Codification of Islamic Law Premises of History and Debates of Contemporary Muslim Scholars

Najmaldeen K. Kareem Zanki PhD
Associate Professor
College of Shari'a & Islamic Studies
University of Sharjah
Sharjah, 27272
United Arab Emirates

Abstract

This study sheds light on the question of codification in the Muslim world. It tries to explain historical attempts made for unification of Islamic law and explore the factors made these attempts fruitless. The study hinges upon a historical and analytical method and concludes some important findings. According to the study, attempts of codification go back to the era of the Abbasid Caliphate. Freedom of Ijtihād was one of the main hindrances making codification of the Islamic law prohibitive. However, the Islamic State had presented different ways to unify the laws, such as recognizing limited schools of law and appointing judges from certain schools of jurisprudence, then selecting certain books of Fiqh to be the reference of Fatwa and judgment and drafting collections of Fatwa by official directives from the State. The final status was promulgation of the official codes of law by the Ottoman Caliphs after enacting the policy of Tanẓīmāt in 1839. Here, the "Majallah" for law of transactions and "Qānūn al-ʿĀ'ilah" for the family law were produced in a way technically similar to the modern styles of codification.

Keywords: Islamic Law, Codification, *Ijtihād*, Sacred Texts, Harmonization of *Shari'ah* and Civil Law

Introduction

During the Muslim history, some attempts had been done to make the Islamic law more attainable and reduce its different jurisprudential views in a single code applying in the entire or a certain part of the Muslim world. However, the challenges of modernity had permanently posed the question of codification and differences of Muslim views are continuously observed. In this study, we will try to shed light on the historical progress occurred in the Muslim world pertaining this issue and then propose the main reasons made the act of this codification legally disputable.

Definition of Code and Codification

Code, literally, means the act, process, or result of arranging in a systematic form, and codification means the act of codifying. It does include, in the view of law, two main aspects, namely: the act, process, or result of stating the rules and principles applicable in a given legal order to one or more broad areas of life in this form of a code; and, secondly, the reducing of unwritten customs or case law to statutory form.[i]

The term "Code" is defined by L. B. Curzon as a systematical collection, in comprehensive form, of laws, e.g., the Code of Hammurabi (Eighteenth Century BC), and the Code Napoleon (1804).'[ii]

The equivalent Arabic term for codification is "*Taqnīn*". Sanhūrī defined the Arabic term as drafting the laws within arranged texts, in a systematic and consistent form.[iii]

From the foregoing definitions, one can conclude that the codification is to collect legal texts that are respective to a branch of law in an official document, e.g., civil law, commercial law, penal law, law of civil or criminal procedure, law of labor. A "code", therefore, is the official document that contains the legal texts in a particular branch of law.[iv]

Literature Review

There is an abundance of literature exploring the history of Islamic law and the foundation of Islamic jurisprudence. The debate on codification of Islamic law and the controversy about its legitimacy have been virtually discussed by the profound Professor Ṣubḥi Maḥmaṣānī in "*Al-Awḍāʿ al-Tashrīʿiyyah fī al-Duwal al-ʿArabiyyah Māḍīhā wa Ḥāḍiruhā"* (Legal Systems in the Arab States: Past and Present)[v] and "*Falsafat al-Tashrī' fī al-Islām"* (The Philosophy of Jurisprudence in Islam).[vi] As such, the issue is studied by Amin Ahsan Islahi in "*Islamic Law: Concept and Codification*"[vii] and Orhan Junbulat in "*Qawānīn al-Dawlah al-ʿUthmanīʿiyyah*" (The Laws of Ottoman State).[viii]

In these books, the authors discuss the development of legal status in the Arab world and explore in detail the historical events relevant to the compilation of Islamic law, with a special reference to the relation of law with the State and Judiciary policy. However, little English literature has been provided on this matter and the latest debate on legitimacy of codification is mainly absent.

Research Methodology

This is a library research and the type of methodology adopted for this research is historical and analytical. It follows the historical method to exhibit the attempts done to codify the law from the early Islamic age until the contemporary time. The study also hinges upon the descriptive-analytical method to describe and critically analyze the main reasons could be manifested for supporting the codification of Islamic law, after shedding lights on the obstacles made it almost unattainable during the history. The material was collected from both primary and secondary sources and critically evaluated to finally come up with a reasonable and justifiable assessment of this matter.

Codification Attempts in Islamic History

In the period of the Prophet Mohammed (P. B. U. H) and of the four great Caliphs, the question of codification did not arise. With the passage of time, when a growing number of juristic schools appeared and the job of the courts was not as simple as before, it was not possible any longer to expect the harmony in scholars' opinions and judges' verdicts, as much as the rulers themselves, began to feel the necessity of a codified law.[ix]
The historians refer the very beginnings of codification in Muslim World, to the well documented event of *Ibn al-Muqaffaʿ*s dialogue (d. 144AH/762CE), with the Caliph *Abū Jaʿfar al-Manṣūr* (95-158AH/713-775CE). *Ibn al-Muqaffaʿ*, a famous writer in Arabic literature, was the first to see the necessity of codification. He put a proposal before *Abū Jaʿfar al-Manṣūr* in a formal letter named "*Risālat al-Ṣaḥābah fī Ṭaʿat al-Sulṭān"* (Message of Companions in the Obedience of the Sulṭān) and because it was fruitless it was then called "*al-Risālah al-Yatīmah"* (The Orphan Message), stating:

'And one problem of these two Islamic States (Chufa and Basra) and other provinces to which *Amīr al-Mu'minīn* has to give his deep thought is that of the divergence of opinion on Islamic Law, which has now reached such proportions that it is no longer possible to close our eyes to it… If *Amīr al-Mu'minīn* would like it, the answer could be; that *Amīr al-Mu'minīn* issue a decree that all decisions and judgments so far passed be compiled in the form of a book and placed before *Amīr al-Mu'minīn*, and every sect must attach with it all the arguments which support their viewpoint, duly based on reasoning and authoritative references. *Amīr al-Mu'minīn* may thereafter review the whole record, and give his own judgment in each case, and restrain the law courts from contravention thereof. In this way all the scattered decisions and judgments – covering a variety of subjects of all shades – shall assume the form of a regular, written code of law, free of errors. Accordingly, all Islamic States shall come to be governed by a uniform legal system. It is hoped that Allah Almighty shall bring about a consensus of the *Ummah* on the opinion and verdict of *Amīr al-Mu'minīn*.'[x]

