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**A BRIEF NOTE ON 'ABD AL-RAZZAQ
AL-SANHURI: THE MASTER ARCHITECT
OF CIVIL CODES OF ARAB
COUNTRIES**

مهارة القراءة ووظيفتها في تعليم اللغة العربية

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A BRIEF NOTE ON 'ABD AL-RAZZAQ AL-SANHURI: THE MASTER ARCHITECT OF CIVIL CODES OF ARAB COUNTRIES

Mhd. Syahnan

Interaksi umat Islam dengan modernitas menimbulkan masalah dalam berbagai bidang kehidupan umat, tak terkecuali di bidang penataan hukum. Di antara bidang yang sangat menarik dalam konteks ini adalah proses panjang mengupayakan tersedianya Hukum Perdata di berbagai negara-negara Arab. Makalah ini merupakan uraian tentang pandangan dan upaya yang dilakukan seorang pionir di bidang ini, Abd al-Razzaq al-Sanhuri, seorang tokoh asal Mesir.

Kata Kunci: Abd al-Razzaq al-Sanhuri, Hukum Perdata.

The end of imperialism threw lights in Muslim countries to formulate their own code, which is both practical and combinative distilled from Islamic tradition and Western law. At the turn of the nineteenth century, Egypt recorded the most important phase in its legal history by enacting modern codes after it became largely independent of Ottoman control. The necessity to reform the legal system was overseen by a distinguished jurist and an ordinary politician 'Abd al-Razzaq al-Sanhuri. He was primarily responsible for drafting the Egyptian Civil Code (1949), the Iraqi Code (1951), the Libyan Code (1953), and more recently the Kuwaiti Code (1960/ 1). However, In spite of his theoretical and practical activity in Egypt's political circle, he is relatively unknown outside the Arab world. In Egypt alone,

as his country of origin, only 'few give any indication that ~~they~~ realise what they comprehend" about Sanhuri.

In the light of these, the present paper is an attempt to sketch an intellectual biography of Sanhuri. The discussion starts with his early life that includes his educational background and the social and political milieu in which he lived. Thus, it is expected that we would be able to determine the extent to which his environment may influence the future direction of his thought. In so doing, the formative stage of his thought will be analysed by delving into his various works. In addition, his career both as legal educator and politician will also be discussed. Finally, the primary objective of this exposition is hoped to serve a better understanding of such an important figure as Sanhuri in the realm of legal reform in the Arab world.

Sanhuri's Background

Born in Alexandria, Egypt in 1895, 'Abd al-Razzaq al-Sanhuri was raised and educated in a complex political and social environment. He began his education at Kuttab or Qur'anic lowest elementary school, but due to the death of his father, he had to be transferred to Ratib Basha primary school as subordinated to Jam'iyah Khairiyah Islamiyah. He then continued to al-'Abbasiyah elementary school and graduated in 1913.

During the secondary school 1908-1913 he began to be fascinated with literature and linguistic. He reads a highly reputed works as those of al-Ashfahani's *al-Aghani*, al-Qali's *al-Amali* and Ibn Abd Rabbih's *al-'Aqd al-farid* to mention a few.² In addition, at the very process of his

¹ Enid Hill, "Islamic Law as a Source for Development of a Comparative Jurisprudence, the Modern Science of Codification", in Aziz al-Azmeh (ed.) *Islamic Law: Social and Historical Contexts* (Routledge: London and new York, 1988), 184.

² Commenting on the talent of Sanhuri in Arabic literature, one of such prominent language and literature scholar as Abbas Hasan (1900-1978) asserts that: "Sanhuri is better suited to become talented in literature than in law." However,

inquiry for knowledge and nurturing his worldview he also consulted various libraries of different field of specialties that he got interested in history.

