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The Relationship between Islamic law and Roman law

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Abstract

Both Islamic law and Roman law are ancient legislations that were adopted in many countries as a basis for codification and governance, and work with them spread in many countries, and each law has its origins, principles and writings, but not long ago, some Orientalists appeared who claimed that Roman law had influenced Islamic law differs between the orientalist in this regard, between those who claimed that Islamic law was influenced by some principles of Roman law and those who claimed that Islamic law is nothing but Roman law in an Islamic guise, while some of them denied this claim and admitted that Islamic jurisprudence had nothing to do with Roman law. Its principles and principles, however, it became clear to us through the presentation of the semi-Orientalists and the response to them that many of the Orientalists only want to distort Islamic law, While also many orientalist were objective in their studies and recognized Islamic law as independent in principles and rules, and that it is a jurisprudence comparable to Roman law in originality and precision of workmanship.

Keywords: Roman law – Islamic jurisprudence - Orientalism – legislation - Sharia

Introduction

With the emergence of Islam in the Arabian Peninsula, which was originally a collection of tribes characterized by ignorance, frequent wars, governed by customs and traditions, and without any form of laws, Islam was able to spread quickly throughout the Arabian Peninsula and in many neighboring and distant countries through the conquests carried out by Muslims. Some of these countries included the Levant, Egypt, and other regions that were under Roman rule. As a result, Islamic Sharia replaced Roman law in these open countries that were under Muslim control. From this, the issue of the relationship between Islamic jurisprudence and Roman law arose, with the idea of the influence of Roman law on Islamic jurisprudence being supported by most orientalists, although they differ in the extent of this influence ¹. **Domenico Gatteschi** was the first to claim that Islamic jurisprudence was derived from Roman law in his book titled "A Manual of Ottoman General and Private Law" in Italian, which was printed in Alexandria in 1856. In this book, the author claimed that Islamic jurisprudence and Roman law are similar in several matters, and that the principles of Roman law easily entered and influenced Muslims through fabricated Hadiths attributed to the Prophet Muhammad².

And followed by many Orientalists such as **Goldziher, Santillana, Scherman, Karozi, Amos, Sasho, De Boor, and Von Kremer...** in doubting the authenticity of Islamic Sharia, claiming that it is derived from Roman law or heavily influenced by it, and that Roman law is one of its main sources, with varying degrees of extremism. Among those who went to extremes in this regard is Sheldon Amos, who claimed in his book "**Roman Civil Law**" that Islamic law is nothing but the Roman law of the Eastern Empire modified according to the political conditions in Arab territories³, or that "Islamic law is nothing but Justinian's law in Arab attire,"⁴ and one of them even went as far as saying that "the Arabs have only added some mistakes to Roman law,"⁵ while others took a more moderate approach and argued that Muslims' interaction with non-Muslims after the Islamic conquests was a factor in the influence of Islamic jurisprudence by Roman law. Although this opinion seeks to criticize and accuse Islamic jurisprudence, it does so in a manner that approaches objectivity and moderation. Many French authors and the Dutch Orientalist **De Boor** support this view who says, "After the Muslims opened countries with ancient civilizations, needs arose that Islam did not have an agreement on. Instead of simple Arab affairs, there were customs and systems that were not governed by the revealed book, and the Sunnah did not mention or interpret anything that clarifies the way to address them. Then the number of specific events increased every day, and these were events that did not have texts. Muslims had to rule on them either according to customary practices or guided by independent reasoning. It is inevitable that Roman law had a significant influence on this, in Syria and Iraq, which were provinces of the ancient Roman Empire."⁶

However, there is a third trend among some fair-minded orientalists themselves that denies any connection between Islamic jurisprudence and Roman

law. Among them are **Nallino, Fyzee**, and some prominent figures in Arab jurisprudence and law, such as Professor **Ali Badawi, Dr. Abdel Razzaq Al-Sanhouri, Dr. Shafiq Shihata, Dr. Mohammed Youssef Musa, Dr. Mohammed Salam Madkur, Dr. Abdul Karim Zaidan, Dr. Sofi Abu Talib**, and others⁷. On the contrary, there are those who completely reversed the matter and claimed that Roman law is nothing but a set of rules derived from Islamic law. Fearing non-compliance and denial by church men, European law scholars claimed it as their own and called it Roman law. This happened after the translation of Islamic jurisprudence in Spain from Arabic to Spanish. One of these scholars is the Iranian professor **Abu Al-Fadl Al-Jarqadqani**⁸.

