of *Majallat al-Ahkam al-‘Adliyya* and the utilization of the Egyptian Civil Code. At this stage, Islamic jurisprudence would be placed alongside Western civil law, thereby creating a genuine intellectual renaissance in the study of Islamic jurisprudence in light of Western civil law.

Al-Sanhuri states:

“This research is precisely what I intended to achieve. If this endeavor succeeds, Islamic jurisprudence will become a source of civil law while remaining compatible with contemporary civilization and culture. At that point, we shall enter the third stage and attain our ultimate objective.”

He then proudly refers to the capacities of Islamic jurisprudence, stating:

“Islamic jurisprudence is a complete legal system that is no less than Roman law in the precision of its logic, the soundness of its reasoning, and its capacity for development. It deserves to be recognized as a universal legal system, just as Roman law, following its revival during the Middle

Ages and the commencement of juristic reasoning within it, gave rise to a new legal system that was neither inferior to Latin and Germanic laws in quality nor in its adaptability to the requirements of its time. Likewise, Islamic jurisprudence can serve as a source for modern legislation.” (Al-Sanhuri, 1967, pp. 21–22).

Al-Sanhuri further explains:

“My conviction in Islamic jurisprudence does not arise merely from sentiment or emotion; rather, both emotion and reason contributed to its formation. Most of my studies during the drafting of the Iraqi Civil Code were jurisprudential in nature, and this Code represents a combination of Islamic jurisprudence and the Egyptian Civil Code. This process enabled me to become familiar with the texts of Islamic jurisprudence as presented in the works of different legal schools and led me to recognize the significance and innovative character of this jurisprudence.” (Al-Sanhuri, 1967, p. 22).

Ultimately, it may be concluded that, according to Al-Sanhuri's thought, the revival of Islamic jurisprudence and commitment to its renewal constitute a genuine intellectual renaissance. Such a renaissance can only be achieved through the comprehensive study of all Islamic legal schools, including Sunni, Shi'i, Zāhiri, and Ibādī jurisprudence.

He maintains that comparative study enables researchers to identify the different dimensions of legal perspectives and ideas and to examine the principles and methodologies of Islamic jurisprudence through comparison with the achievements of modern legal thought. Through such comparative analysis, the fundamental areas of disagreement and divergence become clearer, while the limits reached by Islamic jurisprudence in its legal branches, detailed rulings, and conceptual formulations can be properly identified. Where further development is necessary, Islamic jurisprudence should be developed in a manner consistent with the methodological framework and foundational principles of *usul al-fiqh*. In this way, authentic Islamic jurisprudence can be preserved while external influences that might distort or divert it are prevented from intervening in its development. (Al-Sanhuri, 1967, pp. 23–24).

4. Sanhuri's Role in the Present and Future of Islamic Jurisprudence and Law

Abd al-Razzaq al-Sanhuri was one of the most influential figures in the codification and transformation of Arab and Islamic legal systems. His role in revitalizing Islamic jurisprudence and adapting it to modern legal needs has left a lasting legacy. This section evaluates the long-term effects of his efforts on

Arab and Islamic legal systems, as well as his influence on subsequent scholarship in Islamic jurisprudence and comparative law.

4.1. Revitalizing Islamic Jurisprudence as a Dynamic Legal System

From the outset, Abd al-Razzaq al-Sanhuri demonstrated a particular interest in the science of legal codification and devoted considerable attention to comparative law, eventually becoming one of its most prominent scholars (Tajin, 2020, p. 520). This achievement was largely shaped by his education under prominent jurists such as the renowned French legal scholar Édouard Lambert (Mansour, 1970, pp. 41–42). His profound familiarity with comparative law enabled al-Sanhuri to recognize the significance and sophistication of Islamic jurisprudence in comparison with other major legal systems of the world, while also providing him with a detailed understanding of the complexities and nuances of those systems. He came to recognize the prominent position of certain Islamic jurisprudential doctrines, such as the doctrine of abuse of rights. This doctrine, which had been articulated by Dr. Mahmud Fathi, greatly impressed many jurists at the time and directed al-Sanhuri's intellectual attention toward the reconstruction and revival of Islamic jurisprudence (Abduh, 2011, pp. 110–111).