The Caliph did not accept the proposal in this form, but he kept it in mind. When he went to perform the pilgrimage to Mecca in (148AH/765CE), he indicated the idea to *Imam* Mālik. Mālik opposed the proposal and said that the followers of each school found solace in following their respective doctrines. It is also maintained that the Caliph went again to the pilgrimage in (158AH/775CE), and he put the whole scheme before Mālik. It is also believed that Mālik did not formally agree with the proposal, but compiled his *Muwaṭṭa'* yet holding the opinion thereof of his own. History has it on record that during their reign, both *Al-Mahdī* (d. 169AH) and *Harūn al-Rashīd* (d. 193AH) also approached Mālik with the same question, which again was refuted by him.[xi]

It is recorded by history that during the first three centuries of Islamic history, the function of *Ijtihād* remained free of the interference of rulers; and judges remained free to implement the law according to inspiration of courtesy and justice based on the fundamental evidences of Islamic Holy References and other relative sources of jurisprudence like Analogy (*Qiyās*), Custom (*ʿUrf)* and Public Interest (*Maṣlaḥah Mursalah*).[xii]

The concept of codification was presented in various forms in the later history of Islamic jurisdiction. It was improved and advanced in very slow and gradual steps in such a form that it is sometimes difficult to decide how to categorize them from a contemporary perspective. Generally, the historians of Islamic legal system indicate the different typical approaches, that to be discussed in the following sections, as the very beginnings of the codification concept.

A. Adoption of the four prominent doctrines of jurisprudence: After the confusion of political order and division of power that occurred during the *Abbasid* era, a beginning of juristic rigidity came to be grounded. The majority of scholars favored adopting certain schools founded by famous *Mujtahids* to the extent that this gradually led to severe doctrinism in juristic opinions. This became dominant, especially after the conflict of opinions became obvious as a result of freedom of juridical opinions. The four best known schools of four great Imāms; Abū Ḥanīfa (d. 150AH/767CE), Mālik, Shāfiʿī (d. 204AH/820CE) and Aḥmad b. Ḥanbal (d. 241AH/855CE) became dominant. The Ḥanafī Doctrine diffused more due to the Abbasid's adoption of this school and the appointment of major judges from its fellows, e.g. the popular judge Abū Yosuf (d. 189AH/805CE). Shāfiʿī Doctrine was preferred in Egypt, the place where the doctrine had grown in. Mālikī Doctrine became prevalent in West Africa (*Maghrib*). The judges mostly were selected from these schools according to the historical contexts of each and based on opportunities. Under the jurisdiction of Ṭūlūnid (254-292AH) and Akhshidid (323-358AH) the judges were selected from the four schools, with a certain favor to the Shāfiʿī School. Therefore, it became a judicial tradition for the judges to consult their doctrine in applying the rules. Yet, the rulers did not adopt a certain school to be the only reference of adjudication and people were free to choose the judge they preferred in accordance with the common acceptability of these doctrines.[xiii]

B. Official adoption of a certain doctrine as a formal judicial reference: In Fāṭimids era (358-654AH) in Egypt and West Arabia, the situation of judicial order totally changed. They, for the first time in Islamic history, created a new post of Super Judge "*Qāḍī al-Quḍāt*". They used to choose a scholar from Ismāʿiliyyah Shiite to the post, imposed the Shiite Doctrine over territories and adopted it as the only reference for Fatwā and Judgment. Also, history records that the Mālikī Doctrine was imposed in West Africa by Al-Muʿizz b. Badīs b. Yosuf (d. 454AH/1026CE) in the middle of the Fifth Century of *Hijrah*. The Ayyūbid (566-648AH) adopted the Shāfiʿī Doctrine but selected the judges from the followers of the four Sunni Doctrines. In the age of Mamālīk (648-922AH) the post of judge was only entitled to the followers of the four Sunni Doctrines, even the post of disciplinary teaching (*Mashīkhah*) was reduced to them.[xiv]

In the beginning of the Ottoman jurisdiction, this situation lasted; no official adoption of a codified law and with multiple juridical doctrines in power. But, because the Ottoman rulers embraced the Ḥanafī Doctrine, they used to select a Ḥanafī scholar to the post of *Sheikh al-Islām* who was entitled to issue *Fatwā* according to his doctrine. The Ḥanafī Doctrine, therefore, became powerful. Later on, Sulṭān Salīm al-Awwal (ruled between 1512 and 1520CE) issued a decree (*Farman*) announcing the Ḥanafī Doctrine as the official doctrine of the State, both in aspects of Fatwa and judgment. As such, the Ḥanafī Doctrine controlled the positions of *Sheikh al-Islām*, *Fatwā* givers (except the *Fatwā* in cases of Devotions) and the judges over the territories ruled by the Ottomans. The same policy took place in Egypt in the reign of Muḥammad ʿAlī Bāshā (1769-1849CE) when the Ottoman Caliph issued a decree specifying the legal approach of Ḥanafī Doctrine to the official *Fatwā* and judicial affairs too.[xv] As concluded by Ṣūbḥī Maḥmaṣānī, the adoption of a certain doctrine as a compulsory reference was a primary step to the codification of Islamic law, especially preparation of a scholarly version of officially preferable laws was evident too.[xvi]

C. Official selection of laws from a certain doctrine of jurisprudence: As a result of the enforcement of Ḥanafī Doctrine in the legal courts, the policy of courts, as well as the laws and juristic approaches became unified. Yet the diversity of opinions and disputes upon the best resolutions for juristic questions, within the Ḥanafī Doctrine from inside, remained truly an obstacle to a full adoption of a uniform code of law. This pushed the Ottoman rulers think about a preferable selection of legal resolutions, aiming at a uniform opinion to be imposed over all territories of the Ottoman Caliphate.[xvii]

The Ottomans promulgated a series of legislative commands to organize the financial and administrative policy, as well as the governmental institutions, in special decrees known as "*Qānūn Nāma"* (the Massage of Law) that was mainly drawn from Islamic teachings and dominant customs. They used the word "*Qānūn*" to distinguish these worldly commands from the Divine legal obligations. These took place in various forms such as "*Farmān*, *Khaṭṭi Sherif of Gulḥane*, *Khaṭṭi Humayūn* and *Irādah Saniyyah.*" These official orders rarely surveyed the policy of private laws, abandoning it to the authority of *Sheikh al-Islām*. The "*Qānūn Nāma*" of the Sulṭān Muḥammad al-Fātiḥ came to exist after he conquered Constantine (Istanbul) in 1455CE. It contains administrative directives and some penal laws. The then-Caliphs continued the same policy. In the reign of the Sulṭān Muḥammad II, a '*Qānūn Nāma'* concerning the distribution of conducting bills "*Sanadāt al-Taṣarruf"* respective to state-owned lands (*Al-Arāḍi al-Meriyyah*) was promulgated.