In order to cover all aspects of the topic, we will address the topic through the following axes:

The First Axis: Definition of Islamic Jurisprudence and Roman Law

The Second Axis: the evidence of those who say that Islamic jurisprudence is influenced by Roman law

The Third Axis: Discussing the evidence of those who say that Islamic jurisprudence is influenced by Roman law

The First Axis: Definition of Islamic Jurisprudence and Roman law

1/ Definition of Islamic Jurisprudence:

Before addressing the definition of Islamic Jurisprudence, it is necessary first to define Islamic Sharia, then we define Islamic Jurisprudence. After that, we clarify the differences between Islamic Jurisprudence and Islamic Sharia in order to remove the confusion that exists between them for many people.

The First Branch: Definition of Sharia:

Sharia is what Allah has legislated for the worshipers in terms of rulings that were brought by a prophet from among the prophets, peace be upon them, including both procedural and operational matters, which are documented in the field of Jurisprudence, or matters related to belief and are considered fundamental, which are documented in the field of Theology⁹

It was said, "These are the rulings that Allah revealed to His servants through the tongue of His messenger, for them to act upon with faith, whether they are related to beliefs, worship, or ethics."¹⁰

Based on the previous definitions, Sharia includes both contractual, ethical, and practical rulings, which are synonymous with religion.

Anyone who claims that Sharia is more specific than religion understands it as: "The systems that Allah legislated, or legislated its foundations, for a person to follow in their relationship with their Lord, their relationship with their Muslim brother, their relationship with their fellow human, their relationship with the universe, and their relationship with life."¹¹

Legislation, based on the above, is the establishment of laws, whether their source is religion, and it is called divine legislation, or they are established by humans, and it is called human legislation.

The Second Branch: Definition of jurisprudence terminologically

One of the most important definitions of the term "jurisprudence" is the definition given by **Abu Hamid al-Ghazali**, who defined it as: "It is the knowledge of the established Sharia rulings regarding the actions of accountable individuals, especially." He then says, "So that the term jurist is not used, by custom, to refer to a speaker, philosopher, grammarian, hadith scholar, or interpreter. Rather, it is specifically reserved for scholars who specialize in the established Sharia rulings regarding human actions, such as obligation, prohibition, permissibility, recommendation, and detestability, as well as the validity, invalidity, and nullity of contracts, and the fulfillment and performance of worship, and the like."¹²

Ibn Khaldun defined it as: "The knowledge of Allah's rulings regarding the actions of accountable individuals, such as obligation, prohibition, recommendation, detestability, and permissibility. This knowledge is derived from the Quran and Sunnah, and from the evidence that the legislator has established for the knowledge of these rulings. When these rulings are derived from those evidences, it is called jurisprudence."¹³

The most famous definition of jurisprudence is attributed to Imam Shafi'i, which is: "The knowledge of practical Sharia rulings acquired from their detailed evidence."¹⁴

The third branch: The difference between the term Islamic Sharia and Islamic Jurisprudence:

We have previously mentioned that Islamic Sharia consists of three main sections: beliefs, ethics, and practical rulings. The latter includes worship and transactions. Therefore, matters of worship and transactions are considered only a part of Sharia, and they are the ones addressed by the term jurisprudence, which is the knowledge of practical legal rulings. Therefore, matters of creed and ethics fall under the category of Sharia and not under the category of jurisprudence. Sharia is broader and more comprehensive than jurisprudence. Furthermore, Sharia refers to the texts of the Quran and the Prophetic tradition, including

statements, actions, and approvals of the Prophet Muhammad, whether they are interpretations or explanations of Quranic texts or new rulings not explicitly mentioned in the Quran. As for jurisprudence, it is what scholars understand from the texts of Sharia and what they derive from them, whether from the Quran, the Prophetic tradition, or what the texts have confirmed in terms of authenticity and credibility. It should be noted here that Islamic jurisprudence as a whole remains influenced by the religious dimension, as it is based on Islamic Sharia, its principles, rules, and foundations, and it is derived from its texts and the sources considered reliable.¹⁵

2/Definition of Roman Law:

The journey of Roman law begins with the establishment of the city of "Rome" in 754 BC until the death of Emperor "Justinian" in 565 AD. It is known that Roman law was born as a primitive law to govern a small city, but it soon evolved and extended its rule to the entire Roman Empire, which included diverse peoples and civilizations. This development had a significant impact on the law, leading it to reach a high degree of evolution and sophistication. It enabled its survival and made it the basis for most modern legislations.

2-1/Benefits of studying Roman law include:

It is considered a historical source for many laws in the world today, especially Latin-based laws, most notably the French law. The latter played the role of a mediator in transferring provisions of Roman law to countries that derived their laws from French law. Therefore, studying this law and understanding its stages is essential. Additionally, credit is given to the Romans for making law a separate discipline from religion, philosophy, and ethics.