In Egypt, it was very common amongst the best high school graduates to choose law school to further their study, and in case of Sanhuri is not an exception.³ In the same year, (1913) he continued to Khedevial School of Law (Madrassa al-Huquq al-Khidiwiya)⁴ in Cairo, and worked for finance ministry in order to be able to afford his study. He obtained his License in 1917. At this time, he wrote poetry of gentle and profound quality that depict his concern on the Egypt social condition in general, and against the augmentation of Islam during the first world war against imperialism in 1916, when colonial forces advanced toward the territory of Ottoman Empire and destroyed it. The colonial authority came to a secret agreement to divide the Empire and its legacy, and banish the Islamic nationalist leaders.⁵

Furthermore, his close reading of the Egyptian press influenced Sanhuri's political and social consciousness, injustice, freedom, and even liberation of Egyptian women.⁶

During his study at the Khedevial law school, he was acquainted with Eduard Lambert, the French Dean of the school, who then became

it appears that he destined to become expert in both field of specialties. See Muhammad Imarah, *Al-Duktur Abd al-Razzaq al-Sanhuri: Islamiyyat al-Dawlah wa al-Madaniyah wa al-Qanun* (Cairo: Dar al-Rashad, 1999), 254.

³ On the history and development of preparatory school in the context of the education of Egyptian lawyers of the beginning of the twentieth century, see Donald M. Reid, *Lawyers and the Politics in the Arab World, 1880-1960* (Chicago: Bibliotheca Islamica, 1981) especially chapter one.

⁴ The present day Cairo University originated from Muhammad Ali's School of Languages, and after undergoing several reorganizations, in 1925, it became the Faculty of Law of the Egyptian University.

⁵ Donald M. Reid, *Lawyers. Ibid.*

⁶ Muhammad Imarah, *al-Duktur*, 26.

his mentor at Lyon University in Paris, and colleague in the next stage of his life.⁷

In Manshura, during his post in the Prosecutor's Office (parquet), a great Egyptian nationalists outbreak occurred in 1919 in order to free the nation and pushing the occupation forces out of the Nile bank, but this did not prevent Sanhuri from the procession in the process of national revolution and who called for strike.

With the current political stake in Egypt in 1920, Sanhuri departed for France to pursue further study at graduate level. At this time, Egypt was in the process of searching to improve the judicial system, which was inter alia resulted in join cooperation between the University of Lyon and the Egyptian authority, and Sanhuri's departure gained its momentum.

Writings and Scholarship

Sanhuri produced several treaties and scores of articles written throughout the span of his lifetime covering variety of issues such as social, Islamism, Arab nationalism, law to legal reform. However, the common threat of most of his *oeuvre* underpins his concern on the legal related subject.

The prolific writings of Sanhuri took shape in the 1920s while pursuing his doctoral studies at Lyon University in two different fields of law and political science respectively. Working under the supervision of Eduard Lambert, Sanhuri wrote his first dissertation entitled *Le restrictions contractuelle a la liberte individuelle de travail dans la jurisprudence anglaise* published in 1925.⁸ The second dissertation was written concerned

⁷ Cf. Amr Shalakany, "Sanhuri: The Historical Origin of Comparative Law in the Arab World," in Annelis Relis (ed.), *Rethinking the Masters of Comparative Law* (Oxford & Portland/Oregon, Hart Publishing, 2001), 169.

⁸ (Paris: Universite de Lyon – faculte de Droit, Marcel Giard, 1925). (*al-Qaynd al-Ta'aqudiyah al-Waridab 'ala Hurriyat al-'Amal fi al-Qada al-Injilizi*).

with the tablishment of a modern day caliphate entitled *Le Califat: son evolution vers une Societe des Nations Orientale* published in 1926.⁹

The core issues that Sanhuri brought to a fore in these two dissertations are centered on individualism vis-à-vis socialism and modernity vis-à-vis tradition. However, these two works represent the formative stage of his thought each of which are characterized by being well research and but nonetheless featured by his considerable insight on his perspective for Islamic institution and Islamic legal concern.¹⁰

Being the precursor of the formative stage of Sanhuri's legal thought, as a whole, *Le restrictions contractuelle* is framed in terms of individualism vis-à-vis socialism dichotomy. Taking the English doctrine of restraints of trade of its theme of discussion, Sanhuri delves into the term "standards" as a means of advancing the "social" in the modern Western law. The dissertation introduces ideological proposition for the re-distributive role of law in bringing about social justice. By articulating the sociological approach, it seeks to advance a reciprocal element between individual and social justice.¹¹

