

CHAPTER III

SANHŪRĪ'S PROPOSALS FOR THE NEW EGYPTIAN AND IRAQI CIVIL CODES

Before drafting a New Code for civil law, Sanhūrī deeply studied the project. He discriminated the affirmative directions and tendencies of the entire former codes of both Egypt and Iraq¹⁴² from their unpleasing dimensions and aspects. The shortcomings of the former codes were precisely demonstrated by him. Furthermore, he wrote two articles in parallel to address the issue and show the advantages and disadvantages of involvement in the new proposals through a broad description of the positive as well as the negative attributes of the former Civil Codes and relevant Ordinances. He eventually suggested two different proposals for Egypt and Iraq to overcome the problematic shortcomings and to advance the formulation of the New Codes.

To get a comprehensive vision on the New Codes, one cannot ignore the significant implications that he laid down in his primary overview of the works, namely the two well established and published articles entitled: “The Necessity of Revising the Egyptian Civil Law and the Basis on Which the Revision Should Take Place” and “*From Majallat al-Aḥkām al-‘Adliyyah to Iraqi Civil Code and the Codification Currents in Recent Era*”.¹⁴³ Through the mentioned works, one can also conclude with Sanhūrī’s perceptions on the following matters.

¹⁴² The researcher will follow the historical development of the Iraqi and Egyptian Civil Codes and how Sanhūrī had drafted the two Codes of the both countries. This is due to the fact that these constitute two different prototypes and other Codes (Syrian, Libyan and Kuwaiti) were distributed between these two.

¹⁴³ Sanhūrī (1936c). Op. Cit., pp. 3-121; Sanhūrī (1936b). Op. Cit., volume. 1, pp. 269-325.

3.1 Sanhūrī's View on Codification

Sanhūrī took a moderate stance on the codification question. In this regard, he emphasized the admissibility of the two various dimensions that had been juristically reported in this matter. He firstly pointed out that Savigny, the founder of historical jurisprudence who believed that any system of law must truly reflect the spirit and genius of the institutions of a people, was correct. Laws are illimitable bodies that cannot have two covers of a book surround it.¹⁴⁴ The approach of the historical school is successful for it identified the law as a living entity, 'growing up' and developing in the environment that it belongs to and it pictured law as a more flexible body than what was to be drafted in a rigid textual body.¹⁴⁵ Sanhūrī thought that as long as the life confronting endless developments and challenges, the law cannot be embodied in a numerable and rigid essence within an eternal code, unless to assume that the human being might suspend the curves of life and stop the society from any typical growth and development.¹⁴⁶

On the other hand, he supported the idea of codification and proclaimed that it is in conformity with the approach of the historical school and it did not contradict it to the extent alleged by Savigny. The law should be drafted in the shadow of the prevailing situation and based on the social developments gained, but it does not put an end to the law itself. Rather the law should adapt to circumstances and be amended or drafted again if the circumstances change dramatically.¹⁴⁷ The passage of time has proved that Savigny was not correct in claiming the code is a means to solidify the law. The benefits of codification are undeniable as

¹⁴⁴ Ibid, p.3.

¹⁴⁵ Ibid; Sanhūrī (1936b). Op. Cit., volume 1, pp. 271-272; David L. Sills 'editor' (1968). International Encyclopedia of the Social Sciences. USA: The Macmillan Company and the Free Press, volume 9, pp.59-60.

¹⁴⁶ Sanhūrī (1936c). Op. Cit., p.3.

¹⁴⁷ Ibid, p. 4.

it makes available the law to the common people. It also assists in approximating the laws of different nations by providing the grounds for a comparative study of law.¹⁴⁸

By this way of thinking he could justify two claims simultaneously, namely the following:

- The essentiality of codification as a tool for providing the Arab society with stability as well as conformity with the requirements of the modern age.
- The essentiality of re-editing and revising the codified laws from time to time when the status of the growth and development of the society requires.¹⁴⁹

In this context, he demonstrated different trends about the question. He divided them into three groups: the extreme proponents, the extreme denouncers and the moderate proponents.¹⁵⁰ The denouncers or the extreme proponents disputed the possibility of determining an end and drawing a limit to law. The denouncers denied this possibility, whereas the extreme proponents believe in its affordability. Sanhūrī objected to both approaches and preferred a moderate approach. He thought that in parallel to a code there is a ‘common law’ manifested in the works of the jurists and the practices of judges over the passage of time forming the first rank of authority and then the code will only form an ambiguous and incomplete picture of the genuine laws applied inside the courts.¹⁵¹ This shows that a code is not aiming at drawing the last boundary of law; rather it is one of two parallel directions of the law applied inside the courts. The code represents the near permanent

¹⁴⁸ Ibid, pp.4-5; Sanhūrī (1936b). Op. Cit., volume. 1, p.272.

¹⁴⁹ Sanhūrī (1936c). Op. Cit., p. 4.

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

milestones of the law whereas the works of judges and jurists represent its flexible components. By combining both parts, a law can be truly pictured.¹⁵²

The necessity of codification does simultaneously necessitate revising the code due to the span of time, including change in priorities and needs. The main purpose of revision, in Sanhūrī's opinion, is to avoid shortcomings of a code as it becomes outdated by the passage of time and the disparity between it and the laws applicable in the courtrooms increases and that disparity will overrule the code's authority in the end.¹⁵³ The disadvantages of codification cannot be overcome without revising and amending, this refers to the nature of law itself as it fulfills the requirements of a certain time, whereas it becomes rigid in another time and space. Therefore, whoever recognizes the importance of codification then recognizes the necessity of revision and amendment.¹⁵⁴ Other factors beyond the necessity of revision are:

- ❖ Impropriety of a code in terms of its drafting and wording. This can be known via its application. When the application of a code proves the impropriety of it, then the code should be amended and revised.¹⁵⁵ The propriety of a law cannot be achieved by the means that courtrooms apply, because the courts never bring about a comprehensive appropriation inclusive of the whole body of the code. If the courts were entitled to play such a role, it may lead to an erroneous understanding of the function of the courts as they are promoted from application of the law to its interpretation and amendment. This, of course, overweighs the power of the judiciary and substitutes it from the role of application to legislating.¹⁵⁶ Moreover, the courts do not apply common regulations but rather view

¹⁵² Ibid.

¹⁵³ Ibid, p.5.

¹⁵⁴ Ibid.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

specific cases and accommodate them with rules of justice.¹⁵⁷ Therefore, the revision of Codes is necessary.

- ❖ The vast progress of comparative law necessitates a vast revision and amendment of the codes.¹⁵⁸ Due to the fact that many countries codified the laws, holding comparisons between these codes becomes necessary to disclose the shortfalls and make possible the achievement of the advantages. Thus, the lawmaker in recent times must take into account various forms and different measures when codifying or amending a set of laws.¹⁵⁹

3.2 Sanhūrī's Evaluation of the Former Egyptian and Iraqi Civil Codes

Before giving any valuable comments on the Egyptian Civil Code that in Sanhūrī's regards was only a distorted copy of the Napoleonic Code (1804), he presented the deep arguments that the French jurists provoked about the later after the passage of a century of its official issuance.¹⁶⁰ This is in order to support the necessity of revising the code. He presented the two shackling opinions that arose on a similar question stressed on by French jurists. According to Sanhūrī, any comments on the French Code are true with the Egyptian Code as well, as the later only represents a macerated copy of the former.¹⁶¹

He stated:

‘I truly tend to prefer the call of those French jurists who saw the revision of the code is essential. This is due to the fact that the War World I had greatly affected the socio-economic life. The disparities extremely appeared between the new context of civil life and the context of civil life of 1804. This shows how is necessary to revise the Egyptian Code that reflects only a macerated copy of the Napoleonic Code.’¹⁶² (Trans. T.W.)

¹⁵⁷ Ibid.

¹⁵⁸ Ibid, p.6.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Ibid, pp. 8-9.

¹⁶² Ibid.

As a matter of fact, Sanhūrī indicates two essential reasons to support the forgoing idea, namely the following:

- The old Egyptian Civil Code is only a distorted duplication of the French Civil Code 1804. Because the drafter of the code hurried the work and did not grant it due time, the work never stands up to the desirable standards of a code. Moreover, it does not comprise the law of personal statute. It also followed different directions in regard to the subjects of the law as some rules are only applicable to Egyptian citizens, whereas there are others that applicable to Egyptians and foreign residents.¹⁶³
- The vast progress that occurs in comparative law along with the new codes that are innovated everywhere, especially that occur after the issuance of the old Egyptian Code will benefit a lot in revising it. It is recommended to resort to the Sharī'ah which contains the original norms of the local law as well as to the valuable experience of the national courts and the universal experience as such. The progressive character of these legal systems is one of the factors justifying the revision of the Egyptian Code to adopt what generates benefits and abide by the latest conclusions of the contemporary legal discipline.¹⁶⁴

As far as the Iraqi Civil Law is concerned, the transplantation of a New Code replacing the *Majallah* was not an easy job. *Majallah*'s original source was Islamic jurisprudence. It was taken from the Ḥanafī doctrine of law. Iraq adhered to the Ḥanafī School of law for several centuries since the moment the School was established by Abū Ḥanīfa in the Iraqi territories.¹⁶⁵ Thus, it was difficult to change the legal circumstances dominant there as the Ḥanafī School is rooted very deeply in the past and present history of Iraq. Therefore,

¹⁶³ Ibid, p. 13.

¹⁶⁴ Ibid.

¹⁶⁵ Sanhūrī (1936b). Op. Cit., volume. 1, pp. 269.