2-2/Periods of Roman Law:

Monarchic Era 754 BC - 509 BC: This era begins with the founding of the city of "Rome" and ends with the establishment of the "Republican" system in 509 BC. During this era, the only source of law was "custom," and religious figures played a significant role in its formation, development, and interpretation. This continued even after the enactment of the "Twelve Tables law"

-The era of ancient law: This era begins with the establishment of the "Republican" system in 509 BC and ends with the issuance of the "Lex Aebutia" law around 130 BC. During this era, the geographical territory of the Roman state expanded, including some regions such as the Mediterranean basin, Spain, and the Italian peninsula. These expansions led the Roman people to shift from agriculture to trade, making Rome a major commercial center. This resulted in conflicts between the aristocracy and the common people, leading to the emergence of the "Twelve Tables" law.

-The Twelve Tables Law: Historians mention that the reason for the emergence of this law was the revolution of the working class against the aristocracy. The customary rules that were dominant before were subject to the understanding and interpretation of the religious figures, who interpreted them in favor of the

aristocracy. These led the common people to revolt against them and demand the codification of customary laws. This law was established to be a general law for all Romans, regardless of their social classes and religions.

-The Law of Nations: The law of nations emerged as the Roman state expanded.

3- Scientific era (age of the supreme empire): It is the era in which the system of governance changed from "republican" to "imperial". This era started from 130 BC to 284 AD. It represents a stage of maturity, progress, and prosperity from a legal and legislative perspective. It begins with the issuance of the "Aebutia Law" in 130 BC and ends with the rule of Emperor "Diocletian" in 284 AD. • Some of the main sources of law in this era include:

Legislation: Through legislative councils.

Praetorian edict: The "praetor" deals with procedural matters related to legislation in particular.

Jurisprudence: Due to the expansion of jurisprudential activities and the emergence of legal jurisprudential schools.

Many laws were issued in this era, such as the "Julian, Santic, and Papian Law."

Lower Empire era (284 AD - 565 AD): This era ends with the death of Emperor "Justinian" in 565 AD. The emperor is the sole source of legislation in this era, as he establishes, interprets, and appoints judges, etc. This era was characterized by the deterioration of legal culture due to the distancing of legal scholars from exerting effort. Despite the stagnation of jurisprudential movement in this era, the works of the jurists of the "scientific era" remained respected and appreciated. As for the "legal schools" that existed since the scientific era, the most important of which are the "Beirut" school, the "Alexandria" school, and the "Constantin".

4-1/Justinian Group: Justinian assumed power in the Eastern Empire from 527 CE to 565 CE and was able to accomplish a massive legislative work that no one before him could achieve. He collected the valid law of his time, most of which dates back to the scientific era - the era in which law developed and flourished. In his known work called "Justinian's Code," he gathered all the laws and constitutions that were applicable during his time or before. This was done to make it easy for students, especially law students, to know the source of these laws. His book, "Justinian's Code," is specifically directed towards law students. It should be noted that the first Arabic translation of "Justinian's Code" was made by Dr. **Abdul Aziz Fahmi** in the mid-20th century.

It is worth mentioning that Justinian did not only issue his code but also issued what is known as the "**Digest**" or the "**Pandects**," which are legal and jurisprudential collections that include the opinions of Roman jurists, especially those of the scientific era.

After the Justinian Code stage, some laws of the Church in the Middle Ages were codified, as well as some of the Germanic customs and traditions among some European nations during those times, leading to Napoleon's Code

The second axis: the evidence of those who say that Islamic jurisprudence is influenced by Roman law

The evidence of those who say that Islamic jurisprudence is influenced by Roman law is summarized as follows:

1/ some orientalist went on to say that the Prophet (peace and blessings of Allaah be upon him) was widely acquainted with the Roman-Byzantine law applied in the Eastern Roman Empire, and thus seeped into Islamic jurisprudence.

2 / The Roman Empire has established a number of schools of Roman law, the most important of which are the school of Rome, Constantinople, Athens, Beirut, Caesarea Levant, and Alexandria, as well as found courts in the regions of the Roman state that apply the provisions of Roman law, and those schools and courts have remained in place even after the Islamic conquest, which made Muslim jurists derive from those schools and courts a lot of opinions and provisions, and introduced them into Islamic jurisprudence, including Imam **Shafi'i** and **Ouzai**.

3 / They said that the jurists of Islamic law spread in the country of the Roman Empire after its conquest, and this enabled them to see the provisions of Roman law and contact with those who know it, and since the people of the open country are accustomed to Roman law and familiar, Islamic jurists could not but maintain those customs and traditions of the Roman and rule by them to take care of what people are familiar with.¹⁶

4 / They said that Roman law indirectly affected Islamic law, through pre-Islamic customs and customs and the Jewish Talmud book, because the pre-Islamic customs were affected by Roman law, so some of the rules of the latter leaked to it as well as the Talmud, and since Islamic law approved some systems of pre-Islamic Arabs, some rules of Roman law leaked this way to Islamic law.