Al-Sanhuri's writings contain numerous references demonstrating his deep commitment to and confidence in Islamic jurisprudence. He states:

“Islamic Sharia is the law of the East and the law of revelation; an inspiration that emerged from the minds of the thinkers of the East and was cultivated in its valleys and peaks. This Sharia breathes the spirit of independence into our jurisprudence and judiciary and illuminates world civilization with a new light.” (Al-Sanhuri, 1998, p. 12).

Al-Sanhuri also wrote in his memoirs that, during his doctoral studies in France, one of his principal concerns was the revival of Islamic Sharia and the restoration of its position in contemporary legislation. He states:

“I had always aspired to formulate Islamic Sharia as a scholarly project and restore it to the position it deserved within contemporary laws.” (Al-Shawi, Al-Sanhuri, 2005, p. 74).

This profound interest in Islamic jurisprudence led al-Sanhuri to describe himself as “the first lover of Islamic jurisprudence.” Nevertheless, some of his students accused him of hostility toward Islamic jurisprudence. In response, he explicitly stated:

“No one in the world loves Islamic Sharia as much as I do. I am among the first to believe that Islamic Sharia should be regarded as a foundation for comparative law.” (Ministry of Justice of Egypt, 1950, pp. 85–89).

Al-Sanhuri believed that Islamic Sharia, which had governed the East for

centuries, remained applicable in the contemporary era, not only within Islamic societies but also potentially at the global level. He maintained that Islamic legal rulings were not inferior to modern Western laws in terms of quality and precision; rather, Islamic jurisprudence contained principles that were superior to many foundations of modern legal thought (Abduh, 2011, p. 111). When the Council of Ministers decided to employ Islamic Sharia as a basis for drafting the Iraqi Civil Code, al-Sanhuri wrote in an article:

“This decision restored the position of Islamic Sharia, which had been gradually losing its status. Since the second half of the nineteenth century, many Eastern countries, such as Egypt, Tunisia, Morocco, Turkey, and Lebanon, had abandoned Islamic laws and turned toward Western legislation. Iraq now declares to the world that Islamic Sharia remains a living legal system capable of implementation. If this claim is demonstrated, it will provide an argument for other Arab countries to follow the same path.”

This perspective illustrates al-Sanhuri's role in restoring Islamic Sharia to a significant position and consolidating it within modern legal systems.

Emphasizing the distinctive characteristics of Islamic jurisprudence, al-Sanhuri states:

“To establish the validity of this claim, it is sufficient to return to Islamic Sharia itself. Within it are elements from which a codifier can derive theories and principles that, in their breadth, significance, and compatibility with contemporary development, are in no way inferior to the legal theories of modern Western laws.” (Al-Sanhuri, 1936, p. 59).

These statements demonstrate the depth of al-Sanhuri's conviction regarding the capacity of Islamic Sharia to adapt to changing circumstances while maintaining its dynamism in interaction with modern legal systems.

Accordingly, al-Sanhuri regarded Islamic jurisprudence as a rich and developable legal system capable of serving as a foundation for modern legislation. He placed particular emphasis on the values and principles of Islamic jurisprudence and considered them suitable for adaptation to the legal circumstances and needs of the contemporary era. With precision and intellectual commitment, he sought to establish Islamic jurisprudence as a principal foundation for legislation in Islamic societies and, potentially, at the global level. He believed that Islamic jurisprudence possessed the capacity to address complex contemporary issues and legal requirements and should therefore be incorporated into the process of drafting new legislation. In his writings and statements, al-Sanhuri emphasized that Islamic jurisprudence could play an important role not only within Islamic societies but also within the

international legal sphere. By emphasizing these capacities, he demonstrated that Islamic jurisprudence could preserve Islamic legal identity while also responding effectively to modern legal challenges (Imara, 2009, p. 145). In his major projects, particularly the drafting of the Iraqi and Egyptian Civil Codes, he introduced principles of Islamic jurisprudence as an essential component of modern legal systems.

4.2. Establishing a New School in Comparative Law

Through his successful experiences in Egypt and Iraq, al-Sanhuri provided a model for other Arab countries. Countries such as Libya, Kuwait, Sudan, and the United Arab Emirates drew upon the models developed by al-Sanhuri in drafting their own legislation. These countries employed combinations of Islamic jurisprudential principles and modern legal concepts in the development of their civil and, in some cases, constitutional laws.

Al-Sanhuri poses a fundamental question:

“Can it be claimed that Islamic Sharia remains a living and enforceable legal system? And if so, how has Iraq chosen Islamic Sharia as a source of its legislation?”