Sanhūrī's concern in Iraq was directed more to unify the Civil Laws of Iraq and to follow the artificial styles of the prominent modern Codes. Therefore, he clarified,

‘The purpose from (drafting) a new Iraqi Civil Code is not to shift from the *Majallah* to a different direction and abandon legacy of Ḥanafī rite in Iraq. Therefore, the ‘Iraqi Civil Code’ as a term except the wordings contains nothing new. The Iraqi Civil Code is there but lacking a new art of codification, a good governance and coherent order and some adjustment and amendment in the light of the contemporary requirements. Thus, if the New Code pretends to have a new appearance it will be the one that hiding the entire juridical traditions and legacy of Iraq under it away from any distortion or futility... Therefore it is lunacy and unconsciousness to destroy wealth of the predecessors and become beggars asking aids from others... If the intention is to codify a Civil Law for Iraq it ought to be communicated with the past inasmuch communicated with a promising future.’¹⁶⁶ (Trans. T.W.)

3.2.1 A Brief History of the Former Egyptian and Iraqi Civil Laws

3.2.1.1 Egypt

As far as Sanhūrī's evaluation of the former Egyptian Code is concerned, it is necessary to record his stance on it as he explicitly expressed in an overview. However, the history of the former code is quite unknown due to the fact that the lawmaker did not record the Preparatory Work (*Aṣmāl Taḥdīriyyah*) providing information about the history and progress of the Code, circumstances of its codification and the legal agenda that was aimed at.¹⁶⁷ That is why Sanhūrī mentioned a brief history of it from his own investigations that could be one of the rare and reliable sources in this matter. In other words, the records of Sanhūrī are the main reference exploring this history.¹⁶⁸

Sanhūrī established a linkage between it and the history of the Mixed Courts in Egypt owing to the fact that the drafter of the old Civil Code and founder of the Mixed Courts was Maitre Manoury himself. He was a French lawyer residing in Alexandria province in Egypt.

¹⁶⁶ Sanhūrī (1936b). Op. Cit., volume. 1, pp. 270-271.

¹⁶⁷ Sanhūrī (1936b). Op. Cit., volume. 1, pp. 310-311; Sanhūrī (1972). Op. Cit., volume. 1, p. 2.

¹⁶⁸ George N. Sfeir (1998). *Modernization of the Law in Arab States: An Investigation into Current Civil, Criminal, and Constitutional Law in the Arab World*. San Francisco: Austin & Winfield Publishers. p. 31.

Nobar Bāshā, who was of Armenian origin and known as the chief of legal reforms in Egypt, recruited him first as his aide and then appointed him as secretary general of the international commission that had been appointed to study and approve Egypt's foundation project of the Mixed Courts. Also, Manoury was entitled to draft the mixed codes in 1872 and he completed the job the following year.¹⁶⁹

Manoury derived the old Civil Code, known as Mixed Civil Code (*al-Taqnīn al-Madanī al-Mukhtaliṭ*), from the French Civil Code. He summarized it defectively in a majority of locations and locutions. Moreover, he did derive and extract some Articles from the French judiciary comments and the old Civil Code of Italy issued in 1866.¹⁷⁰ Besides this, some rules were derived from Shari'ah law.¹⁷¹ The Mixed Code was issued on 28 June 1875. A specialized committee of the noble translators and some *Azhari* scholars were entitled to translate the Civil and other Mixed Codes into Arabic. Among them were Muḥammad Qadrī Bāshā, Ḥusain Fakhri Bāshā and Putrus Ghālī Bāshā. The French Codes (French Civil Code, Law of Action and Penal Code) which were previously translated had become a living example for this translation.¹⁷²

It is noteworthy that the forgoing historical events show the efforts of Nobar Bāshā, who concentrated intensively on arriving at a mutual agreement with the super-power countries that had been granted privileges in Egypt according to the regime of Capitulations.¹⁷³

¹⁶⁹ 'Abdullāh 'Alī Ḥusāin (2001). *Al-Muqāranāt al-Tashri'iyyah bayna al-Qawānīn al-Waḍ'īyyah al-Madaniyyah wa al-Tashri' al-Islāmī: Muqāranah bayna Fiḥ al-Qānūn al-Faransī wa Madhhab al-Imām Mālik b. Anas*, 1st edn. Cairo: Dār al-Salām. volume. 1, pp. 41-42; Sanhūrī (1972). Op. Cit., volume. 1, p. 2; Sanhūrī (1936b). Op. Cit., volume, 1, p.280; Sanhūrī (1972). Op. Cit., volume. 1, p. 2 ; Mahmasani, Legal Systems, p. 247.

¹⁷⁰ Sanhūrī (1936b). Op. Cit., volume, 1, pp. 280-281; Sanhūrī (1972). Op. Cit., volume. 1, p. 2; Sanhūrī (1936c). Op. Cit., pp. 14-15; Enid Hill (1979). Op. Cit., p.47.

¹⁷¹ Ibid.

¹⁷² Al-Mustashār Ṭāriq al-Bishrī (1996). *Al-Waḍ' al-Qānūni al-Mu'aṣir bayna al-Sharī'ah al-Islāmiyyah wa al-Qānūn al-Waḍ'ī*, 1st edn. Cairo: Dār al-Shurūq. pp. 55-56; Sanhūrī (1972). Op. Cit., volume. 1, pp. 2-3; Sanhūrī (1936c). Op. Cit., p. 15.

¹⁷³ Sanhūrī (1936c). Op. Cit., p. 14; Muḥammad Fatḥi Najīb (2003). *Al-Tanzīm al-Qadā'i al-Miṣrī*, 1st edn. Cairo: Dār al-Shurūq. pp.33-44.

He was concerned with getting a writ to rearrange the Mixed Courts' order which was associated with the discretion of their scope of authority. Therefore, the applicable laws had not been paid any noticeable attention from the two negotiating parties. The only emphasis was given to its extraction from French Codes owing to their dominancy and popularity, and to the fact that the vast majority (4/5) of foreign residents in the country, were from Greece, France and Italy, so favoring the French Codes over others.¹⁷⁴

After the foundation of Mixed Courts, the Egyptian governments desired to reform and reorganize the National Courts according to the Mixed Courts style. This aimed at rescuing the State's justice from the disruptive chaos that had diffused through the entire judicial system, as the applied laws were those enacted previously in the Ottoman Caliphate, like the Ottoman Commercial Code that was derived from the French Commercial Code. It implies that the French Codes could only take place through the Ottoman-French prototype and in association with the local customs of the region.¹⁷⁵

The Justice Director was Muḥammad Qadrī Bāshā. At the end of 1880, he established a Commission to draw up the writ of the National Courts that were then known as *al-Maḥakim al-Waṭaniyyah al-Niḏāmiyyah* and entitled to apply the laws to the local subjects, as well as the Mixed Courts which were entitled to apply the laws in cases involving local and foreign subjects.¹⁷⁶

The committee issued a writ to administer the new National Courts on 17 November 1881. Simultaneously, the committee issued a group of Codes to these Courts that were entirely assimilated to the Mixed Codes. It was the task of Moriondo to handle the draft of the

¹⁷⁴ Sanhūrī (1936c). Op. Cit., p. 14.

¹⁷⁵ Ibid, p.15; Sanhūrī (1972). Op. Cit., volume. 1, p. 3; M. F. Najib (2003). Op. cit., pp. 33-44.

¹⁷⁶ Ibid.

National Civil Code. He, in association of Muhammad Qadrī Bāshā, duplicated the Mixed Civil Code almost literally. Qadrī Bāshā contributed in drafting the Code of Criminal Procedure and the Commercial Code too.¹⁷⁷

The British invaded Egypt and Aḥmad ‘Arrābī (1841-1911) started resistance. The legal reform stopped. After the collapse of the revolution, the government revised the writ of 1881 and reissued it after amendments on 14 June 1883 without any valuable indications to the previous writ, the matter being obscure in the Egyptian legal environment in respect to the history of the writ’s foundation, as some do not realize its foundation preceded the British invasion.¹⁷⁸

The National Civil Code was issued on 28 October 1883 and the other five Codes on 13 November 1883 after being prepared since 1881. The group of six codes was drafted in French and only then translated into Arabic by Yosuf Wahbat Bāshā who was guided by the translations of the Mixed Codes. A committee was then founded to reexamine the accuracy of that translation.¹⁷⁹

It is noteworthy that the issuance of the six Codes had been speeded up by Fakhri Bāshā owing to the request of Sherif Bāshā who felt that the occupying British authorities will oust him after refuting the separation of Sudan which was under Egyptian control and because he realized that the British authorities will intervene in the affairs of the Mixed Courts to give room to the English law in this respect. The Civil Courts were opened on 31 December 1883

¹⁷⁷ Ibid, pp. 16-18; Sanhūrī (1936b). Op. Cit., volume. 1, pp. 280-281.

¹⁷⁸ Sanhūrī (1936c). Op. Cit., p. 16; Sanhūrī (1972). Op. Cit., volume. 1, p. 3.