The Sulṭān Sulaymān I (1520-1566CE) was known as "Sulaymān Qānūnī" due to the numerous legislative directives he ordered.[xviii] In his reign and the period of the next Ottoman Caliphs (in the middle of the Sixteenth Century) a trend to collect elective laws from the Ḥanafī School of jurisprudence appeared. The Sulṭān Sulaymān Qānūnī authorized *Sheikh al-Islām* Abū al-Suʿūd b. Muḥammad b. Muṣtafā al-ʿImādī al-Kūrdī (898-982AH/1492-1574CE) to perform the duty of an elective compilation of laws. He did author a compilation of Fatwa known as *"Maʿrūḍāt Abū al-Suʿūd Afandī*". Sulaymān Qānūnī had also asked Sheikh Aḥmad al-Ḥalabī (d. 956AH/1549CE) to author a book on Islamic law; easy to be understood by common readers, comprehensive in substance and encompassing an abstract to the outputs of former Ḥanafī references like (*al-Qaddūrī, al-Mukhtār, al-Wiqāyah and al-Kanz),* then he authored "*Multaqā al-Abḥur*". Despite the great benefits that these books had facilitated, they were only advisory references and were authorized partially.[xix]

Later on, during the Eleventh Century of *Hijrah* (Seventeenth Century), another positive attempt was made under the orders of the Sulṭān Muḥammad Awrangzeb ʿĀlamgīr. A scholarly Board of five members, from the best Indian scholars and under the leadership of Niẓām Burhān Burī, was constituted with the directive to compile a book that, in the Sulṭān's words, "should embrace such *Fatāwā* or judgments as had obtained the consensus of eminent scholars of jurisprudence, and which should be a treasure-house of valuable information, having the approval of religious luminaries". The compilation of "*Al- Fatāwā al-Hindiyyah/al-Fatāwā al-ʿĀlamgīriyyah*", within six volumes, was authored, but it did not fulfill the requisites of an official Code, owing to the fact that it was not compulsory applied, nor drafted in a systematical order and it encompassed both the rules of *ʿIbādāt* and *Muʿāmalāt* in which some of the rules were only imaginary and abstract truths. Although it was not compiled in the style of a modern Code, it was an important link in the chain of the works attempted in this direction.[xx]

In the second half of the Nineteenth Century, several law compilations emanated to organize the ownership of land, in which most of them basically quoted from the Islamic law principles of ownership. The most famous compilation was the land law (*Arāḍi Qānūn Namasi*" (*Qānūn al-Arāḍī*) issued in 1274AH /1857CE.[xxi]

The codification of Islamic law reached an advanced stage with the issuance of the compilation of "*Majallaht al-Aḥkām al-ʿAdliyyah*" (1869-1876CE). This compilation was an important event in the history of codification, due to it was derived from Islamic law and applied in most territories ruled by the Ottomans, except Egypt. It became the official code of civil law to entire countries ruled under the Caliphate, even for a period after their independence. The government constituted a panel of seven top ranking scholars under the presidency of Aḥmad Cevdat Bāshā (1822-1895CE) and entrusted them with the job, with a directive to compile a book on Islamic jurisprudence in a systematic form, which should be quite convenient to consult, free from disputes, be an authoritative reference on all well known pronouncements and decisions, and should be readily available to anyone.[xxii] The committee finalized the job in (1293AH/1876CE). This compilation was authored in the form of the modern codes and it contained 1851 Articles divided into an introduction and sixteen chapters. The introduction contained 100 Articles elaborating the definition of jurisprudence (*Fiqh*), its categorization and main maxims.[xxiii] In drafting the code, the committee had never stepped outside the limits of the Ḥanafī rite and the rules which they laid down were for the most part actually applied by the *Fetvā Khanī (Fatāwā Qaḍī-Khān)* of Fakhruddin Ḥasan b. Manṣūr al-Farghānī (d. 592AH). However, among the opinions of the most authoritative jurists of the Ḥanafī rite there were some which were perceived as less rigorous and more suitable to the needs of contemporary times, and they adopted these opinions.[xxiv] Amendments to the *Majallah* were worked out by a committee in 1920-1921. The committee went beyond the Ḥanafī rite and took various principles from other schools. The amendments were, however, never enacted into law, since Turkey soon embarked upon a radical legal reform.[xxv]

Substantively the *Majallah* covered both less and more than a European Civil Code. It dealt with contracts (sale, hire, guaranty, dept, etc.) and some torts, but not with non-contractual obligations and did not regulate other areas of private law, such as marriage, divorce, inheritance, and various aspects of genuine property.[xxvi]

The Ottomans, in enacting this policy, relied on the maxim of Legal Politics (*al-Siyāsah al-Sharʿiyyah*) to legitimize it and gain the force of obedience upon the citizens. It was stipulated in *Majallat al-Aḥkām al-ʿAdliyyah* (Article 1801) that if an official command emanated from the Sulṭān to utilize a juristic opinion of a certain *Mujtahid* in a particular legal question because it was deemed more suitable to the contemporary age and more respondent to everyday life of people, the judge should be bound by it and not utilize the reverse opinions.