5/ one of the proofs is also the similarity between the legal systems and provisions in both Islamic law and Roman law, and as it is known, the subsequent is affected by the former, and therefore Islamic jurisprudence has been influenced by Roman law.¹⁷

TheThird axis: Discussing the evidence of those who say that Islamic jurisprudence is influenced by Roman law

We will try to discuss each of the previous evidence separately:

1/ Discussion of the First evidence

The claim that the Prophet (peace and blessings of Allaah be upon him) was widely aware of Roman law is baseless, as it is historically proven that the Prophet

(peace and blessings of Allaah be upon him) grew up in a pure Arab environment, and lived his whole life until his death (peace and blessings of Allaah be upon him) illiterate and neither read nor write, Prophet Muhammad did not leave the Arabian Peninsula except on two short trips to the Levant, the first was his age did not exceed twelve years, and in the second was twenty-five years old¹⁸, and those who accompanied him on his trips were all Arabs¹⁹, Is this trip sufficient to get acquainted with the customs of the people, as well as their legislation and laws? Moreover, the Prophet (peace and blessings of Allaah be upon him) was not favoured before the mission over other Quraish boys, and most likely that the presenter when the Romans are the merchants known for trade, which was not so, so does it make sense to specialize in him without the rest and teach him their laws and legislation with his illiteracy, and his ignorance of reading and writing, then the merchant often does not work unintentionally, which came from a distant place for him, which is trade, not the transfer of science and knowledge that Requires long time²⁰.

2/ Discussion of the second evidence

As for the claim that Islamic jurisprudence derived a lot of its rulings from Roman schools and courts, it is a false claim, because although the fact that the Roman Empire has established a number of schools of Roman law, the most famous of which are the school of Rome, Constantinople, Caesarea of the Levant, Beirut, and Alexandria, but the Roman Emperor Justinian, when he collected Roman rules in his famous collection, abolished schools that teach Roman law, with the exception of only some of them, namely: The school of Rome, Constantinople, and Beirut, in the constitution issued on September 16, 532 AD.

As for the school of Constantinople, it is far from the Arabian Peninsula and there was no link between them until it fell at the hands of the Turkish Muslims in 1453 AD, and there was no friendly contact between the Islamic state and Constantinople except in a few cases, so no one of the orientalist said that Muslim jurists were affected by this school, as well as the school of Rome, which was not originally opened by Muslims.

As for the Beirut School, it has been exposed to many natural disasters since the fourth century AD until it disappeared permanently from existence in the middle of the sixth century AD, specifically in the year 551 AD, due to successive earthquakes on the region, as stated in a research by Professor **Colignet**.²¹

With regard to the benefit of the two Imams **Ouzai** and **Shafi'i** from the Beirut School is clear invalid because of the above mentioned that the Beirut School has disappeared by more than three quarters of a century before the conquest of the Muslims of the Levant, and that **Ouzai** has disappeared doctrine and there is nothing left of it except some of the sayings that have been saved by us some books of jurisprudence, in addition to the fact that **Ouzai** is one of the people of

hadith not of the people of opinion²², and this jurist would not be affected by Byzantine jurisprudence to assume his existence at the time. As for Shafi'i, they went so far as to say that he received his legal studies in Beirut, which is really strange, the environment in which Imam **Shafi'i** grew up and the place where he received his sciences and the country where he founded his doctrine were all far from Roman law, and about these slanders Fitzgerald says: "This historian (**von Kremer**) had thought in his German book (Cultural History of the East) that the Imams **Ouzai** and **Shafi'i** had been born in the Levant, he said" they were in most In the hands of those who narrated it later, the phrase "most likely" turned into "determined", and the phrase "law of tradition" into "**Byzantine law**", until one of them ended up cutting off confirming that Shafi'i, "as it is very well known, is studying jurisprudence in Beirut."²³

With regard to the school of Alexandria, it was really an important legal center in the East, but Emperor Justinian has ordered to close it with some other schools, as previously explained, and it is known that Alexandria fell into the hands of Muslims in November 641 AD, and therefore the school of Alexandria had closed its doors for more than a century before the Muslims opened it, so how can it be said that Muslim jurists have studied it!²⁴ As for its library, which some orientalist claimed that the Muslims burned after their conquest of Egypt, it is not taken for granted, because the Library of Alexandria, as proved by Professor Butler, did not exist originally after the Islamic conquest of Egypt, and that the Muslims did not find anything until they burned it, so how can they see the library and be affected by Roman law!²⁵

As for the claim that the Roman courts remained carrying out their mission a hundred years after the Islamic conquest of the Levant, it is an incorrect claim, because the authority of the judiciary has become in the hands of Muslims and not in the hands of the Romans, and Islamic law is the applicable law in Dar al-Islam, which does not allow the judge or the jurist to derive its provisions from a foreign law.²⁶

3/ Discussion of the third evidence

As for the suspicion that the jurists of Sharia spread in the open Roman regions were able to see the Roman law, and contact with those who know it, and since the people of the open countries when they are accustomed to that law and familiar with it, the scholars of Sharia saw that they should maintain what people are familiar with in their dealings, including accepting the rules of Roman law, and ruling by them in care of what people are familiar with.