¹⁷⁹ Ibid.

by Tawfīq Bāshā Khedive (1852-1892), the monarch of Egypt. After its announcement, the ministry of Sherif Bāshā collapsed only days after the Civil Courts became a fact.¹⁸⁰

3.2.1.2 Iraq

As the matter concerns the previous Iraqi Civil law, it is noteworthy to indicate that the transplantation of a New Code in the place of the *Majallah* was not an easy job as it was the Code of Iraq whose original source was Islamic law. The *Majallah* was elaborated between 1869 and 1876 as a part of the Legislative purpose of the *Tanzīmāt*, initiated in imperial Turkey, with the approval of the Sulṭān. The Penal Code of 1850 and the Commercial Code of 1861 were its predecessors, but these two compilations quoted largely from continental European laws. The codification was the work of a Commission of Jurists, headed by Ahmad Cevdet Bāshā, the Minister of Justice. The reasons why codification of the *Majallah* had become necessary were explained by the Commission in a report dated 1st April 1869 (18 *Dhul Hididja* 1285AH). It was stated that the newly instituted secular Tribunals (*Nizāmiyyah*) had often to deal with matters of common civil law, but the members of the Cassation Council, other than the *Hākim*, were not well-versed in the precepts of the *Fiqh*. It was consequently felt that the principles of the Islamic law of obligations should be presented in one volume for facility of consultation. It is, however, stated that the introduction and the first Book, were submitted to the *Sheikh al-Islām*, and approved by him as well as by other prominent jurists.¹⁸¹

¹⁸⁰ Sanhūrī (1936c). Op. Cit., pp. 17-19; Mark S. Hoyle (1991). Op. Cit., 9-12.

¹⁸¹ See the forewords of Daud Bakar and S. A. Rahman for: *The Mejelle* (2001). Op. Cet., pp. vi-x and The Report of the Commission, pp.xxiv-xxxi.

Before the issuance of the new Iraqi Civil Code, the civil laws of Iraq were separated by a variety of sources.¹⁸²

The Ottoman *Majallah*, being the most prominent source of Iraq, did not contain all the provisions of civil law. It covered only the general rules, the named contracts, some of rules of ownership, and real rights. The majority of *Majallah*'s provisions were about named contracts, including pawning (*Rahn Ḥiyāzī*). The *Majallah* also governed a special kind of ownership relevant to the right of disposition in the Royal lands (*al-Arāḍī al-Amīriyyah*). The most obvious branch of law that was left out was family law. The total number of *Majallah*'s Articles is 1851, including the preliminary part that consists of 100 Articles articulating legal maxims from which the judges and the lawyers could seek assistance to base their judgments and arguments respectively. The *Majallah* simply means a digest of legal rules and principles. The master architect of this book was Cevdet Bāshā, an eminent jurist and statesman.¹⁸³ The *Majallah*, originally in Turkish, was later translated into other languages such as Arabic, English,¹⁸⁴ Bosnian¹⁸⁵ and Malay.¹⁸⁶ The *Majallah*, no doubt, was perceived to be the first Islamic Civil Code.

In addition to *Majallah*, there existed other Iraqi laws and ordinances that were the estate of the Ottoman Caliphate, governing mortgage on real estate (*al-Rahn al-Ta'mīnī*). The registration of real rights (*Tāpo*) was detailed in special ordinances. Other important civil laws

¹⁸² Sanhūrī (1936b). Op. Cit., volume. 1, pp. 310-311; IJM (1945). Op. Cit., pp.1-2.

¹⁸³ See: the foreword of Dr. Daud Bakar for: *The Mejelle* (2001). Op. Cet., pp. v-vi.

¹⁸⁴ *Majallah* was translated into English first by three officers of the District Court of Kyrena; C.R. Tyser, B.A.L., President, District Court of Kyrena; D.G. Demetriades, Registrar; and Ismail Ḥaqqī Effendi, Turkish Clerk of that court. It was printed in Nicosia, Cyprus in 1901. Later, C.A. Hooper, Judicial Adviser to the Government of Transjordan, completed another English translation published in Jerusalem in 1933. See: the foreword of Dr. Daud Bakar for: *The Mejelle* (2001). Op. Cet., p. vi.

¹⁸⁵ *Majallah* was translated into Bosnian in Saraivo in 1906 under title of "Medjellei Ahkami Šeriye – Otomanski Gragjanski Zakonik". It was implemented by the Sharī'a and Civil Courts of Bosnia and Herzegovina until 1946. See Fikrit (1993). Op.cit., p. 65.

¹⁸⁶ *Majallah* was translated into Malay in the state of Johor in 1913. It is known as *Majallah Ahkam Johor* which made Islamic law accessible to non-Arabic speaking Muslim communities in South East Asia. The *Majallah* was applied in Johor until 1914. See the foreword of Dr. Daud Bakar for: *The Mejelle* (2001). Op. Cet., p. Vi; Zainuddin Jaffar (2000). "The Development of Islamic Legal Thought in Twentieth Century Malaysia: An Assessment of Crosscultural Links With Special Reference to the Ottoman's *Majallah al-Ahkam al-'Adliyyah*," *Jurnal Syariah*, 8. pp. 93-94.

separated in law of Civil Procedures, and law of Conciliation Courts (*Maḥākīm al-Şulḥ*). The reason for this separation goes back to the policy of the Ottomans as the State in general adhered to Islamic jurisprudence in its civil laws as codified in the *Majallah*. But occasionally the State was forced to draft civil laws that could not be incorporated into the *Majallah* because they were extracted from sources other than Islamic jurisprudence. Therefore, the State gradually created special ordinances that lastly became the estate of the Caliphate for Iraq. The Caliphate also derived the Code of Procedure from the French Code of Procedure and extracted many provisions from the French Civil Laws, which later on were transited to Iraq.¹⁸⁷

3.2.2 The Defects of Former Egyptian and Iraqi Civil Laws

3.2.2.1 Egypt

As the matter concerns the Egyptian Civil Code, Sanhūrī had reminded himself and others, before addressing the defects, the glory of the former Civil Code in the context of that respective time when it reflected the symbol of legal reforms in Egypt. He stated:

‘Whatever to be complained about the defects of the former (Egyptian) Code and before recording any, it is our duty to advance a word of appreciation to the Egyptian lawmaker of both years 1876 and 1883. It should be doubtless that the Egyptian generation who were the recipient of the Code in the end of the last century was happy and comfortable with it owing to that it was favored on the previous legal status when the courts were suffering chaos, the laws were undetermined and unacknowledged, and the justice was distributed unfairly throughout the entire country. The order then replaced the chaos and prosperity substituted the sadness. The country stepped ahead to a new age of reform. Yet, a total transference to a complete legal system was unpredictable as it was a difficult task to drastically materialize a comprehensive legal achievement. The Code, regardless of the defects it had, was sensibly a positive work compared to the undesired misery of the former legal status.’¹⁸⁸ (Trans. T.W.)

¹⁸⁷ Sanhūrī (1936b). Op. Cit., volume. 1, pp. 310-311; IMJ (1945). Op. Cit., pp. 1-2.

¹⁸⁸ Sanhūrī (1936c). Op. Cit., p. 20. See Also: Sanhūrī (1972). Op. Cit., volume. 1, pp. 3-4.

As Sanhūrī recorded, the passage of time had disclosed shortcomings in the former Code, despite the fact that the country was stepping ahead and the codification arts had developed. Hereby, it was no more acceptable to suspend the legal reforms and stop with the past, closing eyes before the obvious defects that had manifested gradually and were being criticized continuously.¹⁸⁹

Sanhūrī divided the defects of the former Egyptian Civil Code into two sub-types: objective and formative. One of the main objective defects is the ambiguity of the Code's history and the process of its codification, as indicated previously. This is due to the fact that the lawmaker did not record any preparatory work in respect to the code, its Articles and Clauses. This implies a lack of knowledge on one of the main sources of interpretation that forms sometimes a parallel component to the law itself.¹⁹⁰

Other defects are mainly the following:

- i. Imitation of French Civil Code:** According to Sanhūrī, blind aping of the French Code is common in the entire Egyptian legal construction.¹⁹¹ It, therefore, gathered both the defects of the French Code and that of its own.¹⁹² There exists errors in the Egyptian Code; no motives are beyond them except a mere imitation to the original code.¹⁹³ This is despite being out of time as the original Code of France was one and a half a centuries old. During this time there were planted a lot of issues and the comparative codification elevated to the extent that the French Code only occupied the last class in terms of good drafting and engineering of the theories. The Egyptian, as well as the French Code, did not incorporate a lot of the tenets that later Codes of the Twentieth Century had established. Among these issues are: theory of abuse

¹⁸⁹ Sanhūrī (1936c). Op. Cit., p. 21. See Also: Sanhūrī (1972). Op. Cit., volume. 1, p. 4.

¹⁹⁰ Sanhūrī (1972). Op. Cit., volume. 1, p. 2.

¹⁹¹ Sanhūrī (1936c). Op. Cit., p. 28.

¹⁹² Sanhūrī (1972). Op. Cit., volume. 1, p. 4.

¹⁹³ Sanhūrī (1936c). Op. Cit., p. 28.

of right, theory of exploitation, regulations in relation with institutes, arrangement of joint ownership, binding contracts for public utilities, insurance contracts, debt transfer and civil insolvency. All of these issues are not stipulated, even by a single provision, both in French and Egyptian Codes. The ‘sources of obligation’ which form a significant theory in civil law is covered in an ambiguous way although subjects such as deputyship in contract, unilateral will, contracts of adhesion as well as unjustifiable enrichment and dilactual responsibility are treated in defected texts in which the general principles may have neither been sufficiently clarified nor been grounded.¹⁹⁴

- ii. Deficiency and inadequacy:** According to Sanhūrī, one of the main deficiencies of the Egyptian Code is that it did not cover law of personal statute.¹⁹⁵ Also, there are cases in between financial dispositions and personal statute; if they are to be deduced from the principles of Sharī‘ah they may contradict the spirit of the French Civil Code and vice versa. Therefore, it is uncertain how to decide these issues; had the lawmaker transferred them to the principles of Sharī‘ah *or* to the tenets of French law? For instance, transfer of ownership on inherited properties: should it be the Sharī‘ah principle that decides no inheritance unless after settlement of the debts or the French legal principle that transfers the rights and debts altogether to the successors?¹⁹⁶ But more crucial is inadequacy of the Code in adapting to the great advances that contemporary legal discipline realized. The Code is a duplicate of the French Code that was drafted in the Nineteenth Century. The progress of law in this span of time is huge and unanticipated. Therefore, there are theories applied thereon which became a global legacy but has no place in the Code or can only get them a limited indication.¹⁹⁷ Composition of contract is an obvious example. The Egyptian Code, aping that of the French,

¹⁹⁴ Ibid, pp. 24-25; Sanhūrī (1972). Op. Cit., volume. 1, p. 4-5. Sanhūrī referred to several articles (135, 195, 480, 588) of Egyptian Civil Code and (1112) the French Civil Code to prove the authenticity of his claims. See: Sanhūrī (1936c). Op. Cit., pp. 28-29.