At the methodological level, the dissertation apparently reflects the author's criticism of the prevailing *l'ecole de l'exegese*, the classical formalist legal thought of France. This, in turn, suggests that by placing himself at one extreme of the two contradicting groups of the established jurist of *l'ecole de l'exegese* versus the progressive jurists of *juristes inquiets*, the dissertation implies Sanhuri's intellectual alliance or at least his favour to the latter.¹²

As mentioned above, following the completion of *Le restrictions contractuelle*, Sanhuri presented another dissertation, *Le califat*, in 1926.

⁹ (Paris: Librairie Orientalist Paul Geuthner, 1926).

¹⁰ Cf. Hill, "Islamic Law as a Source ...," in Aziz al-Azmeh (ed.) *Islamic Law*, 149.

¹¹ Sanhuri, *Le restrictions*, 26.

¹² On this issue, see Marie-Claire Belleau, "The 'Juristes Inquiets': Legal Classicism and Criticism in Early Twentieth-Century France", in *Utah Law Review*, 379:2 (1997), 372-422.

Reading through this work, it is evident that this work is an intellectual exercise underpins twofold-facet discourses of modernity vis-à-vis tradition, the primary doctrinal objective of which concerns with the modernization of the well established form of Islamic caliphate of the past.

In elaborating his theory, Sanhuri argues that it is inconceivable why the institution of the caliphate could not continue and develop towards an international organization of the Orient similar to that of the League of Nations,¹³ in the sense that the caliph would become the head and the central figure of the congregation of Islamic states, presiding over a body whose jurisdiction remain supreme on the religious matters, whereas in the realm of civil and the exercise of executive and legislative would be the prerogative of the heads of state and government.

It is worthy of note that there is a continuous methodological thread in the two dissertations in that tendency of the anti-formalist interpretations on the nature of law and legal reasoning. One of the most important aspect that Sanhuri demonstrated in *Le califat* is his newly invented concept of the distinction between the 'sacred' and the 'temporal' aspects of Islam, the idea of which alien or even unacceptable to the conservative circle of Muslims.

On the psychological level of the author, the underlying factors that motivated the study of *Le califat* seems to be as against the backdrop of searching for identity in the post colonial era. It thus became the anti-colonial vehicle of establishing pan Oriental, nationalist movement which preoccupied the mind not only Sanhuri but also the other intellectuals and the community at large.¹⁴

Other work noteworthy of mentioning is *al-Wasit: fi Sharh al-Qanun al-Madani*,¹⁵ commentary to the Egyptian civil code of 1949 is

¹³ A. Sanhoury, *Le Califat: son evolution vers une Societe des Nations Orientale* (Paris, 1926).

¹⁴ *Ibid.*, 512.

¹⁵ (Commentary of the Civil Code) comprises of 15000 pages in ten volumes written between the years 1950s through to 1970.

probably the most important civil law treatise ever produced in the Middle East history up to the present time, which no self-respected Arab lawyers library would be without.

In addition to these he produced several treaties of nonpareil and meticulous treatment of different aspects of law in his *Syarh al-Ijar*, *Nazariyyat al-'Aqd*, *al-Qanun wa al-Iqtisad*, and others, upon which many Arab states base their present legal systems.

Finally, *Mashadir al-Haq fi al-Fiqh al-Islami: dirasah muqaranah bi-l-fiqh al-gharbi* written by 'Abd al-Razzaq al-Sanhuri (1895-1971) is a work which try to make effort to formulate *mu'amalat* (social dealings) aspect of Islamic law, which represents work of the 'scientific stage'.¹⁶ The significance of this work lies in its to extract a general theory of legal action from the dispersed elements in the great classical treaties, to become a synthesis of new avenues in modernizing law.