This argument is supported by what we have previously mentioned about **the Dutch orientalist de Boer**, who says: "After the Muslims conquered countries with ancient civilizations, needs arose that Islam did not have a covenant, because instead of simple Arab life affairs, there were customs and systems in which the

book did not rule the house, and there was no text or interpretation in age that shows the way to address them, and then the number of partial facts increased every day, facts in which there were no texts. The Muslims did not have to rule in it either in accordance with the inherited custom, or in accordance with the jurisprudential opinion, and the Roman law must have been a time that greatly affects that, in the Levant and Iraq, which are the states of the ancient Roman Empire.²⁷

This evidence is not valid based on them, because the spread of Muslim jurists in the open country did not enable them to see the Roman law, and we have already shown that Muslims did not find any school of law after entering the Roman regions, nor did they see any of their books, and if they saw Roman law or met one of its scholars, or benefited from it, they would have referred to it in their books, such as what the people of philosophy, medicine and literature pointed out. About what they took from the books of Greece and Persians after the translation movement²⁸ If one book was translated into Arabic, they would have stipulated it, and to tell us the people of history that, Ibn al-Nadim has transferred in the index the names of the books that were translated and the people who translated them into Arabic, and there was no mention of any book in Roman law, because the translation of Roman law books came much late, historians have stated that the first book translated into Arabic is the Syrian book Roman in 1100 AD²⁹, In the modern era, Justinian's blog was translated by one of the Egyptian jurisprudence of law, Professor **Abdel Aziz Fahmy**, and perhaps the reluctance of Muslims to pay attention to the transfer of Roman laws and others is due to a contractual order first, the content of which is that it is not permissible to rule other than what God has revealed, and the second thing is that Islamic law imposes on the mufti and the judge to abide by its sources of the Qur'an, Sunnah, and other sources, and there is no source among those sources called foreign law.³⁰ However, it is possible to say that the jurists of Sharia have found Roman customs and customs in the open country, and Islamic jurisprudence is not an enemy of everything that is Roman, but like what the jurists did in Iraq and Persia with those customs that people are familiar with, they also did with the customs and traditions that they found in the open Roman regions, so they present them to Islamic law and its origins, so they accept what was in accordance with it and invalidate what violated it³¹, due to the fact that among the provisions of However, these orientalist did not explain what customs were familiar to the Romans, and the Muslims kept and preserved them, which indicates that their claims are purely speculative, because they want to undermine the authenticity of Islamic jurisprudence by any means and in any way.

4/ Discussion of the fourth evidence:

As for their claim that the pre-Islamic customs and systems have been influenced by Roman law, and Islam has approved some pre-Islamic customs and customs, there is no evidence for their claim this, because the Arabs, although

they have a connection with neighboring countries through trade, but they were limited, and did not appear to have any effect from a legal point of view, in addition to the fact that the Arabs are an illiterate nation, do not care about science, and are ignorant of foreign languages, and the quotation is mostly between close mentalities³² There is also no evidence to prove that the Arab customs and traditions embraced by Islamic jurisprudence were influenced by Roman law, which was confirmed by Professor Nalino³³ and Professor Schacht³⁴.

As for his claim that Roman law influenced the Jewish Talmud, the latter influenced Islamic jurisprudence, it is not true in many respects.

1 / The Roman-Byzantine law after the third century AD is the one that was influenced by Jewish law and not vice versa, which was confirmed by the commentators of Roman law in this era, that the Roman legal systems are some of Jewish origin, such as the betrothal system, some penal systems, and some rules related to sale, and this means that the Roman law systems were not transmitted through the Jewish Talmud.

2/ The provisions contained in the previous divine laws are not Shariah for us and part of our Sharia unless the evidence is from the Islamic Sharia to legislate it against Muslims.

3/ There are many provisions in Jewish law that are contrary to Islamic law, including that a marriage contract, for example, is a formal contract that can only be concluded with certain words, and with a special prayer performed by clerics, and it is not permissible on Jewish holidays. In Jewish law, a man marries whatever he wants from women without a certain number, and that the wife's property belongs to her husband and he disposes of it as he pleases, because the woman has no capacity, breastfeeding is not forbidden, and that the estate is transferred with what she has and what she owes to the heir... All of the above is completely contrary to what is prescribed in Islamic jurisprudence, thus showing the invalidity of what they went to about the influence of Islamic jurisprudence on Jewish law.