¹⁹⁵ Sanhūrī (1936c). Op. Cit., p.23; Sanhūrī (1936b). Op. Cit., volume. 1, p. 272. This comment was recorded in his articles “Wujub Tanqih al-Qānūn...” and “Min Majallah”, but after the codification he apologized and kept silent about the point.

¹⁹⁶ Sanhūrī (1936c). Op. Cit, p. 23.

¹⁹⁷ Ibid.

has amazingly kept silent about it. As Sanhūrī concluded, it is observed that the French and Egyptian Codes did not address this issue which represents one of the most complicated issues in respect of contract. They left it for jurisprudence and Courts' decision. In contrast, the later Codes, such as German Code, Swiss Obligation Code and Italy-France Project, have explicitly stipulated on it, including the way of contracting, the time and duration of obligation...etc.¹⁹⁸ Also; there are issues that should be included in the Code and others to be excluded as they have no further application.¹⁹⁹

- iii. Expatiation and shortness:** According to Sanhūrī, one of the major defects is unnecessary expatiation on one hand and unreasonable summarization on the other hand.²⁰⁰ It explored the right of ownership by two texts while explored the right of utilization abundantly. This is despite that the right of utilization narrowly applied in Egypt. This means that the Code imitated the French Code that was concerned with the needs of French society as they had broadly applied the right of utilization.²⁰¹ Another example is theory of obligation. It expatiates on the case of multi-optional obligations and those originate from law, whereas issues requiring more explanation, such as composition of contract, stipulation for benefit of third party, dilactual responsibility and unjustifiable enrichment, are not.²⁰²
- iv. Ambiguity and obscurity:** As Sanhūrī claimed, the former Code contains many ambiguous texts especially in essential subjects. This claim is evident in issues like: indirect action, natural obligation, condition, cause and object as well as joint liability, disposition of officious

¹⁹⁸ Ibid, pp. 23-24.

¹⁹⁹ Sanhūrī (1936c). Op. Cit., p.24. He indicated to articles (553, 17-18, 37-38).

²⁰⁰ Sanhūrī (1972). Op. Cit., volume. 1, p. 5.

²⁰¹ Ibid.

²⁰² Ibid, volume. 1, p. 6. Sanhūrī referred to articles (13-50, 67-92, 96-100, 150-104, 138-140, 199-201, 155-157, 216-220, 271-299, 342-373) of Egyptian Civil Code as examples for expatiation and to articles (146/207, 11/27) as examples for shortness to prove the authenticity of his claims. See: Sanhūrī (1936c). Op. Cit., pp. 25-26.

(*Fuḍūlī*), possession (*Hiyāzah*) and stipulation for benefit of third party.²⁰³ A proper understanding of these precepts needs a typical imagination or even a divination.²⁰⁴

- v. **Contradiction:** According to Sanhūrī the former Code does contain contradictions, in many locations.²⁰⁵ For example, it burdens the buyer with the liability of pre-delivering damages in sale of fungibles (*Mithliyyāt*), whereas it burdens the seller with such a liability in general. This conflict owes to divergence of historical references. The first statement was derived from French Code, whereas the second statement was from the Sharī‘ah.²⁰⁶ Also, while the Code allows stipulation for benefit of third party without any restrictions, it regulates in another locution, with no exception, that “contracts do not create any usufruct to other than the two contracting parties”.²⁰⁷ It stipulated that maximum rate in agreed interest is nine percent but contrarily maximized the rate in loan contracts to twelve percent.²⁰⁸ Despite self-contradiction, the Code also sometimes contradicts the Mixed Civil Code. For instance, it stipulates the consent of debtor is a condition for transfer of rights. The Mixed Code stipulates notification only.²⁰⁹ The Code permits sale of agricultural product before its maturity. The Mixed Code prohibits that.²¹⁰ Also, in sale with right of redemption (*Bay‘ al-Wafā’*), the code extends duration of redemption right to maximum of five years, while the Mixed Code shortens the duration for two years only.²¹¹ The Civil Code does not recognize the right of drink and the right of drip as rights of servitude following a bare property, but recognizes the right of passage on the basis of need only. Therefore, it authorizes an administrative committee with the right of discretion for the amount of compensation as the case may be. The Mixed Code

²⁰³ Sanhūrī (1972). Op. Cit., volume. 1, p. 6. Sanhūrī referred to articles (137/198, 143/204, 141/202, 147/208, 95/149, 94/148, 76/102, 535/657, 98/152, 109-115, 165-171, 144/205, 355/443, 538/660). See: Sanhūrī (1936c). Op. Cit., pp.26-28.

²⁰⁴ Sanhūrī (1936c). Op. Cit., p. 28.

²⁰⁵ Sanhūrī (1972). Op. Cit., volume. 1, p. 6; Sanhūrī (1936c). Op. Cit., p. 29.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Ibid.

does not recognize all three mentioned categories of servitude right, but then a law issued (number 27 of 1912) recognizes the right of drip and passage and refutes the right of drink. Furthermore, the later does not authorize any administering committees for discretion of damages. Therefore, the legal texts contradict each other in the limit of servitude rights associated with a conflict on the authority of discretion, in case of damage.²¹²

- vi. **Fault:** There are some legal errors and faults in the old Civil Code, Sanhūrī proclaimed.²¹³ For example, in case of social expenses, it contradicts the Sharī‘ah rulings as it puts the burden on her for the maintenance of her housebound and even the maintenance of the wife of her father in law.²¹⁴ Sanhūrī comments: “this is the utmost confusion. It embarrassed the Egyptian Courts and forced them to regard the respective texts as deceased letters and out of consideration.”²¹⁵

After recording last comments in this regard, Sanhūrī concluded:

‘The mentioned examples showed some defects that distorted our Civil Code. It is a code fluctuates between deficiency and expatiation in part, and ambiguity and instability in another part. Contradiction, fault information and incoherency diffuse over it. It is not rather than a blind imitation to an outdated Code.’²¹⁶ (Trans. T.W.)

The formatting defects of the code were not less apparent than the objective ones. The formatting defects distorted the entire old Civil Code. Sanhūrī referred to the following aspects as manifestations of the most defective phenomena in the formative sphere of the Code.

- i. **Artificial order of the Code:** Sanhūrī criticized the format of the Code in different manners.²¹⁷ Firstly, the Code contains four chapters relevant to *Mu‘āmalāt*. In the first chapter, the lawmaker put the properties under the ‘principal real rights’, although it is well known that

²¹² Sanhūrī (1936c). Op. Cit., p. 30. Sanhūrī referred to articles (113/169, 201/265, 241/307, 297/371, 137/198, 141/202, 359, 206/270, 125/185, 478/582, 349,341, 32-33) of Egyptian Civil Code and articles (436, 426, 330) of mixed code, as examples for self-contradiction in part and contradiction between civil and mixed codes in another hand. See: Ibid, pp. 29-30.

²¹³ Sanhūrī (1972). Op. Cit., volume. 1, p. 6; Sanhūrī (1936c). Op. Cit., p. 31.

²¹⁴ Ibid.

²¹⁵ Sanhūrī (1936c). Op. Cit., p. 31. Sanhūrī referred to articles (76/102, 103/157, 255-256, 331-332, 156/218, 155/217, 268/338, 98/152, 162/225, 209/273, 210/274, 212/276) of Egyptian Civil Code to prove the above-mentioned claims. See: Ibid, pp. 31-32.

²¹⁶ Ibid, p. 32.

²¹⁷ Ibid, p. 32.

the properties are subject to the ‘personal rights’ too. Hereby, it was preferable to differentiate the properties from real rights in two different chapters.²¹⁸ Secondly, the Code differentiates between the general and specific when isolating the named contracts from the obligations, for that they have two independent chapters. The named contracts are a part and parcel of the obligations and meet with obligations theory.²¹⁹ The fourth chapter is specified on the creditors’ rights. Here, the lawmaker confused the real guarantee and the real rights altogether with mentioning some regulations regarding the registration of properties.²²⁰ Also he put pawning (*Rahn Hiyāzī*) under the named contracts whereas its right place is the real guarantee.²²¹ Last, but not the least, he criticized the code in the sense that it failed to furnish an introductory chapter to state the sources of law, its ways of implementation, its applicability to the space and place and other relevant questions²²² which represent the general theories that perhaps diffuse over the entire body of the law such as the abuse of right, aleatory contract (*Gharar*) and interpretation principles.²²³ Yet, in details, there are errors spread over all chapters of the code.”²²⁴

- ii. **Multiple languages:** One of the distortive defects of the code is the multiple language of the project. It was firstly codified and written down in French and later translated to Arabic. There existed two forms. One was official (Arabic) and another was original (French). Owing to inadequacy of translation which occurred in many texts, confusion occurred in some Articles. Here the question arises as to whether the priority should go to the original French version or to the Arabic version as the latter represents the official code. Some Egyptian jurists and judges supported the later opinion, whereas others supported the former. Sanhūrī, among

²¹⁸ Ibid, p. 32; Sanhūrī (1972). Op. Cit., volume. 1, p. 7.