Teaching

Upon his return to Cairo in 1926 Sanhuri began teaching constitutional law but then assigned to teach Civil Law, a subject which he later developed and designed by himself. What make Sanhuri attracted by his students, it seems, is not only confined to appealing academic ties but also his perspective and strategy as a mode and etiquette in the troubled nation searching for identity.¹⁷

During the 1930s increasing Arab cooperation was particularly visible in the realm of education. The number of Egyptian academician traveled to Arab countries is increasing to teach and advise on educational issues. The educational mission sent seems to be importance in fostering a more Arab inclined attitude in Egypt. It was in this mission

¹⁶ *Mashadir al-Haq fi al-Fiqh al-Islami: dirasah muqaranah bi-l-fiqh al-gharbi*, 6 vols. (Cairo, Jami'ah al-Duwal al-'Arabiyyah, 1954-9). This work contains the course of lectures given by al-Sanhuri in the Department of Legal Studies at the Arab Studies Institute, Cairo. Thereafter *Mashadir al-haq*.

¹⁷ *Ibid*.

that Sanhuri, together with a number of other Egyptian academicians, was invited by the Iraqi government following the independence to reform the law and judiciary of the country. He served in Baghdad for a year as Dean of the Law College the experience of which play important role to his better understanding of the Arab legal institutions.

In the same year he was invited by the Iraqi government to prepare a draft of what was then the Iraqi Civil Code. With this project in hand, Sanhuri gained extensive international experience since more countries such as Syria, Libya and others began to follow Iraq's step.¹⁸ All these prompted Sanhuri to return to his original theme to modernize the legal system through comparative means to fit the legal development of respective Arab states.¹⁹ During this later phase of his career he devoted most of his life to teaching, research, and writing, one of which is *Mashadir al-Haq fi al-Fiqh al-Islami* a culmination of his experience and understanding of the Arab legal system, in the form of synthesis of theory and practice Eastern and Western legal systems.

From Academic to Politics

From the outset of his life and career, Sanhuri was struggling in Egypt political situation, which initiated in the 1919 nationalist revolt when he was a junior assistant (*wakil*) in the *niyaba* in Manshura. He joined the Wafdi's movement and organized a successful strike of employees in his office, and consequently results in his transferal to a further province, Assiut in Upper Egypt.²⁰

His alleged involvement in politics also became apparent in 1934 when he was being accused by the government of forming a group of

¹⁸ In fact, the invitation that Sanhuri received also gave him mandate to develop the universities in respective countries such as the one in Syria. For details on the issue, see Donald M. Reid, *Lawyer and Politics*, 181.

¹⁹ In 1943 Sanhuri completed the draft of civil code of Iraq, and in 1949 Syria adopted his draft code.

²⁰ See Imarah, *al-Duktur*, ? Cf. Hill, *Islamic Law*, 177.

students to protest against political uncertainty, to which he denied.²¹ This allegation also led to his temporal suspension from the university.

Three years later, he joined the secessionist group (from Nahhas and the *Wafd*) established by Nuqrashi, and Ahmad Mahir and in the subsequent government posts represented the Saadist party.

Upon his return from Iraq in 1936 he was appointed Dean of the Faculty of Law at Cairo University. However, within the year due to deep feeling of hatred of Sanhuri, Nahhas pursued him vindictively over the years. In 1937 Nahhas fired him from his deanship and the civil code committee. Nahhas's cabinet fell the same year, and Sanhuri bounded back on the new civil code committee and as secretary general of public instruction and royal counselor. Nahhas forced him out once more in 1942, and Sanhuri fled to Iraq where he worked on an Iraqi civil code. Nuri al-Sa'id reluctantly agreed to Nahhas's demand that he forgo Sanhuri's services but refused to extradite him to Egypt. Sanhuri returned after 1944 to represent the Sa'dist Party as a minister of education in various anti-Wafd cabinets. Finally he became the Council of State, an advisory judicial body.