If such conduct happens, the verdict given will be out of validity and shall not take place to application with the executive personnel,[xxvii]
'If an order has come from the Sulṭān, that as regards some special matter the opinion of one of the founders of the Law should be acted on, on the ground that it is more convenient for the business of the time and for people, in that matter the judge cannot act by the opinion of another founder of the Law and contrary to the opinion of that one. If he does, his judgment is not executed (*Nafiz).*'[xxviii]

In a report advanced by the Drafting Committee of the *Majallah*, the reporters sealed the statements with these words: 'Finally, as most of the Articles written in this *Mejelle* refrain from going outside the Ḥanafī doctrine, and are in force and acted upon in the *Fetvā Khanī* at the present time, there seems no necessity for a discussion about them…Because it is necessary to act according to whatever opinion his Majesty, the leader of the Muslims orders that people should act, the report is laid before the Grand Vizier also, in order that he may order it to be decorated with the Imperial writing of his Majesty the Sulṭān, if on trial the enclosed *Mejelle* is approved by him.'[xxix]

D. Official selection of laws from various doctrines of jurisprudence: The policy of legal oriented politics (*Siyāsah Sharʿiyyah*) followed by the Ottomans was also manifested in the form of adopting different schools of Islamic jurisprudence, in the creation of later codes. Commonly it was decided by the scholars that an unqualified person (*Muqallid*) is allowed to follow opinions of different qualified scholars if he is keen to protect the objectives of the law. However, if he is not aware of these objectives and boundaries, he may transgress the limits of Sharīʿah at the end, especially when he consciously seeks the easiest opinion to apply, regardless of the authenticity it possesses.[xxx] Combining this rule to right of a ruler to select the most suitable opinion, the Ottoman Caliphate drafted a code for the law of marriage, divorce, etc., which was known as "*Qānūn Ḥuqūq al-ʿA'ilah al-ʿUthmānī*" (Ottomans Law of Family Rights, 1917). It was authored in accordance with the Ḥanafī approaches and incorporated selected opinions from other rites, considering public interests. As such, it considered rules of family in minorities' religions. Although this code was repealed in Istanbul only two years later, it was, for a long time, applied in Lebanon, Syria, Palestine and Jordan. Also, it is noteworthy that the Arab States followed similar steps in their family law, with special reference to the area of personal statute, trusts "*Awqāf"*, inheritance, and will "*Waṣiyyah".*[xxxi]

E. Adoption of the foreign legal codes (man-made law): Throughout its entire history, the Ottoman Caliphate had felt the necessity of a well-established legal system. Although *Majallah* was considered an attempt for Islamization of laws, on one hand, it was, on the other hand, counted as the Ottomans approach for adaptation of the foreign laws. N.

J. Coulson, a professor in oriental laws, holds that the derivation of western law began as a result of the system of Capitulations in the Nineteenth Century. The Western powers ensured that their citizens residing in the Middle East would be governed by their own laws. This brought about familiarity with European laws particularly in mixed cases involving Europeans and Muslims in respect to trades and commerce. The laws applied under the Capitulatory system turned with the state's desire for comprehensive legal codification to form the basic trends of this progress. At the same time the adoption of these European laws as a territorial system meant that foreign powers might acquiesce in the abolition of Capitulations that became increasingly irksome as a growing emphasis was placed on national sovereignty. As a result of these considerations a large-scale reception of European law was effected in the Ottoman Caliphate by the *Tanẓimāt* reforms of the period between 1839 and1876.[xxxii]

The *Tanẓimāt* reforms included the introduction of a European style army, codification of customary land tenure relations, reorganization of taxation, provincial and ministration, judiciary and education.[xxxiii]

The codification reforms started as a mass reflection to the huge advances realized in Europe. The citizens of the Ottoman Caliphate put the state under serious pressure asking for constitutional reforms, especially after the draft of the Napoleonic Civil Code.

The Caliphate promised the citizens that the orders applied in the state would be similar to European orders. The "*Tanẓimāt*" was the policy that adopted by Sulṭān ʿAbdul-Majīd on 3rd November 1839, in his first year of jurisdiction.

The first constitutional document that came to ground was *Khaṭṭi Sherīf of Gulḥane* (Chamber of Roses). Its primitive section includes a deep description of the backwardness and instability in the Caliphate due to misapplication of Divine laws. It 'figured out' that the legal reform is the way for a solution. It also declares the principles of human liberty, recognizes dignity of ownership and equality to all residents before the law without any discrimination based on religion or job.

Besides that, it decides that the fulfillment of disputed rights should be only attained through a judicial verdict in a public trial and the punishment should be after a public trial and in accordance with the rules of law. The document also promised a reform in administrative and judicial aspects by resetting the laws.[xxxiv]

Except for the Commercial Code of 1850 and the old Penal Code of 1851, the promises contained in the *Khaṭṭi Sherīf of Gulḥane* did not materialize. The disorder and disruption prevailed in the Caliphate territories and the foreign pressure enhanced on the Caliphate, the matter that pushed Sulṭān ʿAbdul-Majīd to order a second supplementary document of reform known as *Khaṭṭi Humayūn* (Imperial Edict) of 18 February 1856 which promised the reform of judicial tribunals and the creation of mixed tribunals, the reforms of penal and commercial codes to be administrated on a uniform basis and the reform of prisons. Moreover, the document reinsured the former one by posing more promises of reform and reorganization of the state. It emphasized again the privileges secured for the Christian minorities by Sulṭān Muḥammad Fātiḥ and indicated more positive amendments based on the new circumstances that were on the ground. The decree also guaranteed freedom of religion, declaring that no one could be compelled to change his religion. Also, equal opportunity was promised in competing for public offices, recruitment by civil, military and other public services, as well as schooling, regardless of religious or national differences. In addition to that, it declared the authenticity of religious courts for non-Muslim minorities to rule on and determine their personal statute. Mixed Courts or councils were introduced to hear commercial and criminal cases between Muslims and non-Muslims and among non-Muslims of different denominations. Other changes introduced included the abolition of corporal punishment, and a pledge to reform the criminal law, penal and prison systems.[xxxv]

These constitutional instruments did not create any effective mechanism to ensure the application of their provisions until 1876 when the Sulṭān ʿAbdul-Ḥamīd II promulgated a more substantive constitution to check the absolute powers of the Sulṭān but in the following years of his reign the constitutional regime was suspended in 1878 and it was restored only in 1908. As a result of *Khaṭṭi Humayūn* reforms and later reforms done by ʿAbdul-Ḥamīd II, the state ratified various codes in various respects of law, some of which purely quoted from European codes and others derived from the Islamic law.[xxxvi] This situation continued until the Union and Progress Party announced the Republic of Turkey in 1923 and abolished the Caliphate system in 1924 and then a new constitution was introduced by the national assembly in 1924.[xxxvii]

The foregoing discussion proves that the laws of the Ottoman Caliphate flowed in two opposing directions:

1. A direction towards westernization of the law in the form of adopting the foreign laws, with special reference to French Codes. These sets of laws distorted the Islamic rulings in aspects of estates and penalties, e.g., article 54 in the land law stipulated equal inheritance between males and females. The penal law did not codify the Islamic penal system including the *Ḥudūd*, and usury was made legitimate.[xxxviii]
2. A direction towards codification of Islamic law, and this movement was represented by two main compilations:

- The issuance of "*Majallaht al-Aḥkām al-ʿAdliyyah*" (Compilation of Principles of Justice) in 1293AH/1876CE under supervision of *Cevdat Bāshā*. The compilation covered the rules of transactions (*Muʿāmalāt*), the rules of actions and the principles of judicial trials and proofs.