²¹⁹ Sanhūrī (1936c). Op. Cit., p.32; Sanhūrī (1972). Op. Cit., volume. 1, p. 7.

²²⁰ Sanhūrī (1936c). Op. Cit., p.33; Sanhūrī (1972). Op. Cit., 1, p. 7.

²²¹ Sanhūrī (1936c). Op. Cit., p.32; Sanhūrī (1972). Op. Cit., volume. 1, p. 7.

²²² Sanhūrī (1972). Op. Cit., volume. 1, p. 7.

²²³ Sanhūrī (1936c). Op. Cit., p.33.

²²⁴ Ibid., pp.33-34; Sanhūrī (1972). Op. Cit., volume. 1, pp. 7-8. He indicated to articles (621/711), (608/734), (46/68) (86-87/733-734).

others, preferred to apply the text that more precisely expresses the objectives of the lawmaker regardless of the text's language. Simultaneously, he proposed a new edition is the best way to avoid these defects.²²⁵

- iii. **Expression and style:** Due to the multiplicity of the code's language, an accurate style and an adequate translation were a must. Owing to the fact that the Arab jurists were unfamiliar with French technical terms, because they were used to use the Sharī'ah technical terms which have no real equivalent terms to the French technical vocabularies, many terms have been misused in translation to the extent that some terms were only translated to the simple language of the public. Despite that, many of the public terms were originally derived from Turkish or Persian rooting back to the age of Ottoman Caliphate. Also, the administrative language was mostly impure and severely mixed with other oriental languages. Therefore, language of the Code needed purification and amendments in order to elevate it and promote the styles and expressions.²²⁶ To illustrate this, there are some examples. For instance, "State" was expressed as "*al-Merī*" which is an Ottoman term and "Obligation" was translated to "*Ta'ahhud*" which means a binding promise, meanwhile the accurate word is "*Dawlah*" for "State" and "*Iltizām*" for "Obligation".²²⁷
- iv. **Faulty translation:** In addition to inadequacy, there were found substantial false translations.²²⁸ For example, the composition "*object de l'obligation*" (Article 95 French) which means *Maḥal al-Iltizām* (the object of obligation) had been translated to "*al-Gharad min al-Ta'ahhud*" which means the purpose of the contract.²²⁹

²²⁵ Sanhūrī (1936c). Op. Cit., pp. 34-35; Sanhūrī (1972). Op. Cit., volume. 1, pp. 8-9. He indicated to articles (136), (120), (162), (84-85) (134), (270) and (462).

²²⁶ Sanhūrī (1936c). Op. Cit., pp. 35-36.

²²⁷ Ibid, p. 36. To illustrate the fact more Sanhūrī referred also to articles (44, 53, 164, 198, 460, 461, 114, 168, 172, 205, 209, 134, 135, 137, 209, 265, 462, 499, 143, 167, 191, 262, 270, 383, 538, 539) and others. Ibid., pp. 36-40.

²²⁸ Ibid, p. 40.

²²⁹ Ibid, p. 41-42. He also referred to articles (84-85, 136) to prove the abovementioned truth. See: Ibid, pp. 40-42.

3.2.2.2 Iraq

Sanhūrī determined the problems of previous Iraqi Civil Law in two main defects:

- (1) Scattered nature of the Iraqi Civil Law. It implies that the Iraqi Civil law was separated between different codes and ordinances. Beside the *Majallah*, there existed *Qānūn al-Arāḍī* (1900), Ṭāpo (land registration) ordinance (1861), law of disposition of immovable properties (1331AH), law of leasing immovable properties (1331AH), law of distribution of joint immovable properties (1329AH) and law of transfer of immovable properties (1331AH). In addition to the Sharī'ah, there existed common laws that applied onto personal statute and *Waqf* properties and the law of civil actions and law of procedure that contained provisions on privileged rights and some other civil laws.²³⁰
- (2) Obsolete and outdated characterizations that the aforementioned laws and ordinances reflected. The *Majallah* contained the rules of Sharī'ah with special reliance on the Ḥanafī School of law and particular reference to *Zāhir al-Riwāyah*, the most authoritative view of law in the Ḥanafī School of law.²³¹ Other laws departed from ancient Turkish laws which were perceived to be rigid and outdated. Therefore, Iraq, as Sanhūrī stated, was in extensive need for a comprehensive Civil Code gathering the separated laws and ordinances in practice and adapting to the legal progress achieved in Iraq and Worldwide.²³²

²³⁰ Sanhūrī (1936b). Op. Cit., volume. 1, pp. 310-311. See also: IMJ (1945). Op. cit., pp. 2-3.

²³¹ In few cases the *Majallah* abandoned *Zāhir al-Riwāyah* and had recourse to other works of the Hanafī School of law. Also, in case of conflict between the opinion of Abū Ḥanīfah and his companions, the *Majallah* adopted those views which conform with needs of the age and public interest. See: S. Maḥmaṣānī (1987). Op. Cit., p.44.

²³² Sanhūrī (1936b). Op. Cit., volume. 1, pp. 311-312.

The defects of these ordinances and laws, other than *Majallah*, were critical and severe. It is enough to read any single provision of these to conclude what inadmissible characteristics they had in terms of simplicity, inaccuracy and complexity.²³³

The defects of *Majallah* too were expressly determined by Sanhūrī. He firstly appreciated it for being superior in respect of the time it came to exist. Therefore, he did not deny the favor of the authors who demonstrated a distinguished set of knowledge and high merits in arts of expression and drafting. He assimilated it to *Murshid al-Ḥayrān* of Qadrī Bāshā for the good drafting and precise styling privileges the latter has. The main shortcomings of *Majallah*, as he diagnosed, return to its classification and drafting style compared with the style of modern codes. However, there are some potential deficiencies with regards to the substance. There is no general theory in the *Majallah* governing obligations and contracts, except provisions relevant to delictual responsibility, regardless of the significant place the theory occupies in any Civil Code. He maintained that the *Majallah* is more likely a law of civil contracts rather than a law of obligations and contracts. For example, the rules of ‘offer and acceptance’ which concern all types of contract are embodied in the book of sale. Similarly, most rules relating to civil torts are dispersed in provisions dealing with wrongful appropriation and destruction.²³⁴

One of the obvious vices of the *Majallah* is impropriety of the style it follows compared to the style assumed for any code of law in terms of furnishing the rules through binding injunctions and plain prohibitions. The treatment of the subjects and the terms used in each chapter of *Majallah* gives the impression that it is more of a textbook than a Civil Code. It mentions definitions for terms in different locations. To illustrate this, the *Majallah* contains

²³³ Sanhūrī (1936b). Op. Cit., volume. 1, p. 316.

²³⁴ Sanhūrī (1936b). Op. Cit., volume. 1, p. 311; S. Maḥmaṣānī (1987). Op. Cit., p. 45.

an introduction and sixteen books. The first chapter of each book gives definitions of the technical terms used, and most of the Articles are followed by examples taken from the collections of *Fatāwā*.²³⁵ This goes back to different reasons as follows:

- A. Though different parts of the *Majallah* obtained the imperial sanction, it cannot be said to have an exclusive authority in the matter regulated. The very purpose of compiling this code was essentially to furnish ready-made principles of law for immediate consumption by the law practitioners. The judges were not strictly obliged to adhere to all provisions documented in it; rather they were left free to form their own opinions as a result of deliberation on Ḥanafī Law Books. Therefore, it was used as a guide and a useful book of reference and the judges had the liberty to apply, or modify, or depart from those provisions as the case may be.²³⁶
- B. As the law-making process of Islamic legal system follows neither the common nor the civil law approaches, but could be regarded as a combination of both, the provisions of *Majallah* were often supplemented by *Fatwas* or cases decided by Shari‘ah Courts. These show why the style of *Majallah* was different from counterparts in modern law.²³⁷

Other jurists, like Maḥmaṣānī, criticized the *Majallah* for other reasons. These, in addition to the previous vices, include:

1. The *Majallah* did not deal with questions of personal statute such as marriage, divorce, adoption, guardianship, etc, except indirectly in the ninth book on interdiction. It also left out the laws of inheritance, wills, *Waqf*, and other like matters as may be found in modern Civil Codes.²³⁸

²³⁵ Sanhūrī (1936b). Op. Cit., volume. 1, p. 311, 314-317. He has referred to articles of *Majallah* (169) (175) to illustrate the claim above.

²³⁶ See the forewords of Daud Bakar and S. A. Rahman for: *The Mejelle* (2001). Op. Cet., pp. vi-x.

²³⁷ Ibid.

²³⁸ S. Maḥmaṣānī (1987). Op. Cit., p. 44.