As far as the education program is concerned, there is available information on Sanhuri's concern on this regard during his tenure as *wakil* at the department of Education and the Ministry of Justice in 1939 and 1944 respectively. In addition he presumably had greater opportunity to impose the education projects during his service as minister of Education representing the Sa'dist Party in various anti-Wafdi cabinets.²²

To place Sanhuri in the perspective of the career of the 19th century of Egyptian lawyers, it worth mentioning that Sanhuri is one of the first to use the new academic road to political prominence.²³

²¹ The interview of his defence was published in *al-Abram* on August 1943.

²² See Khattab, 'Abd al-Razzaq al-Sanhuri'; Donald M. Reid, *Lawyers and Politics*, 155; Hill, *Islamic Law*, 178.

²³ Khadduri, *Political Trends*, 240-44; Ziadeh, *Lawyers*, 137-47- 56.

Around the late 19th century generation, scores of young lawyers chose to join established parties and hoped to inherit the mantles of the older politicians. Others turned to radical extra-parliamentary movements like Young Egypt, the Muslim Brotherhood, and the communists. But suffice it to say that the career pattern fall either administrator-lawyers or politician-lawyers.

The path of new academic to politics was virtually non-existent prior to the war, because teaching professions at the high school levels were greatly dominated by the British. However, during the 1920s, when professorships in the Egyptian University and educational administration took up by the Egyptians, they became exposed and caught the attention of the prime ministers selecting their cabinets. Surprisingly, approximately a quarter of Nasser's ministers had begun their careers in academia. Of the first five Egyptian deans of the Cairo law school, Sanhuri and two others paved their ways to cabinet.

Sanhuri was also a statesman who paved his way from being involved in various activities and was appointed President of the newly established Council of the State (*Majlis al-Dawla*) in 1949. With this position, Sanhuri made an effort to cooperate with the Revolutionary Leaders hoping that this will gather more energy to contribute to the development of his country.²⁴ To this end it appears then, that despite the fact of its newly established institution, Sanhuri has been successful in elevating its independence, and most importantly it portraying the

²⁴ It is noteworthy to mention that of Sanhuri's achievement in running these courts include: "Establishing the right of the judicial power to exercise supervision over the constitutionality of the law. 'The judicial power, while it supervises the legislative power, does not undertake to legislate'. However, 'if legislation is in opposition to the Constitution, it is its duty not to apply it'. Supporting the freedom of the press and expression against government orders to ban publications or cancel or deny publishing license. Offering legal redress of grievances for those who claimed to have been wronged by administrative or gather governmental action." Cf. Hill, *Islamic Law in Aziz al-Azmeh (ed.) Islamic Law: Social and Historical Contexts* (London and New York: Routledge, 1988) 179.

judicial reform of Egypt.²⁵ The function of the *Majlis al-Dawla* continues to the present time not only to hear cases on alleged illegal government action and the violation of rights and liberties, but it is given greater authority to issuing *fatwa* or advisory opinions, a function of which had been long accredited to Shari'a court judges or *qadi*. In addition, it has also be consulted its opinions to review draft legislation prior to submission to the People's Assembly whether approved (or disapproved). However, he came into conflict with this them, which forced him for early retirement in 1954.

When Egypt finally regained full control over its judicial system in the 1930's, though with some controversy, the proposal to construct the *Majlis al-Da'wah* was revived. The authority of the *Majlis al-Dawlah* was to render legal opinions on proposed legislation and draft legislation when requested by the government. It worth noting that jurisdiction and boldness of the newly established body gradually increased which led to its adversary. This is evident in the newly elected Wafdist government attempt to put Sanhuri out of the *Majlis al-Dawla* in 1950. The Wafd's move against him was not based on a particular decision but rather the claim of his political affiliation with the Sa'dist party that in turn would have disqualified him from taking the position.

New disputes between the *Majlis al-Dawla* and the government under Sanhuri's leadership emerged on March 1951 due to its boldness such as that of 1951 case in which the institution involved in very sensitive ground by deciding that it had jurisdiction to examine military decision to dismiss an officer.

When the Free Officers took power in the 1952 revolution, the *Majlis al-Dawla* supported the new regime and became the legal adviser that provide legal formula for the establishment of the Revolutionary Command Council (RCC) following the forced abdication of King Faruq.