In response, he writes:

“First, Islamic Sharia remains a living and valid legal system capable of implementation, and I have no doubt about this matter. I do not make this statement without reflection; rather, I make it after considering its consequences.”

He further explains that he does not restrict the verification of this claim to the opinions of impartial Western jurists, although their testimony also confirms this reality. He refers to prominent scholars such as Köhler, the German jurist; Professor Del Vecchio of Italy; and Wigmore, the American scholar, who recognized Islamic Sharia as one of the three fundamental legal systems of the world, alongside Roman law and English law. According to al-Sanhuri, these systems were not merely prominent in the past but continued to preserve their significance and capacities.

Al-Sanhuri also refers to the remarks of Professor Édouard Lambert, the distinguished French jurist, at the International Conference of Comparative Law held in The Hague in 1932. Lambert emphasized that Islamic Sharia, as a major legal system, had attracted increasing attention among European and American jurists and was gradually acquiring a position of greater recognition (Al-Sanhuri, 1936, pp. 58–59).

Al-Sanhuri thus created a foundation for legal unity in the Arab world. One of his principal aspirations was the formulation of a unified Arab Civil Code based on Islamic jurisprudence. Although this objective has not been fully

realized, his efforts played an important role in promoting convergence among the legal systems of Arab countries. Through teaching and by drawing upon principles shared by Sunni, Shi'i, Ibadi, and Zahiri schools of jurisprudence, he sought to develop a unified civil code and proposed that such a project should be based upon common principles shared across the Islamic legal schools (Subhi, 1975, p. 77). The outcome of his efforts was the development of a shared legal language among Arab countries. His emphasis on comparative concepts contributed significantly to the emergence of a common legal vocabulary across the Arab legal sphere.

Al-Sanhuri succeeded in establishing a balance between preserving Islamic identity and accepting modern transformations. By incorporating principles of Islamic jurisprudence into civil legislation, he helped Arab countries preserve their Islamic legal identity in the face of Western legal influence. This approach provided a durable model for Muslim societies seeking to respond to contemporary needs without abandoning their religious identity.

Through his writings, particularly *Masadir al-Haqq fi al-Fiqh al-Islami* (*Sources of Rights in Islamic Jurisprudence*), al-Sanhuri contributed to the formation of a new school of comparative law in which Islamic jurisprudence was presented as one of the major legal systems of the world. His research centered on the question of how Islamic jurisprudence could be reconciled with the principles and rules of modern law. This process of adaptation was evident not only at the theoretical level but also in the practical legal projects he undertook. Al-Sanhuri's works provided a foundation for constructive interaction between Islamic jurisprudence and Western law, and this interaction subsequently became an important methodological approach within comparative legal studies.

An evaluation of Abd al-Razzaq al-Sanhuri's method and intellectual project requires that, alongside emphasizing his achievements, attention also be given objectively to the capacities and limitations of his model. Undoubtedly, one of the major strengths of al-Sanhuri's thought is his systematic and deliberate formulation of the idea of the "revival of Islamic jurisprudence." Within his intellectual framework, revival was not merely an identity-based slogan or an emotional reaction to Western legal modernity. Rather, it constituted a multilayered and coherent project beginning with the *ijtihadi* reinterpretation of jurisprudence and extending to its integration with civil legislation, reform of the methodology of legal reasoning, establishment of scholarly institutions, and production of specialized and substantive legal scholarship. This comprehensive approach distinguishes al-Sanhuri from many contemporary thinkers who have confined the revival of Islamic jurisprudence to the theoretical or rhetorical level.

Another prominent feature of his methodology is the systematic distinction between “religious belief” and “Sharia as a system for regulating social relations.” This distinction, rooted in al-Sanhuri’s legal and comparative perspective, makes possible the rationalization of jurisprudence and its dialogue with modern legal systems, while facilitating the extraction of general legal principles from jurisprudential sources. In this way, jurisprudence is removed from an exclusively ritual and theological function and reconceptualized as a dynamic legal system capable of codification. This played an important role in making possible the drafting of modern civil legislation inspired by Islamic jurisprudence.