- The issuance of "*Qānūn Ḥuqūq al-ʿĀ'ilah"* (Family Law) in 1336AH/1917CE. The significance of this compilation refers to three reasons: firstly, it is the first historical code in respect of family law on the basis of Sharīʿah law, secondly, it stepped outside the Ḥanafī rite to other Sunni rites of jurisprudence, and finally, it included special rules pertaining to the religious family law of both Jews and Christians.[xxxix]

In addition to that, other laws dealing with different questions, such as those regulating local administration of the provinces, police, prisons, public buildings, societies, trade-unions, civil servants and their pensions were also promulgated.[xl]

In summary, the Law on Provincial Administration of 1864 provided for the establishment of *Niẓamiyyah* Courts at the provincial level. They were soon provided with codified laws derived from European Continental law tradition. Hence, a complex dichotomy affected the legal status of the Caliphate which was rooted in the nature of the reforms campaigned with *Tanẓīmāt*. The dichotomy spread over aspects of both legislative and judicial institutions. The laws were separately quoted from Islamic Jurisprudence and European codes. As well, the judicial body was divided between "*al-Maḥākim al-Niẓāmiyyah*" (The Official Courts) that were established in 1860 to apply the foreign codes and "*al-Maḥākim al-Sharʿiyyah*" (The Sharīʿah Courts) that belonged to the personal statute of the Muslim majority within the state. However, the *Majallah* was meant for the reference of both Sharīʿah and *Niẓāmiyyah* Courts.[xli]

Despite that, there existed "*al-Maḥākim al-Khāṣṣah"* (the Special Courts) which branched into Council Courts for the foreign residents inside the Caliphate and Spiritual Courts for the non-Muslim minorities in respect to the family law.[xlii]

The institutional separation of Sharīʿah and *Qānūn* paved the way for future secularization. However, to Niyazi, codification was in itself an unmistakable mark of secularization in a Muslim society as it is a designed, concrete human effort to formulate the Sharīʿah as a positive law.[xliii]

Following the 1923 Lausanne Peace Conference the new regime in Turkey reached the decision that the process of codification should be conducted in conformity with the legal systems of modern European States. This time, entirely novel codes were drafted, following the provisions of the Swiss Civil Code, Italian Criminal Code, German and Italian laws of land and sea trade, and the Neufchatel procedural law, all of which were accepted and ratified following the regular discussions in the Grand National Assembly. After a time other Codes followed these.[xliv]

Factors of Codification Debate

Despite historical attempts made for unification of Islamic law, there is a haggling debate amongst the Muslim jurists on making codification the means to realize this dramatic objective.
After the *Tanẓīmāt* of the Ottoman Caliphate, in part, and because of compelling foreign laws on Muslim countries, codification became a prevailing model of jurisdiction for the majority of Islamic countries. Hence, a legal question had arisen: Is codification of Islamic law legitimate? Is it necessary to modernize legal theories of Islamic law in the light of man-made law?

The question of codification hereon shifts to a special atmosphere of critique. It became neither the question of necessity nor the case of any advantage it generates. It is, further, the question of legitimacy. This is due to variable causes; some of them back to ideas manifested in the early history of Islamic law. The main obstacles before the codification of Islamic law could be summarized in nature of Islamic law, freedom of *Ijtihad* and freedom of belief. The reference to Islamic law is found first in the texts of the Holy Qur'an and the authenticated traditions of the Prophet Mohammad (P. B. U. H). It implies that the law in Islam is mainly derived from the holy texts. A *Mujtahid* should not transgress a particular rule grounded by a text of *Sharīʿah.* He can only apply his reasoning if there is no relevant definitive text or if the available text is speculative in meaning and surrounded by more than a possibility of understanding. Due to the sanctity of those refereed texts, the jurists had treated the texts keenly and favored an inductive method of application upon an analytical approach that may reduce the detailed laws in general maxims so that the particularity of each single law may get lost. The *Ūṣūl Fiqh* founders also recognized analytical applications in unpronounced cases to apply the analogy (*Qiyas*) or interests (*Maṣāliḥ*). Yet, they deduced general disciplinary maxims of jurisprudence within a discipline called today "*ʿIlm al-Qawāʿid al-Fiqhiyyah*", but it was only an advisory work, not fully authoritative in nature and not completely validated in application.[xlv]

The freedom of *Ijtihād* is admissible in Islamic law. It was often beyond the diversity of approaches that flourished in Islamic legal history. Under this tenet, it was difficult to unify un-stated laws, so contradicting the nature of Islamic legislation that obliges qualified Muslims to do *Ijtihād*. It was assumed that the codification stands adversely to free *Ijtihād* as it is drawing the last boundary of law and then undermining the lines of freedom in juristic works.[xlvi]

It is narrated that the Abbasid Caliph Abū Jaʿfar al-Manṣūr (d. 158AH) asked Imām Mālik b. Anas (d. 179AH/796CE) to draft the Islamic law. He said: 'Take the subject of Islamic jurisprudence in your own hands, and do compile it in the form of different chapters. Avoiding the strictness of ʿAbdullāh b. ʿUmar (d. 73AH/692CE), the liberalism of ʿAbdullāh b. 'Abbās (d. 68AH), and the individualism of 'Abdullāh b. Masʿūd (d. 32AH), compile a code which should reflect the maxim: (the best of affairs is the middle course) and which should be a collection of the legal decisions and verdicts given by the Imāms and Companions of Prophet (P. B. U. H).

If you complete the job, we shall bring about a consensus of the Muslims on your school of jurisprudence and enforce it throughout our realm with a decree that contravention thereof be strictly avoided.'[xlvii]

Mālik politely declined on the plea that one man's opinion could not be imposed on everyone. People should have the freedom to disagree. In other words, he refused the suggestion to preserve continuity of free *Ijtihād* of the qualified Muslims forever. He stated:'Please ignore that. The people have already made different opinions and jurisdictions. They got and narrated speech and tacit of Prophet. Each group inferred the rulings of Sharīʿah according to their own foundations.