This was confirmed by the French orientalist **Bousque**, because when he made some comparisons, he found deep differences between the two legislations, which made him say: "This is a completely negative first reason, which invites us to respond to the view that jurisprudence is nothing other than the Talmud, and another positive reason, which is the following: There are deep differences between the bodies of these two systems so that the late (Islamic) cannot be considered just a transfer from the advanced system in time³⁵.

5/ Discussion of the fifth evidence:

As for the evidence on which they relied regarding the similarity in some legal rules and provisions, it applies to what applies to other types of different thought, which is normal among all nations, there is no difference between the Arabs and the Romans or other different nations and peoples, and no sane person can judge a nation that it has quoted from a nation its law or thought by mere similarity, because the similarity in general rules and issues that are often expressed by the principles of natural law and the rules of justice It is intuitive, because it is due to the fact that the healthy human mind is similar in many colors of thinking and its results, without the need to strain ourselves by explaining this phenomenon by taking and imitating³⁶.

The sanctity of murder, theft and adultery, or the rule of the burden of proof on the plaintiff, and the prohibition of taking the money of others unjustly, is one of the common rules in all laws that guide the sound mind and are required by justice, and its omission in any legislation indicates its shortcomings and injustice, and therefore such similarity never indicates being affected.³⁷

Even the similarity in some partial issues does not indicate the impact, so that the partial provisions if built on causes and causes, the same causes and causes if achieved in a place or time lead to the same provisions, according to the principle that "the analogues of the causes generate analogues of results", so the similarity in some partial provisions between two legal systems is not evidence of influence and influence between them, but perhaps the two societies – as Schacht says – have reached the degree of One of civilization, and to the similarity of their socio-economic conditions³⁸

Despite what is said of the existence of superficial similarities in some legal systems, a large range of principles of the two Sharia clearly and categorically demonstrate the independence of each other, as Roman law often contained systems that have no effect on Islamic law, such as: the system of parental authority, marital sovereignty, the system of adoption, guardianship of women, and formalities. Islamic law often contained systems that have no basis in Roman law, such as: the adoption of the principle of consent, the system of pre-emption, the sanctity of marriage because of breastfeeding, the civil endowment, , the system of punishment in penalties, etc. Often, each of the two Sharia contains common systems, but their rules are different, such as that women inherit like men according to the Romans, and half of it is in Islamic law, and there is no polygamy in Roman law, contrary to Islamic law, and divorce is the right of the husband and wife, but in Islamic law it is the right of the husband only.³⁹

Conclusion

Finally we conclude by presenting the similarities raised by orientalist, wanting to challenge Islamic jurisprudence only, and the best evidence of this is that it has been raised since 1856 only, that Islamic jurisprudence has nothing to do with Roman law, and that saying that influence has nothing to do with reality, and that those who say that influence has established their arguments on flimsy foundations, and therefore some of them have retracted from those allegations such as **Gold Zeher**⁴⁰, and then the Sharia Islam is rich in its sources, principles, rulings and doctrines, and its jurists number in the thousands, and its writings are not many, does this not indicate its independence? As well as claiming that she was affected by what is below her in everything!

¹ Abdel Karim Zaidan, Introduction to the Study of Islamic Law, Dar Omar Ibn Al-Khattab, Alexandria, Egypt, 1969 p: 73.

² Carlo Alfonso Nalino, Perspectives on the Relations of Islamic Jurisprudence with Roman Law, article in the book "Does Roman Law Have an Impact on Islamic Jurisprudence", dar al-bahouth al-alamia, First Edition, 1973, p. 9.

³ Sufi Hassan Abu Talib, Between Islamic Sharia and Roman Law, Nahdet Misr Library, Cairo, p. 6. Muhammad Yusuf Musa, Islamic Legislation and its Impact on Western Jurisprudence, Dar Al-Asr Al-Hadith, Beirut - Lebanon - Second Edition, 1991, p. 68. Adel Bassiouni, History of Egyptian Law, Nahdet Al-Sharq Library, Cairo University, p: 96

⁴ Sufi Hassan Abu Talib, op.cit , p. 6.

⁵ Ibid, p: 6.

⁶ Sajir Nasser Hamad Al-Jubouri, Islamic Legislation and the Western Legal Conquest of Islamic Countries, Dar Al-Kutub Al-Ilmiyya, Beirut, First Edition, 2005, p. 206.

⁷ Sufi Hassan Abu Talib, op.cit . p. 8. Abdul Karim Zaidan, op.cit, p. 74. Al-Desouki Al-Sayyid Al-Desouki Eid, The Independence of Islamic Jurisprudence from Roman Law and the Response to the Quasi-Orientalists, Islamic al-touaia Library, Giza - Iraq -, First Edition, 1989, p. 14.