2. The *Majallah* adopted the theory of the voidable (*Fāsīd*) contract and made the validity of certain contracts conditional upon stipulations which limit the freedom of contract.²³⁹

3.3 Sanhūrī's Assessment of the Major Legal Systems

Viewing the major world laws before codifying the Arab civil law was one of the basic aims of Sanhūrī in order to get more advantages and benefits from the progress of comparative law in his era. Besides that, taking positive tenets of various codes, despite that of the French Code, was a motive among others to justify the necessity of the revision.²⁴⁰ According to Sanhūrī, the new codification movement began in the Nineteenth Century.²⁴¹ After the French Codes, the Austrian Code appeared in 1812. Then, the German Code took place in 1900 followed by Swiss Code (1912), Brazilian Code (1916), Russian Codes (1923), Chinese Code (1929-1930) and Lebanese Code (1932). Add to these a number of code projects like Italy-France Project, Polish Project²⁴² and Czechoslovakian Project.²⁴³

Sanhūrī classified the main laws which are profound and well established into four fundamental categories, namely the following:

- Latin codes as represented by French Code and Italy-France Project.
- German codes as represented by German Code and Swiss Code.
- English law.

²³⁹ Ibid., p. 45. For further information about *Majallah* see: M. Al-Zarqā' (2004). Op. Cit., volume. 1, pp.235-246; Herbert J. (1975). Op. Cit., pp. 65-66.

²⁴⁰ Sanhūrī (1936c). Op. Cit., pp. 42-43; Sanhūrī (1936b). Op. Cit., volume. 1, p.270.

²⁴¹ Sanhūrī (1936b). Op. Cit., volume. 1, p.271.

²⁴² See: Ibid., volume. 1, pp. 308-310.

²⁴³ Sanhūrī (1936c). Op. Cit., p. 43; Sanhūrī (1936b). Op. Cit., volume. 1, pp. 271-310.

- Islamic law “*Al-Sharī‘ah al-Islāmiyyah*”.²⁴⁴

Hereby, he established a new classification varying from the classical one that divides major legal systems into three categories: Romano-Germanic family; socialist laws, the common law and Muslim law (Sharī‘ah).²⁴⁵ However, Sharī‘ah is always recognized as one of the prevalent world legal systems.²⁴⁶

Hence, he recorded some comments and views on samples of the forgoing law categories to indicate the advantages and disadvantages that they have, in order to step towards his own project in codifying the Arab civil law. In the following sections, the top ideas and core comments that provided by him on these fundamental categories and how he examined their suitability and conformity to be regarded as proposed sources of the new Arab Civil Code, are summerized.

3.3.1 Latin Codes

French Code and Italy-France Project represent the so called “Latin codes”. Sanhūrī’s comments on the old Egypt code that considered a picture of the original French Code could be considered here. Hereby, any criticism that substantively encounters the Egyptian Code, perhaps encounters the French Code too. Moreover, he disseminated broad comments on the French Code as well as Old Egyptian Code in different areas of his articles and books.

²⁴⁴ Sanhūrī (1936c). Op. Cit., p. 43.

²⁴⁵ Rene David, John C. Brierley (1985). *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law*, 3rd edn. London: Stevens. pp. 1-25.

²⁴⁶ Sanhūrī (1936c). Op. Cit., p.114.

3.3.1.1 French Civil Code

In the legal history of France, different attempts were made in order to unify the laws. After the French revolution, the leaders tried to unify the French nation in all aspects including the legal aspect. Subsequent Legislative Councils attempted preparation of a Civil Code. Cambaceres prepared three different Codes and were subsequently rejected by Legislative Council. Also Jacqueminot Project failed to gain approval. On 13 August 1800 Napoleon Bonaparte entrusted a committee to prepare a Civil Code. The committee consisted of four prominent members namely: Tronchet, chief of Cassation Court; Bigot Preameneu the Government's Representative before Cassation Court; Malleville, Judge in Cassation Court; Portales, the Government's representative before the Court of Booties. The committee was bound to complete the project in six months only, but the job was surprisingly performed after four months. The project was approved by Supreme Legislative Council (*Corps Legislatif*) on 21 March 1804.²⁴⁷

To Sanhūrī, one of the best characters of this code is its discrimination between the law and jurisprudence. Also flexibility of its provisions that allows different interpretations and ways of application is another positive character. Sanhūrī returned the defects of French Civil Code to its formative order. It doesn't contain many new legal theories that came to force after the birth of French Code. Also, it lacks precise expressions with regard to terms used so that one term was sometimes used for multiple meanings, a matter which creates disturbance for the legal professionals.²⁴⁸

²⁴⁷ Sanhūrī (1936b). Op. Cit., volume. 1, pp. 273-278.

²⁴⁸ Ibid. volume. 1, pp. 278-279.

3.3.1.2 Italy-France Project

The Italy-France project was a special concern of Sanhūrī Bāshā. The project in that age did not take its practical place and yet was only a theoretical rather than an actual project. Sanhūrī regarded it as the purified spirit of the Latin laws that were refreshed to adapt to heavier challenges of the age. It should be considered as a revision on the French Code, Italy Code and other Latin Codes. It forms a symbol that denotes the Latin spirit, just like the German and Swiss codes are entitled to demonstrate the German spirit, Sanhuri added.²⁴⁹

The project started with the end of World War I (1918). The profound Italian jurist Scialoia called for a unified code for Italy and France in order to put a base-stone to a universal code for most of the world. The call got warm responses from the French jurists, namely Larnaude who occupied the deanship of law faculty in Paris. Two committees were founded to perform the work. The Italy committee was entitled to draft the “Sources of Obligation”. The French committee was entitled to draft “Obligation Effects” and “Establishment of Obligation”. The project was drafted with accompaniment of an interpretative report and applied to the Italian and French governments in 1928 to get their approval.²⁵⁰

Sanhūrī appreciated this project a lot, relying on the fact that the committees spent about ten years on this draft and they came out with an amazing and significant legal work giving the Latin laws a new cover and the spirit of contemporary age. It encompasses substantively and formatively features that had been held to both Italian and French Codes separately. It is more explicit in legal substance and contains many contemporary legal

²⁴⁹ Sanhūrī (1936c). *Op. Cit.*, p. 54.

²⁵⁰ Sanhūrī (1936c). *Op. Cit.*, p. 54; Sanhūrī (1936b). *Op. Cit.*, volume. 1, pp. 287-288.

theories abundant on that contained in the old Codes of both countries.²⁵¹ Sanhūrī indicated the main advantages of this project in the following points:

1. The lawmakers of the project intended to have it adopted universally.²⁵²
2. The lawmakers extracted some laws from German law, Swiss law, Austrian law, Brazilian law and others in order to put a nucleus for the post-civilized laws in the world.²⁵³ This point motivates why the project got good appreciation from the countries that were influenced by the Latin laws such as Romania, Albania, Greece, Poland and Yugoslavia.²⁵⁴

Regardless of the foregoing advantages, Sanhūrī criticized the project in the sense that it holds an influential effect of reconciliation spirit which sometimes functions passively when the priority goes to dissolution of disputes, rather than the value of the advocated contents and disseminated tenets. The project preserves the Latin spirit to the extent that makes it backward in tendencies and victimizes the spirit of elevation. There are no huge changes in comparison with the Italian and French Codes. According to Professor Ripert, an involving personality in the preparation of the project, the project is a conservative code and does not give room to necessary advancement.²⁵⁵ Therefore, Sanhūrī rejected the call of some jurists, namely Boye, to substitute the Egyptian Code regarding obligations and contracts by the mentioned project. Rather, he called for selective quotations from it owing to it being a successful project as it adapts to the contemporary legal theories and keeps on preservation of the Latin spirit, especially with the concern of the Egyptian Civil Code that somehow falls under the Latin segment.²⁵⁶

²⁵¹ Sanhūrī (1936c). Op. Cit., p. 55.

²⁵² Sanhūrī (1936c). Op. Cit., p. 56.

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ Ibid., pp. 57-58.

²⁵⁶ Sanhūrī (1936b). Op. Cit., volume. 1, p. 291; Sanhūrī (1936c). Op. Cit., pp. 55-57.

3.3.2 German Oriented Codes

The German oriented codes include Austrian Code, Swiss Code and German Code. Sanhūrī preferred the Austrian Code over the others and Swiss Code over the German Code.

3.3.2.1 Austrian Code

The Austrian Code (1914-1916) was a revised version of the Austrian Code (1811). Many amendments were done in the original version due to changes in social and financial circumstances. By passage of time, the Code became one original version surrounded by many marginal laws issued in different times and circumstances. The decisions of courts constituted an essential part of the law that was in practice. Therefore, a committee headed by Unger was entrusted to revise the previous Code in 1904. After a long process of amendments the Council of Representatives approved the project on 19 December 1912. The Austrian government approved the project and issued it in different volumes between 1914 and 1916.²⁵⁷

Sanhūrī appreciated this Code for its rationality and explicit logic and for that it does not bind itself to historical traditions and in absence of statutory laws it resorts to principles of natural law and equity.²⁵⁸

3.3.2.2 Swiss Code

The Swiss code consists of two different parts drafted independently within various historical contexts. The first part is the civil law that covers the genuine and considerable persons of law, family law, the inheritance and will, and the rights on things. The second part is about the obligations which incorporate the commercial law too. This classification turns back to

²⁵⁷ Sanhūrī (1936b). *Op. Cit.*, volume. 1, pp. 294-297.