They worked and applied rulings according diverse opinions succeeded to them by the first generation. It is, therefore, an extreme treatment and an intolerant behavior to bring them by force about uniform of opinion. Let them choose what they hold and do not enforce anything upon them.'[xlviii]

Despite the fact that Islam is a universal religion, it is clear that Islam gave the chance of free choice of belief. As a result, Islam tolerated diversity of religions and gave the chance to the existence of multiple religions in Muslim societies. The codification, therefore, may confront an obstacle in cases relevant to exclusive religious affairs. As such, it was difficult to reach a just conciliation between religions' doctrines in affairs restricted to their full authority in which the reduction of their positions becomes unaffordable or even impossible.[xlix]

Muslim Contemporary Trends on Codification Question

Nowadays, there are two dominant opinions concerning the issue of the codification.

The conservative school objects the idea of codification. It may be led mainly by the scholars of Saudi Arabia and Salafis,[l] e.g., Bakar b. ʿAbdullāh Abū Zaīd, a prominent Saudi scholar, had authored a book addressing this issue and concluded that the codification is not applicable to Muslims. It is a western model that cannot accommodate Islamic law, neither in title nor in content. The nature of Islamic legislation refutes codification and its adoption by Muslims is maladjusted and inappropriate.[li]

The opponents of codification mainly offer the following excuses as factors of preservation:

1) The fear of distorting the legal rules by the rulers via applying the codes as a device to realize their own interests.
2) The Islamic legal rules have been implemented for more than fourteen centuries without official codes.
3) The Common Law system of several developed western countries, e.g., English Common Law, approves the fact that it is still acceptable to apply laws without being drafted in systematic codes.
4) It is opposed to the right of free *Ijtihād* granted to the qualified scholars.[lii]

In contrast, Sheikh ʿAlī al-Khafīf, Sheikh Muḥammad Abū Zahrah, Sheikh Ḥasanaīn Makhlūf, Sheikh Aḥmad Fahmī Abū Sunnah, Sheikh Muḥammad Zaki ʿAbdul-Barr, Sheikh Yosuf al-Qaraḍāwī, Sheikh Wahbat al-Zuḥaylī and Muḥammad ʿAbdul-Jawād, viewed the codification of Islamic law as something necessary. Moreover, Zuḥaylī and 'Abdul-Jawād called on the Arab countries, especially the Kingdom of Saudi Arabia, to go one step ahead towards codification of Islamic law, justifying it by various reasons such as the following:

1. It makes the Shari'ah laws more attainable. It provides judges and jurists with a reference and rescues them from blindness. Our heritage of jurisprudence contains a lot of disputes and arguments. If the Islamic jurisprudence is reduced to codes, it will surely help the judges and lawyers make recourse to them and comprehend the laws, without any confusion or disturbance.

As a matter of fact, in Islamic jurisprudence, legal rules based on sacred texts are few in number, as compared with those based on opinion and *Ijtihād*. Sacred texts laid down basic principles only. But most of the rules relating to details were the work of juristic *Ijtihād*, which was based on the secondary sources of jurisprudence, namely consensus of opinion, analogy and principles of equity. These details and particulars formed a huge mass of *Fatāwā* or "responses" and filled up a great number of books and commentaries. So, it will not be a controversial fact that a code of laws may help Muslims utilize this huge heritage from which the codification should take place.

2. It may help Muslims filter and choose the most suitable opinions of former jurists and conclude with the best.
3. It is difficult today to have judges with qualifications sufficient to independently deduce the legal rules from the primary sources of law. Therefore, it will be interesting to have a code drafted by the qualified personalities and profound scholars, to give others a chance for accessible adjudication of the cases.
4. It may assist in unifying the decisions and judgments of the judges, e.g., in the beginning of the Saudi Arabian rulings, a sharp dispute among the judges was notified, the matter led to the enforcement of certain books as compulsory references for judgment.
5. The Muslims may not be capable to achieve mastery and excellence without getting rid of the influence of foreign laws which were enforced upon them, and this cannot be merely achieved without applying an alternative code deriving from the original sources of Islamic law.[liii]

However, the writer believes that Islamic legal system follows neither the common nor the civil law approaches, but could be regarded as a combination of both. Therefore, the style of *Shar'iah* codes should be different from counterparts in modern law.

The texts of holy Qur'an and *Sunnah* should remain authoritative as references of any code and the codification procedure should cover the issues of *Ijtihad* without contradicting general and specific texts of *Shari'ah* or jeopardizing the higher intents of its legal system. However, a space should be explicitly given to the external sources like collective *Fatwa,* scholarly consensus, custom and public interest, so eliminating the possibility of rigidity and imitation.

Conclusion

The question of codification in the Muslim world goes back to the early history of the Islamic Caliphate. Before raising the controversy of codification in the west, the Muslim world from the era of the Abbasid Caliphate argued the issue. However, after the adoption of the Tanẓīmāt policy by the Ottoman Caliphate and namely within the reign of the Ottoman Caliph, Sulṭān ʿAbdul-Majīd, in 1839, a series of codes was imported from the western models parallel to a code for Islamic civil law and another for the family law which were domestically produced, namely "*Majallah al-Aḥkām al-ʿadliyyah*" (1293AH/1876CE) and "*Qānūn al-ʿāʾlah*" (1336AH/1917CE). The study urges the Arab and Muslim countries to make a further step and revise their codes or amend their legal system in the light of Islamic law. The draft of the Jordanian Civil Code could be a good example. Since the Law Committee of the Arab League recognized it as a prototype for a uniform Civil Code for Arab countries, it is required from countries like Egypt, Iraq, Syria and Libya to realize this and follow the brave step of the United Arab Emirates which made an initiative and enacted it as its own Civil Code from 1st April 1986, under the name of "Law of Civil Transactions." Moreover, Muslim countries should work together to make a uniform law derived from the Islamic law without jeopardizing necessary requirements of modern codes, within a wider campaign towards "harmonization of *Shari'ah* and positive law".

---

[i] David M. Walker (1980). The Oxford Companion to Law. New York: Oxford University Press. p. 234.

[ii] L. B. Curzon (2003). Dictionary of Law, 6th edn. Kuala Lumpur: International Law Book Services. p. 72.

[iii] 'Abdul-Razzaq al-Sanhūrī (1936)."Wujūb Tanqīḥ al-Qānūn al-Madanī al-Miṣrī wa 'alā Ay' Asās Yakūn Hādhā al-Tanqīḥ," Maj. Al-Qānūn wa al-Iqtiṣād, **6**(1). p. 3.