⁸ Sajir Nasser Hamad Al-Jubouri, op.cit, p.: 207. Abdul Karim Zaidan, op.cit, p.: 73.

⁹ Muhammad bin Ali Al-Tahanwi, Scout Encyclopedia of Arts and Sciences Conventions, investigated by: Dr. Ali Dahrouj, presented, supervised and reviewed: Dr. Rafik Al-Ajam, Librairie du Liban Publishers, Beirut, Lebanon, First edition, 1996. C1/1018.

¹⁰ Muhammad Salam Madkour, Al-Mukhalil of Islamic Jurisprudence, Dar Al-Kitab Al-Hadith, 2nd Edition/1996, p.: 09.

¹¹ Muhammad Al-Desouki and Amina Al-Jaber, Introduction to the Study of Islamic Jurisprudence, Dar Al-Thaqafa for Printing, Publishing and Distribution - Qatar - Second Edition, 1999, p. 29

¹² Abu Hamid Al-Ghazali, Al-Mustafa, investigated by: Muhammad Abd al-Salam Abd al-Shafi, Dar al-Kutub al-Ilmiyya, first edition, 1993, p. 05.

¹³ Abd al-Rahman Ibn Khaldun, Diwan al-Mubtada wa al-Khabar in history of Arab, Berbers and their contemporaries of the greatest importance, edited by: Khalil Shehadeh, Dar al-Fikr, Beirut, second edition, 1988, p. 563.

¹⁴ Wahba Al-Zuhaili, Islamic Jurisprudence and its Evidence, Dar Al-Fikr, Second Edition, 1985, Part 1/16. Mustafa Ahmad Al-Zarqa, Islamic Jurisprudence and Schools, Dar Al-Qalam - Damascus - First Edition, 1995, p. 10.

- ¹⁵ Abdul Karim Zaidan, Perspectives on Islamic Sharia and Man-made Laws, Al-Resala Foundation, Beirut, 1st Edition/2011, p. 63.
- ¹⁶ Abdul Karim Zaidan, Introduction to the Study of Islamic Law, op.cit, p. 75.
- ¹⁷ Ibid., p. 75.
- ¹⁸ Abu Al-Fida Ismail bin Omar bin Kathir, Biography of the Prophet, edited by: Mustafa Abdel Wahed, Dar Al-Marefa for Printing, Publishing and Distribution, Beirut - Lebanon - 1976 AD, vol. 1/322.
- ¹⁹ Sufi Hassan Abu Talib, op.cit, p. 30.
- ²⁰ Sajir Nasser Hamad Al-Jubouri, op.cit, pp. 213-214.
- ²¹ Fitzgerald, The Alleged Religion of Roman Law on Islamic Law, article in the book "Does Roman Law Have an Impact on Islamic Jurisprudence", op. cit., p. 135 . Sufi Hassan Abu Talib, op. cit, p. 51. Sajir Nasser Hamad Al-Jubouri, op. cit, p: 215
- ²² Abdul Karim Zaidan, Introduction to the Study of Islamic Law, op. cit, p. 77.
- ²³ . Fitzgerald, op. cit., pp:135-136.
- ²⁴ Carlo Alfonso Nalino, op. cit., p. 12
- ²⁵ Sufi Hassan Abu Talib, op.cit, p. 58.
- ²⁶ El-Desouky El-Sayed El-Desouky Eid, op.cit, p. 34. Abd al-Karim Zaidan, Introduction to the Study of Islamic Law, , op.cit, p. 78.
- ²⁷ . Sajir Nasser Hamad Al-Jubouri, op.cit, p: 206.
- ²⁸ Muhammad Yusuf Musa, Islamic Legislation and its Impact on Western Jurisprudence, op.cit, 69. Allal Al-Fassi, Defense of Sharia, Dar Al-Kalima for Publishing and Distribution, Mansoura - Cairo - First Edition, 2014, p. 70
- ²⁹ It is a textbook of a purely scientific nature, containing the ancient Roman law that was amended in Rome itself, which Fitzgerald says: "a brief trivial book". It is natural that Muslim jurists are not affected by this Arabic translation because it occurred after the completion of Islamic jurisprudence and its maturity since the eighth century AD. See: Fitzgerald, op. cit., pp. 128-129. Sufi Hassan Abu Talib, , op.cit., p. 79.
- ³⁰ El-Desouky El-Sayed El-Desouky Eid, op.cit, p. 37.
- ³¹ Abdul Karim Zaidan, Introduction to the Study of Islamic Law, , op.cit, p. 80.
- ³² Sajir Nasser Hamad Al-Jubouri, , op.cit, p: 225.
- ³³ Carlo Alfonso Nalino, op. cit., p: 12.
- ³⁴ Sufi Hassan Abu Talib, op. cit, p. 92.
- ³⁵ Bouska, The Secret of the Formation of Jurisprudence and the Origin of its Sources, an article in the book "Does Roman Law have an Impact on Islamic Jurisprudence.op.cit, pp. 76-77.
- ³⁶ Muhammad Yusuf Musa, Islamic Legislation and its Impact on Western Jurisprudence, op. cit.p, 68-69.
- ³⁷ Abd al-Karim Zaidan, Introduction to the Study of Islamic Law, op. cit, p. 84.
- ³⁸ Sufi Hassan Abu Talib, op. cit, p. 119
- ³⁹ Ali Badawi, Researches in the History of Laws, Journal of Economics and Law - Egypt -, First Year, Fifth Issue, Rajab, 1650 AH, pp. 734-735.
- ⁴⁰ Fitzgerald, op. cit., p. 121