²⁵⁸ *Ibid.*, volume. 1, p. 294.

historical considerations as the Swiss republic first ordered the codification of the commercial law and some subjects on obligations in 1863. A great professor known as Munzinger was the person who handled the work and accomplished it in 1871. The republic's constitution of 1873 granted the legislative committee the right to draft all aspects of civil laws, including those related to commerce and dispositions of the movable properties. After the demise of Munzinger, another professor named Fick was appointed to handle the first draft of the project. After proceeding with the necessary revision and referendum, the draft gained more clarity and it was approved by the legislature in 1879, to be operative on 1 January 1883. This was considered as the code of obligations. After the amending of the constitution in 1898, more rights were granted to the central government to codify all subjects of the civil law. Upon that, Professor Huber laid down the Civil Code project and revised the code of obligations too. The legislative committee approved the Civil Code in 1907, to be operative on 1 January 1912. Another committee was then founded to revise the code of obligations. After due revision, the obligations code was approved in 1911, to be operative along with the Civil Code on 1 January 1912. Since the Swiss code drafters were professors, it was predicted to be a pure juristic work, but it unexpectedly was rather a practical work. On the contrary, the German code that was prepared by laymen and merchants along with some legal professionals amounted to the juristic spirit more than amounting to the practical point.²⁵⁹

Sanhūrī appreciated the Swiss Code for its simple lingual construction. To him, it may race the German sample in its easy and simple nature. Its construction reflects an example for an explicit, deep and recent code.²⁶⁰ It incorporates the distinctive attributes of both the German code in the technical value and the French Code in the scriptural clarity and lingual simplicity. This distinction made it disseminative and reputable enough to be adopted literally

²⁵⁹ Sanhūrī (1936b). *Op. Cit.*, volume. 1, pp. 297-298; Sanhūrī (1936c). *Op. Cit.*, pp. 49-51.

²⁶⁰ Sanhūrī (1936c). *Op. Cit.*, p. 52.

in some countries. The republic of Turkey, for example, had adopted the Swiss Code, preferring it over all other Western Codes when it shifted from the Sharī'ah law to a European legal code. It can be said that the Swiss Code is the best choice for any nation that tends to extract the foreign codes owing to its flexibility, modernity, adaptive nature, and generality in terms and giving room to the judges and jurists to apply legal reasoning on the basis of the general tenets of the Code.²⁶¹

3.3.2.3 German Code

The German Civil Code was issued in 1896 with effect from the beginning of 1900. Starting from 1874 the council of Bundesrath established a preparing committee to put the outlines for a Civil Code. After its preparation, a committee was established of eleven members from jurists and judges. Each member was entitled to draft a part of the Code until they edited the first project in 1877. The project was published for the masses for the purpose of a referendum in 1888. Later on, many suggestions and new proposals were demonstrated by the intellectual associations and legal professionals in a variety of spheres. One of the most crucial criticisms that had been shown was about the language of the Code and its substantive debt to the Roman law. Its language was much closer to jurisprudence than legislation and the force of the Roman law was critically manifest. Some profound jurists, like Gierke, opposed the force of the Roman law and called for giving noticeable room to the local tradition and German culture. Upon that, the council of Bundesrath created another committee in 1890 from twenty two members, including the legal professionals, the manufacturers, the businessmen, the merchants and the profound nobles to draft the German Civil Code. The project was prepared and amended four times. A referendum was held to approve the project. It was finally ratified by both Reichstag and Bundesrath councils in 1896. Because of the nature of the drafting

²⁶¹ Sanhūrī (1936b). Op. Cit., volume. 1, pp. 298-299; Sanhūrī (1936c). Op. Cit., pp. 52-54.

committee, the Code dressed in a practical cover and the influence of the German traditions was then to be competing and superseding the influence of the Roman law.²⁶² Therefore, the Code got some distinctions. Among them are (1) the long period that had been spent in its preparation until it gathered the abstract of the German understanding within its best stages, (2) the contribution of the non-legal professionals gave it a living spirit and made it capable of incorporating the abstract of legal theories and judiciary habits, and (3) the referendum that assisted in providing different views and possibilities to be taken into consideration. Therefore, it gives a good lesson for the Egyptians in the revision of the old Civil Code.²⁶³

Sanhūrī Bāshā describes the German law as the hugest code that had ever been issued in the recent era. It reflects one of the main attributes of the German people manifesting their mastery of various aspects such as physical capability, broad nets of knowledge, excellent manufacturing, high capacity in warfare and political distinctions, as well as the huge lingual construction of the German language and their well-established legal system. He verifies that the German law is the abstract of the scientific theories they have established during the length of a century. It prevails in the sphere of jurisprudence any other laws due to it following the most explicit methodology and the clearest legal approach. But this nature has had put obstacles before its dissemination as it was regarded as a complicated code in technical aspects and extra accurate in scientific spheres. Therefore, it was unapproachable in the practical legal life.²⁶⁴ This is due to the fact that the German lawmaker tended to put solutions for every case and to assume all presumptions, the matter that brought complexity to the Code. Besides that, the Code has been criticized as it not being materializing the interest of a democratic state as it was laid down more to protect the interest of the wealthy classes. It means that it does not

²⁶² Sanhūrī (1936b). Op. Cit., volume. 1, pp. 300-303; Sanhūrī (1936c). Op. Cit., pp. 44-47.

²⁶³ Sanhūrī (1936c). Op. Cit., p. 47; Rene David, John C. Brierley (1985). Op. Cit., pp.90-93. Also see the introduction of Ian S. Forrester, Simon L. Goren and Hans-Michael Ilgen (1975). *The German Civil Code*. Oxford: North Holland Publishing Company. pp.xi-xiv.

²⁶⁴ Sanhūrī (1936c). Op. Cit., p. 44.

facilitate room for protecting the lower classes and tying solidarity between the social segments.²⁶⁵

3.3.3 English Law

Despite the fact that Sanhūrī had written his first PhD thesis about the English law, he ignored it in his overview and had not provided details about it. The only relevant comment which reflects an important point could be the statement that verifies: “Owing to the fact that the English law is totally stringent and unfamiliar in the Egyptian jurists’ eyes, it is unpredicted to get huge benefits from it via this revising work. Therefore, we shall ignore it.”²⁶⁶

3.3.4 Islamic Law

To give a comprehensive vision about Sanhūrī’s appreciation for Islamic Law, we shall devote the last chapter to elaborate on it.²⁶⁷ However, since the *Majallah* was representing the Islamic Civil Law and Sanhūrī evaluated it, as mentioned before, there is no need to repeat it. Therefore, a summary of his appreciation to this system of law will be made here. Sanhūrī regarded Sharī‘ah in the eye of fair and moderated people as the most elevated system in this universe. Its logic is similar to the logic of the Roman law. According to him, Sharī‘ah has been misunderstood and treated unfairly when some alleged that it is rigid and not proper for the contemporary age ignoring the fact that it developed a lot and is capable of developing more and adapting to the requirements of the current civilization.²⁶⁸

²⁶⁵ Sanhūrī (1936b). Op. Cit., volume. 1, pp. 302-303; Sanhūrī (1936c). Op. Cit., p. 48-49.

²⁶⁶ Sanhūrī (1936c). Op. Cit., p. 44. See also Rene David, John C. Brierley (1985). Op. Cit., pp.309-397.

²⁶⁷ For further details refer to: N. K. al-Zanki (2001). Op. Cit., pp. 81-94.

²⁶⁸ Sanhūrī (1936c). Op. Cit., p .114.

3.4. Sanhūrī's Start-points for the New Codes

In his overviews for the proposed projects, Sanhūrī Bāshā emanated from several essential start points:

- A. The need to construct a comprehensive Civil Code. It means that he undertook the project within a belief in making a comprehensive code. Therefore, he assured the need to encompass the law of personal statute under the New Code. He said:

‘The New Code should be inclusive and regulating all the issues...Hereby, I do not mean to duplicate the law of personal statute from that of the Western paradigm. Rather, our law in these respective issues should be extracted from the Islamic law after it being properly adjusted with the requirements of time to be applicable upon non-Muslim subjects too. Hence, we do not intend to decline the authority of Islamic law by combining the personal statute with the Civil Code. In contrast, we prefer to extend the authority of Sharī‘ah more and more even to cover the realm of *Mu‘āmalāt* itself. Our intention rather is to get the facility of codification in all aspects of the proposed Civil Code including the law of personal statute.’²⁶⁹ (Trans. T.W.)

- B. Overcoming the dichotomy of Egyptian laws in reference to the separation between the Civil and Mixed Codes. He means that the law should be united and applicable on all the residents, including the local and foreign inhabitants. There should not be two codes, one applied in the Civil Courts and another applied in the Mixed Courts, because the divergence of law on the same issue will not bring about stability in dealings. Adversely, it will bring chaos and instability and create critical problems for the country. This dichotomy has reduced the sovereignty of the nation over its legislation and is a manifestation of the foreign privileges. “Therefore, I would express the will of the nation in a uniform Civil Code that is applicable upon all inhabitants of Egypt, whether they are Muslims or not, Egyptians or not.”²⁷⁰

In parallel to that, he intended to overcome the disunity and separation of Iraqi Civil Laws.²⁷¹

²⁶⁹ Ibid, pp. 59-60; See also: Sanhūrī (1936b). Op. Cit., volume. 1, p. 282, 312-313.

²⁷⁰ Sanhūrī (1936c). Op. Cit., pp. 61-64.

²⁷¹ Sanhūrī (1936b). Op. Cit., volume. 1, pp. 310-311.

C. The need for establishing legal independence and getting rid of imitation of others. He, thus, ensured that Egypt deserves to facilitate its independence and enjoy all that enjoyable by a nation. Therefore, it is the right of Egypt to administer the justice in all provinces and by Egyptian judges forever,²⁷² and:

‘The objective of (drafting) a new Iraqi Civil Code is not to shift from the *Majallah* to a different direction and abandon the legacy of the Ḥanafī rite in Iraq. Thus, if the new Code pretends to have a new appearance, it will be the one hiding the entire juridical legacy of Iraq under it, away from any distortion or futility... Therefore it is lunacy and unconsciousness to destroy the wealth of predecessors and become beggars asking aids from others. This consideration will protect the honor of the nation...If the intention is to codify a Civil Law for Iraq; it ought to be communicated with the past inasmuch as communicated with a promising future.’²⁷³ (Trans. T.W.)