[iv] Ramaḍān Abū al-Suʿūd (1983). Al-Wasīṭ fi Sharḥ Muqaddimat al-Qānūn al-Madanī – al-Madkhal ilā al-Qānūn wa bi-Khāṣṣatin al-Miṣrī wa al-Lubnāni. Beirut: al-Dār al-Jāmiʿiyyah. volume. 1, pp. 255-256.

[v] Subḥī Maḥmaṣānī (1965). Al-Awḍāʿ al-Tashrīʿiyyah fī al-Duwal al-ʿArabiyyah Māḍīhā wa Ḥāḍiruhā, 3rd edn. Beirut: Dār al-ʿIlm li-al-Malāyīn.

[vi] Ṣubḥī Maḥmaṣānī (1987). Falsafat al-Tashrī' fī al-Islām -The Philosophy of Jurisprudence in Islam, Trans. Farhat J. Zaideh. Selangor Darul Ehsan: Penerbitan Hizbi.
[vii] Amin Aḥsan Iṣlāḥī (2000). Islamic Law: Concept and Codification, 1st edn. Lahore: Islamic Publications Ltd.
[viii] Orhan Junbulat (2012)."Qawānīn al-Dawlah al-ʿUthmanīʿiyyah", 1st edn. Herndon: The International Institute of Islamic Thought.
[ix] A. Iṣlāḥī (2000). Op. Cit., p. 89.
[x] ʿAbdūllah b. al-Muqaffaʿ (1998). Risāalat al-Ṣaḥābah,1st edn.Beirut:ʿĀlam al-Kutub. pp.58-60; A. Iṣlāḥī (2000). Op. Cit., p. 89; IbnʿAbd al-Barr (n.d.). Al-Intiqā' fī Faḍā'il al-Thalāthah al-A'immah al-Fuqahā'. Beirut: Dār al-Kutub al-'Ilmiyyah. pp.40-41.
[xi] Muḥammad b. al-Ḥasan al-Shaybānī(1999). Muwaṭṭa' al-Imām Mālik, 3rd edn. Azamran: Muzaffar Pur, volume. 1, pp. 12-16; A. Iṣlāḥī (2000). Op. Cit., p. 90-91; S. Maḥmaṣānī (1965). Op. Cit., pp. 158-159; Ṣūfī Ḥasan Abū Ṭālib (1990). Taṭbīq al-Sharīʿah al-Islāmiyyah fī al-Bilād al-ʿArabiyyah, 3rd edn. Cairo: Dār al-Nahḍah al-ʿArabīyyah, pp. 233-234. See also: Ibn 'Abd al-Barr (n.d.). Op. Cit., pp. 40-41; ʿAbdūllah b. Qutaybah (1904). Al-Imāmah wa al-Siyāsah. Cairo: Maṭbaʿat al-Nīl. volume 3, pp. 150-159.
[xii] See: S. Maḥmaṣānī (1965). Op. Cit., pp. 141-160.
[xiii] S. H. Abū Ṭālib (1990). Op. Cit., pp. 234-235; S. Maḥmaṣānī (1965). Op. Cit., p. 176.
[xiv] Al-Qalqashandī, Ṣubḥ al-Aʿshā (n.d.). Cairo: Maṭabiʿ Kostatsomas. volume. 4, p. 35.
[xv] S. Maḥmaṣānī (1965). Op. Cit., p. 176-178; S. H. Abū Ṭālib (1990). Op. Cit., pp. 235-236.
[xvi] S. Maḥmaṣānī (1965). Op. Cit., p. 178.
[xvii] S. Maḥmaṣānī (1965). Op. Cit., pp. 178-179; S. H. Abū Ṭālib (1990). Op. Cit., pp. 236-237.
[xviii] S. H. Abū Ṭālib (1990). Op. Cit., pp. 237-238; S. Maḥmaṣānī (1965). Op. Cit., pp. 183-184.
[xix] S. Maḥmaṣānī (1965). Op. Cit., pp. 182-185; S. H. Abū Ṭālib (1990). Op. Cit., p. 238; Ṭāriq Ziyādah (1990). Dirasāt fī al-Fiqh wa al-Qānūn, 1st edn. Lebanon: Dār al-Shimāl, p. 88; Fikret Karcic (1993). Ta'rīkh al-Tashrīʿ al-Isālmī fī al-Busnah wa al-Hrisik, 1st edn. Istanbul: Sirkeci. p. 62.
[xx] S. Maḥmaṣānī (1965). Op. Cit., pp. 159-160; T. Ziyādah (1990). Op. Cit., p. 89; Muṣṭafā Aḥmad al-Zarqā' (2004). Al-Madkhal al-Fiqhī al-ʿĀmm, 2nd edn. Damascus: Dār al-Qalam. volume. 1, p. 236; A. Iṣlāḥī (2000). Op. Cit., p. 91.
[xxi] S. H. Abū Ṭālib (1990). Op. Cit., p. 238.
[xxii] A. Iṣlāḥī (2000). Op. Cit., pp. 91- 92.
[xxiii] Ibid., p. 92; S. H. Abū Ṭālib (1990). Op. Cit., p. 238-239.
[xxiv] Herbert J. Liebesny (1975). The Law of the Near & Middle East: Readings, Cases, & Materials. Albany: State University of New York Press. p. 69; S. Maḥmaṣānī (1965). Op. Cit., p. 179; S. H. Abū Ṭālib (1990). Op. Cit., p. 238-239.
[xxv] Herbert J. (1975). Op. Cit., p. 69.
[xxvi] Ibid., pp. 65-66; S. H. Abū Ṭālib (1990). Op. Cit., p. 238-239.
[xxvii] S. H. Abū Ṭālib (1990). Op. Cit., p. 237; S. Maḥmaṣānī (1965). Op. Cit., p. 179.
[xxviii] C. R. Tyser, D. G. Demetriades, Ismaʿīl Ḥaqqi Effendi (Transl.) (2001). The Mejelle: Being an English Translation of Majallah el-Ahkam-L-ʿAdliya and a Complete Code of Islamic Civil Law. Kuala Lumpur: The Other Press. p. 319.
[xxix] Ibid, pp. xxix-xxxi.
[xxx] M. Z. 'Abdul-Barr (1983). Op. Cit., pp.35-48; Muḥammad Sallām Madkūr (2005). Al-Madkhal li-al-Fiqh al-Islāmī: Ta'rīkḥuh wa Maṣādiruh wa Naẓariyyātuh al-'Āmmah. Kuwait: Dār al-Kitāb al-Ḥadīth. pp. 318-327.
[xxxi] Herbert J. (1975). Op. Cit., p. 70; S. Maḥmaṣānī (1965). Op. Cit., pp. 179-180; S. H. Abū Ṭālib (1990). Op. Cit., pp. 239-241.
[xxxii] N. J. Coulson (1964). Op. Cit., pp. 150-151.
[xxxiii] Fikret Karcic (1999). The Bosniaks and the Challenges of Modernity-Late Ottoman and Hapsburg Times. Sarajevo: El-Kalem. p. 155.
[xxxiv] S. Maḥmaṣānī (1965). Op. Cit., p.188.
[xxxv] H. S. Amin (1985). Op. Cit., pp. 379-380; Niyazi Berkes (1998). The Development of Secularism in Turkey. London: Usrst & Company. pp.155-192.