References

- Abdel Karim Zaidan, Introduction to the Study of Islamic Law, Dar Omar Ibn Al-Khattab, Alexandria, Egypt, 1969 .
- Abdel Karim Zaidan, Perspectives on Islamic Sharia and Man-made Laws, Al-Resala Foundation, Beirut, 1st Edition/2011.
- Abd el-Rahman Ibn Khaldun, Diwan al-Mubtada wa al-Khabar in history of Arab, Berbers and their contemporaries of the greatest importance, edited by: Khalil Shehadeh, Dar al-Fikr, Beirut, second edition, 1988.

- Abu Al-Fida Ismail bin Omar bin Kathir, Biography of the Prophet, edited by: Mustafa Abdel Wahed, Dar Al-Marefa for Printing, Publishing and Distribution, Beirut - Lebanon - 1976 AD.
- Abu Hamid Al-Ghazali, Al-Mustafa, investigated by: Muhammad Abd al-Salam Abd al-Shafi, Dar al-Kutub al-Ilmiyya, first edition, 1993.
- Adel Bassiouni, History of Egyptian Law, Nahdet Al-Sharq Library, Cairo University.
- Al-Desouki Al-Sayyid Al-Desouki Eid, The Independence of Islamic Jurisprudence from Roman Law and the Response to the Quasi-Orientalists, Islamic al-touaia Library, Giza - Iraq -, First Edition, 1989.
- Allal Al-Fassi, Defense of Sharia, Dar Al-Kalima for Publishing and Distribution, Mansoura - Cairo - First Edition, 2014.
- Ali Badawi, Researches in the History of Laws, Journal of Economics and Law - Egypt -, First Year, Fifth Issue, Rajab, 1650 AH.
- Bouska, The Secret of the Formation of Jurisprudence and the Origin of its Sources, with Roman Law, article in the book "Does Roman Law Have an Impact on Islamic Jurisprudence", dar al-bahouth al-alamia, First Edition, 1973.
- Carlo Alfonso Nalino, Perspectives on the Relations of Islamic Jurisprudence with Roman Law, article in the book "Does Roman Law Have an Impact on Islamic Jurisprudence", dar al-bahouth al-alamia, First Edition, 1973
- Fitzgerald, The Alleged Religion of Roman Law on Islamic Law, article in the book "Does Roman Law Have an Impact on Islamic Jurisprudence with Roman Law, dar al-bahouth al-alamia, First Edition, 1973
- Muhammad Al-Desouki and Amina Al-Jaber, Introduction to the Study of Islamic Jurisprudence, Dar Al-Thaqafa for Printing, Publishing and Distribution - Qatar - Second Edition, 1999.
- Muhammad bin Ali Al-Tahanwi, Scout Encyclopedia of Arts and Sciences Conventions, investigated by: Dr. Ali Dahrouj, presented, supervised and reviewed: Dr. Rafik Al-Ajam, Librairie du Liban Publishers, Beirut, Lebanon, First edition, 1996.
- Muhammad Salam Madkour, Al-Mukhalil of Islamic Jurisprudence, Dar Al-Kitab Al-Hadith, 2nd Edition/1996.
- Muhammad Yusuf Musa, Islamic Legislation and its Impact on Western Jurisprudence, Dar Al-Asr Al-Hadith, Beirut - Lebanon - Second Edition, 1991.
- Mustafa Ahmad Al-Zarqa, Islamic Jurisprudence and Schools, Dar Al-Qalam - Damascus - First Edition, 1995.
- Sajir Nasser Hamad Al-Jubouri, Islamic Legislation and the Western Legal Conquest of Islamic Countries, Dar Al-Kutub Al-Ilmiyya, Beirut, First Edition, 2005.
- Sufi Hassan Abu Talib, Between Islamic Sharia and Roman Law, Nahdet Misr Library, Cairo.
- Wahba Al-Zuhaili, Islamic Jurisprudence and its Evidence, Dar Al-Fikr, Second Edition, 1985.