²⁵ Y Linant de Bellefonds, "'Abdel Razzak al-Sanhuri, *Masadir al-Haq fil jih al-Islami*," in *Revue Internationale de Droit Comparé*, vol. 10 (1958), 476.

While in the service of these government posts he was also preparing on the revision of Civil Code that upon its completion he proceeded to work on al-Wasit, and simultaneously, his writing and activities in both treaties and various articles continued.²⁶

It took several years for Sanhuri and the French jurist E. Lambert as a committee to draft the Egyptian Civil Code. Sanhuri claims that its chief provisions are an outcome of the prevailing Egyptian law or material from the old codes, elements drawn from contemporary legal codes, and the principles of Shari'ah. He also explains that the principles of the shari'ah were designated as a general source of law in cases in which no specific provision of the Code or usage was applicable.²⁷

Given the similarity of social conditions and the common historical background, Egypt's lead in drafting the new Civil Code soon attracted the attention of lawyers in other Arab states that also considered to adopt the same rules of law. The countries that had recourse to Sanhuri for drafting new civil codes along the lines of the Egyptian code were Syria and Iraq. However, he applied different approach to different country. Sanhuri made no attempt to draft entirely new civil code in a revolutionary manner for these countries, but rather it was moderate in temper and pragmatic in approach.²⁸

In addition, Sanhuri also has a great concern on developing Arabic language that he views to make it compatible with the development of his time. To this end, he became a member of the academy or *majma'* in 1946 in which he partake in conferences and worked on projects.²⁹

²⁶ These articles are published in popular journal such as *al-Balagh*, *al-Hilal*, and *al-Siyasah*. He was, for a short period January –May 1937 editor of the journal *al-Qanun wa al-Iqtisad*. See Hill, *Islamic Law*, 178.

²⁷ For details on this issue, see Herbert J. Liebesny, *The Law of the Near and Middle East* (Albany: SUNY, 1975), 98-99.

²⁸ For discussion of New Egyptian Civil Code in a wider context, see Gamal Moursi Bakt, "New Egyptian Civil Code and the Unification of the Laws of the Arab Countries," in *Tulane Law Review*, 30 (1955: 1956), 299-304; J.N.D. Anderson, "The Shari'a and Civil Law," *Islamic Quarterly* (1954): 29-46.

²⁹ Qulali, *Kalima*, Hill, *Islamic Law*, 179.

Moreover, he also headed scores of Egyptian delegation to various conferences, such as that of the second international congress of comparative law at the Hague, conference on Palestine in London in 1949, to the United Nations, and in the following year, he was a member of the Egyptian delegation to the security council forwarding Egypt complaint against the United Kingdom.³⁰

The founding of an Arab University, which was the then Institute for Higher Arab Studies was indebted to Sanhuri's initiative following the formation of the Arab League in 1945. Sanhuri was appointed the director of legal section to this newly established institution in which he involved in academic activities.³¹

However, an over all assessment of his life career, it appears that it is in the legal reform that Sanhuri's contribution will endure, although he made some ventures in politics that which elevated him to cabinet rank.³²

Closing Remarks

The memory of the role played by Sanhuri in Egypt's politics might be swept away in due course of time. However, the tribute paid to him is of a different kind, that is the continuous reference by the Arab lawyers to either one of his Civil Codes, to *al-Wasit* or to *Masadir al-Haq*. Although his thought and works remain virtually unknown outside the Arab world, they have served as alternative solution for the transformation of Islamic law into national legislation.

It seems to be genuine how Sanhuri made all due effort to distilling the legal maxims of Islamic law and recasting them into a mould that shows sophistication and effective characteristic of modern positive law. This suggests the reason why his experiment was generally well

³⁰ Ibid.

³¹ Ibid.

³² Majid Khadduri, *Political Trends in the Arab World* (Baltimore: The Johns Hopkins Press, 1970), 240.

received both by laymen and professionals without a real challenge allowing the building up of a legal system.

As a major figure of the intersection of traditional Islamic culture with modernity, Sanhuri has left mark on contemporary Arab world.

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