3.5 Proposed (Historical) Sources of the New Codes

3.5.1 Egyptian Civil Code

Sanhūrī summarized the proposed sources of the proposed Egyptian Code as three, namely:

- The Egyptian judiciary, for a half century as a practical guide for the lawmaker,
- The contemporary codes and their beneficial lessons and
- The Islamic law.

3.5.1.1 The Egyptian Judiciary

Despite that he did not mention the exact history from which he considered the judiciary experience to be authoritative as a reference, Sanhūrī confined the accessibility of this source to the extent of a half century.²⁷⁴ However, it is easy to figure it out from the history of the new Egyptian Civil Courts. The writ of the Civil Courts was issued in 1881 and the courts opened in 1883. It implies that the half century starts from 1883 the year in which the Civil

²⁷² Sanhūrī (1936c). Op. Cit., p. 62.

²⁷³ Sanhūrī (1936b). Op. Cit., volume. 1, pp. 270-271.

²⁷⁴ Sanhūrī (1936c). Op. Cit., p. 75.

Courts were officially opened by Tawfiq Bāshā Kḥedive to 1936 the year in which Sanhūrī wrote his article. The duration equals to (51) to (53) years.

He attributed the significance of this reference to the fact that it has applied the precepts of the former Code for everyday judgments of a half century. Therefore, it corrected many defects of the Code, completed the deficient, clarified the ambiguous and determined the value of each single law during the practice.

‘The task of Egyptian judiciary was huge and awkward. It was required to nationalize a foreign law entered the country between a day and its night. Thus, the judiciary performed its duty dexterously. Therefore, I have no doubt that we can get large benefits from this experience to enrich the New Code for it being inspired from our own experience and our daily applications. I shall be sure that it matches our circumstances and adapts to our status.’²⁷⁵ (Trans. T.W.)

Furthermore, by going back to the judiciary records and documentary cases recorded by the Courts, we could imagine how the objective of the provisions of the Code prevailed and were achieved and how it failed or lapsed on the ground of application. It also shows how and in what sense the people had used ‘exits’ to escape from the power of law? Therefore, the new lawmakers should discriminate a variety of impacts to amend it in a way that realizes the interest of the public and blocking the means of evil so that no more devices will be practiced after then.²⁷⁶

3.5.1.2 Contemporary Codes

Sanhūrī attributes the impact of this source to the global movement towards codification. The codification process started everywhere. With every new code there is a tradition. Each code

²⁷⁵ Ibid, pp. 77-78.

²⁷⁶ Ibid, p. 78, the footnotes.

gets advantages from the others.²⁷⁷ The Arab lawmakers as well as others cannot deprive the nation from the fruit of human experience.²⁷⁸

Despite the forgoing point, Sanhūrī openly noticed that the derivation from this source should be confined and surrounded by observations, because the mature nations do not imitate blindly and extract no laws from others unless done in a safe way. Therefore, the experience of the Egyptian judiciary must occupy the first position and precede the contemporary codes in that sense. The law should be the fruit of life, not vice versa.²⁷⁹ Thus, the facilitation of this source must be confined with two dictates:

- Law of personal statute should not be derived from a foreign code as it amounts to the influence of a variety of factors like belief, custom, social consideration and local habit. Therefore, we cannot imitate those who have different lifestyles and divergent customs and habits.²⁸⁰
- Extraction from contemporary codes should relate more to the formatting aspects and not to the objective spheres. But, there are subjects that are nakedly related to human logic and that could be merely imagined, like *Mu'āmalāt* and more precisely the obligations, which reflect no religious or local sensitivities. Thus there might be no hindrance to be taken from human experience manifested in the contemporary codes.²⁸¹

²⁷⁷ Ibid, p. 113.

²⁷⁸ Ibid.

²⁷⁹ Ibid, p. 93.

²⁸⁰ Ibid, p. 94.

²⁸¹ Ibid.

3.5.1.3 The Sharī'ah

Sanhūrī returns to the importance of Sharī'ah law for historical and objective reasons.

‘The authors of the New Code must extract a huge portion, in the construction of the project, from the Sharī'ah, owing to that it constituted the legal system of the country before the current Code. Yet, it still constitutes a large part of the Egypt's Civil Code, namely the personal law and other subjects in *Mu'āmalāt*.’²⁸² (Trans. T.W.)

Also, the application of Sharī'ah appropriates the old legal traditions and stands in line with the view that the law is the seed of the community which grows and develops and its present communicates with its past.²⁸³ Beyond the historical incentives, there are objective reasons too. The Sharī'ah is regarded, in moderate eyes, as the most advanced legal system. It can be a pillar in construction of a comparative law. “We know not a legal system, in the history of law, being established upon a precise legal logic resembling the logic of Roman law like the Sharī'ah.”²⁸⁴ Hence, Sanhūrī criticized the way the drafter of the former Code has conducted the Sharī'ah as he had neither a clear agenda, nor an established cognition to a true extraction from it. He seems to have had no plan in dealing with and extracting from it. Rather, he extracted some rulings and laid them down under the Code in an accidental way. He separated them in different locations, such as issues regulating servitude rights (*Huqūq al-Irtifāq*), the sources of acquisition, sale contract and lease contract.²⁸⁵

In Summary, historically there are two facts to be recorded in this case, firstly: Manoury first extracted some rulings from the Sharī'ah in the Mixed Code that he drafted and Moriondo aped him in those aspects and he rarely approached them differently. Except for

²⁸² Ibid, p. 113.

²⁸³ Ibid.

²⁸⁴ Ibid.

²⁸⁵ Ibid, p. 117.

minor issues, the portion of Sharī'ah law in the construction of the Civil Code is the same and equal to the portion preserved for it in the Mixed Code. Secondly: Manoury and Moriondo both had been known to have limited information about the rules of the Sharī'ah to the extent that they had incorrectly extracted laws from it. Nakedly, none of them contacted Sharī'ah with a professional sense.²⁸⁶ If they would truly and professionally know about Sharī'ah, they would, undoubtedly, aim to get more benefits from it.²⁸⁷ Despite the foregoing criticism, Sanhūrī recognized that there are laws extracted from Sharī'ah and laid down in the right way, attributing this to a variety of possibilities. Among them are the following:

- It is historically proven that Manoury and Moriondo stayed in Egypt before drafting the Code and they worked for years as lawyers. Thus, it is possible that they could contact Sharī'ah during their working in the courts as knowledge of it was a prerequisite for the career by the fact that Sharī'ah was the 'common law' of the country.
- It is recorded that Moriondo occasionally contacted the great Muslim jurist Al-Baḥrāwī who held the post of Mufti at the Justice Ministry. Also, it is possible that he also consulted Qadrī Bāshā who was the Justice Minister in 1881.
- It is possible that they have referred to the references of Islamic jurisprudence directly via the translations and works that were available. Also, it is possible that they had taken benefits from the *Majallah*.²⁸⁸

Based on the foregoing discussions, Sanhūrī assured of more reliance on the Sharī'ah in the New Code, to incorporate more rulings, adopt more tenets and give more attention to its

²⁸⁶ Ibid, p. 119.

²⁸⁷ Ibid, p. 118.

²⁸⁸ Ibid, pp.118-119.

glorious and logical principles. In this context, he criticized those who allege that the Sharī'ah cannot be codified. On the contrary, Sanhūrī assured that the codification of Islamic law took place officially with the Ottoman Turks in the *Majallah* and Qadrī Bāshā also drafted the rules from Sharī'ah in endowment (*Waqf*), *Mu'āmalāt* and personal statute. Therefore, there exist, undoubtedly, precedents for an Islamic code.²⁸⁹

3.5.2 Iraqi Civil Code

Sanhūrī in his article “*Min Majallat al-Aḥkām al-‘Adliyyah ilā al-Qānūn al-Madanī al-‘Irāqī*” (1936) ensured that the source of Iraqi Civil Code shall be the Sharī'ah and the Committee should deal with the substance of the Western Codes conservatively.²⁹⁰ Despite that, he summarized, in his later article titled “*Al-Qānūn al-Madanī al-‘Arabī*” (1962), the sources of the new Iraqi Code as three, namely: provisions of *Majallat al-Aḥkām al-‘Adliyyah*, provisions of special Iraqi laws and ordinances, and provisions of the New Egyptian Civil Code.²⁹¹ Meanwhile, Ḍiyā’ Sheith Khaṭṭāb, the famous Iraqi lawyer, returned the historical sources of the Code to four, namely: (1) the *Majallah*; (2) *Murshid al-Ḥayrān*; (3) Islamic jurisprudence, and (4) the New Egyptian Civil Code.²⁹² However, the Justificatory Report “*Al-Asbāb al-Mūjibah*” of the Iraqi Code reduced the sources of the Code to two fundamental sources only; the Islamic Sharī'ah and the Western Codes.²⁹³

²⁸⁹ Ibid, pp.59-60.

²⁹⁰ Sanhūrī (1936b). Op. Cit., volume. 1, p. 317.

²⁹¹ Sanhūrī (1962). Op. Cit., p. 22; IJM (1945). Op. Cit., p. 4.

²⁹² Ḍiyā’ Shīth Khaṭṭāb (1956). “Maṣādir al-Qānūn al-Madanī al-‘Irāqī,” *Maj. Al-Qaḍā’*, 14 (2), p. 182.

²⁹³ IJM (1945). Op. Cit., p. 4.