Furthermore, al-Sanhuri’s emphasis on the general and transhistorical principles of Islamic Sharia constitutes one of the methodological foundations of his thought. Concentrating on such general principles, which possess the capacity for application under changing historical and social conditions due to their rational and flexible character, prevents jurisprudential rigidity and enables a rational adaptation of Sharia to social transformations without rejecting its foundational principles. Within this framework, al-Sanhuri distinguished between the stability of principles and the variability of their applications. He therefore avoided absolutism in legal reasoning and regarded differences in the application of legal rulings as natural consequences of differences among societies, cultures, and historical circumstances. This approach reflects a form of social and historical realism in understanding Islamic jurisprudence and functions as a safeguard against treating interpretive rulings as absolute and universally immutable.

In addition, al-Sanhuri’s trans-sectarian and non-confrontational approach toward non-Muslims constitutes another significant dimension of his thought. His emphasis on the need to formulate a revived Sharia in a manner that would not conflict with the beliefs of non-Muslims should not be understood as an attempt to impose Sharia, but rather as an affirmation of legal coexistence and the avoidance of contradiction. This perspective reflects a civilizational and coexistence-oriented understanding of Islamic jurisprudence, an approach of particular importance for pluralistic contemporary societies.

Nevertheless, this methodology is not free from challenges and conceptual ambiguities. First, although the distinction between “religious belief” and “Sharia as law” has methodological value, al-Sanhuri did not fully conceptualize this distinction in his writings. Its precise boundaries remain unclear, and the criteria for transferring a particular ruling from the sphere of religious belief into the sphere of positive law are not explicitly articulated. This may create ambiguity regarding the scope of legally codifiable Islamic rulings.

Second, the strong emphasis on the legal dimension of Sharia entails a

theoretical risk: the ethical, educational, and devotional dimensions of Sharia may become marginalized in the process of revival, thereby reducing Sharia to a merely legal system. Moreover, the criterion of “non-conflict with the beliefs of non-Muslims,” which al-Sanhuri emphasizes, is not precisely defined. In cases of actual conflict between certain jurisprudential rulings and the religious beliefs of others, he does not provide a sufficiently clear hierarchy of priorities. This issue may create the possibility of minimalist interpretations of Sharia.

Overall, al-Sanhuri's methodology possesses considerable theoretical and practical potential for revitalizing Islamic jurisprudence and integrating it with modern law. Nevertheless, the application of his model under contemporary conditions requires a critical re-reading and further conceptual development of some of its underlying premises.

Conclusion

Abd al-Razzaq al-Sanhuri, through his remarkable ability to integrate Islamic jurisprudence with modern law, brought about a profound transformation in the legal systems of Arab and Islamic countries. His efforts in drafting the Egyptian and Iraqi Civil Codes demonstrated the capacity of Islamic jurisprudence to adapt to the requirements of modern legal systems. By drawing upon the principles of Islamic jurisprudence and reconciling them with Western legal theories, he demonstrated that Islamic jurisprudence, as a dynamic legal system, possesses the capacity to address emerging legal issues. The central research question—namely, whether Islamic jurisprudence can serve as a foundation for modern legislation—receives a positive answer through his writings and legislative endeavors, although this conclusion is accompanied by specific limitations and challenges.

The outcomes of al-Sanhuri's efforts can be observed in three principal areas. First, he contributed to the revival of the position of Islamic jurisprudence within the civil laws of Arab countries. Second, he strengthened comparative legal studies and promoted the use of Islamic jurisprudence as a source for the formulation of modern legislation. Third, he pursued the objective of legal unification among Arab countries through the development of laws based on shared principles of Islamic jurisprudence. Ultimately, his efforts not only contributed to strengthening Islamic identity within the legal systems of Arab countries but also exerted a lasting influence on comparative legal scholarship, establishing him as one of the most important thinkers in this field. This study demonstrated that al-Sanhuri not only succeeded in integrating tradition and modernity but also developed an influential model for subsequent scholars and legislators in the Arab and Islamic world. His work illustrates the feasibility of employing Islamic jurisprudence as a modern legal source capable of preserving

Islamic identity while simultaneously responding to contemporary legal requirements.

Nevertheless, a critical examination demonstrates that al-Sanhuri's model requires further reinterpretation and modernization if it is to address emerging challenges such as globalization, economic transformations, and new developments in legal technology. The enduring value of his legacy therefore lies not in providing a definitive solution, but rather in opening a new horizon for constructive interaction between Islamic jurisprudence and comparative law. This horizon can continue to inspire future generations of scholars and legislators in both academic research and the development of contemporary legal systems.

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