[xxxvi] S. Maḥmaṣānī (1965). Op. Cit., p. 188-189. For further information about the Ottoman Laws and Ordinances 'Farmanat' see: Muḥammad Nūr Faraḥat (1993). Al-Ta'rīkh al-Ijtimāʿī li-al-Qānūn fī Miṣr al-Ḥadīthah. Kuwait:Dār Suʿād al-Ṣabāḥ.pp. 11-16, 97-103.

[xxxvii] H. S. Amin (1985). Op. Cit., pp. 380-381.

[xxxviii] Abduh Jamīl 'Aḍhūb (2005), Al-Qawānīn al-Waḍh'īya al-Faransīya wa al-Sharī'a al-Islamīya:Taqarub wa Tabā'ud (A'māl al-Nadwa al-latī 'Aqadathā Kullīya al-Ḥuqūq- Jāmi'at Bairūt al-'Arabīya bi-Munāsabat Mi'ataī 'Ām 'Alā Iṣdār al-Taqnīn al-Madanī al-Faransī 18004-2004. Baīrūt: Manshūrat al-Ḥalabī al-Ḥuquqīya, al-Ṭab'a al-Ūlā), p.17 ; T. Ziyādah (1990). Op. Cit., pp. 94-100.

[xxxix] Abduh Jamīl 'Aḍhūb (2005), Pp.18-19; S. Maḥmaṣānī (1965). Op. Cit., pp. 192-195; H. S. Amin (1985). Op. Cit., pp. 167-168.

[xl] H. S. Amin (1985). Op. Cit., p. 168; S. Maḥmaṣānī (1965). Op. Cit., p. 195.

[xli] Fikret Karcic, The Bosniaks and the Challenges of Modernity, Pp.56-57; Muḥammad 'Abdul-Jawad (1977). Buhūth fī al-Sharīʿah al-Islāmiyyah wa al-Qānūn, 2nd collection. Cairo: Maṭbaʿat Jamiʿat al-Qāhirah, p. 31; Najm-Aldeen K. Kareem Zankī (2001). "ʿAbdul-Razzāq al-Sanhūrī wa Mashrūʿuh fī al-Taqnīn," Islāmīyat al-Maʿrifah, **7** (27), pp. 67-68.

[xlii] S. Maḥmaṣānī (1965). Op. Cit., pp. 204-205.

[xliii] Niyazi B. (1998). Op. Cit., p. 161.

[xliv] H. S. Amin (1985). Op. Cit., pp. 381-382.

[xlv] S. Maḥmaṣānī (1965). Op. Cit., p. 171; Ṭāriq Ziyādah (1990). Dirasāt fī al-Fiqh wa al-Qānūn, 1st edn. Lebanon: Dār al-Shimāl. p. 91.

[xlvi] S. Maḥmaṣānī (1965). Op. Cit., pp. 171-172.

[xlvii] See the foreword of Muḥammad Zāhid al-Kawtharī for: Abū al-Ḥasan al-Dār-Quṭnī (n.d.), Aḥādīth al-Muwaṭṭa'. (N.p.): Dār al-Riʿāyah al-Islāmiyyah., p.3; A. Iṣlāḥī (2000). Op. Cit., pp. 90-91.

[xlviii] M. b. Ḥ.al-Shaybānī (1999). Muwaṭṭa' al-Imām Mālik, volume. 1, pp. 12-16; Ibn ʿAsākir al-Dimashqī (1992). Kashf al-Mughaṭṭā fī Faḍl al-Muwaṭṭa', 1st edn. Beirut: Dār al-Fikr al-Muʿāṣir. pp. 53-55.

[xlix] S. Maḥmaṣānī (1965). Op. Cit., pp. 172-176.

[l] M. ʿAbdul-Jawād (1977). Op. Cit., pp. 82-83.

[li] Bakr b. ʿAbdullāh Abū Zaid (1983). Al-Taqnīn wa al-Ilzām: ʿArḍ wa Munāqashah, 3rd edn. Riyāḍ: Maṭbūʿāt Ri'āsat Idārat al-Buhūth al-ʿIlmiyyah wa al-Iftā' wa al-Daʿwah wa al-Irshād.pp. 99-100.

[lii] Ibid.; M. ʿAbdul-Jawād (1977). Op. Cit., pp. 79-85.

[liii] Muḥammad Zaki 'Abdul-Barr (1983). Taqnīn al-Fiqh al-Islāmī: al-Mabda' wa al-Manhaj,1st edn. Duha: Idārat Iḥyā' al-Turāth al-Islāmī. Pp. 25-33; Wahbat al-Zuḥaylī(1987). Juhūd Taqnīn al-Fiqh al-Islāmī, 1st edn. Beirut: Mu'assasat al-Risālah., pp. 27-34; M. ʿAbdul-Jawād (1977). Op. Cit., pp. 78-85. See also: Fatḥi al-Duraynī(1985). Al-Manāhij al-Uṣūliyyah fī al-Ijtihād bi-al-Ra'y fī al-Tashrīʿ al-Islāmī. Al-Sharikah al-Muttaḥidah li-al-Tawzīʿ. p. 481; Yosuf al-Qaraḍāwī (2001). Al-Siyāsah al-Sharʿiyyah fī Ḍaw' Nuṣuṣ al-Sharīʿah wa Maqāṣidihā, 1st edn. Beirut: Mu'assasa al-Risālah. p.74; A. Kamal Abulmagd (1987). "The Application of the Islamic Sharīʿah." In Proceedings of First Arab Regional Conference: Arab Comparative and Commercial Law-The International Approach in Cairo 15-19 February 1987. London: Graham & Trotman), volume.1, p.28-41.