The year 1961 was a landmark in the history of Kuwait. In that year, Kuwait achieved full independence, accepted democracy as a form of government, and, last but not least, chose a French-based civil law system. It was a daring choice, because Kuwait at that time had no experience of a modern legal system. What it then had, was, in the main, traditional Islamic courts staffed by Shariah-educated judges who administered the Mejelleh (which is the Ottoman compilation of the code of obligations) and other uncodified Shariah law. But with the advent of full independence and the accelerating economic resurgence, Kuwait felt the need for a modern system of codified law and chose the civil law system, and turned to Egypt for assistance. Egypt, which had extensive experience in civil law, furnished Kuwait with a complete machinery of justice, from appeal court judges, public prosecutors and legal advisers, down to legal clerks and summons servers. Above all, Kuwait obtained the services of the eminent jurist Dr Abdul Razzak Al-Sanhuri, the "Jeremy Bentham" of Egypt, who had previously drafted laws and constitutions for several Arab countries.

It is not the purpose of this paper to analyse the various laws that Kuwait had adopted, but simply to describe briefly the manner and form in which Kuwait adopted what essentially was an alien legal system and integrated it into its social fabric and body politic. Apart from the Constitution, the most important piece of legislation which Dr Sanhuri drafted was the Law of Commerce, which laid the foundation of commercial activities in Kuwait until it was superseded 20 years later by the new commercial code.

Its title as the Law of Commerce was an intended misnomer, since it also incorporated a substantial part of the civil code. In drafting it, Dr Sanhuri borrowed a great deal from the commercial laws of the other Arab countries, which he also helped to draft. For instance, the section on the law of obligations came principally from the Iraqi civil code, which itself was a blend of Shariah and French legal principles. Dr Sanhuri explained that he preferred the Iraqi law to the Egyptian law of obligations, because it was, in his opinion, more akin to the Kuwaiti local environment. The section of the code which deals with agencies, commission agents, brokers and securities came from the Syrian commercial code, whereas the section on bankruptcies came from Egypt.

Further laws dealing with other commercial matters were also drafted and enacted. The most significant of these were the law of land registration, the law regulating liabilities arising from unlawful acts (the law of torts), the law of commercial companies, and the labour law in the private sector. However, two important aspects of Kuwaiti law remained unchanged and were unaffected by modern legislations.
First, the Mejelleh, except for those provisions specifically superseded by commercial legislations, continued to be in force. Secondly, laws of personal status (Ahwal shakhsiyyah) and inheritance also were unaffected.

Thus, Kuwait had a diverse legal system, dominated though it was by the civil law. The whole system functioned reasonably well, thanks to the very high calibre of the judges recruited by Kuwait, mostly from Egypt, and to the readiness of the government to enact the required amendments whenever social pressure, legal gaps, and inconsistencies came up to surface.

Some 15 years later, jurists and particularly law professors of the newly-established University of Kuwait spoke in favour of a uniform legal system. They pointed out a few instances of contradiction between the laws even when dealing with a specific issue. Eventually, the need was felt for the reform of the laws in the light of previous experience and with a view to establishing a homogeneous legal system.

The Council of Ministers responded in 1977 by issuing an order setting up four separate committees to draft modern legislation on aspects of the law which remained uncodified and to develop and revise existing legislation in the light of previous experience. In the legal history of Kuwait this order was perhaps as momentous as the earlier order of the late Amir of Kuwait Shaikh Abdulla al-Salem al-Sabah introducing the civil law system to the country. The committees were instructed to draft the new codes within the framework of the principles of Shariah, in accordance with the Constitution and consistent with the traditions of Kuwait. These instructions should not be interpreted as a retrogressive legal development, but rather as a reminder to the drafters, many of whom were not Kuwaitis, to stay within the bounds of realism and to forgo the natural temptation of producing theoretically-sound codes that bear little relation to local circumstances and conditions of Kuwait.

Each one of the four committees was assigned one of the following legislative tasks: criminal, civil, commercial, administrative and procedural.

The order laid down that each committee must be composed of full-time jurists from amongst the university professors, men of religion and the judiciary who are specialised in drafting legislation. In addition, there were part-time members from the faculty of the University of Kuwait, from Kuwaiti judges, and from experts and specialists in the employ of the government or public corporations. After a draft legislation had been completed, it would be reviewed by another committee composed of seven to nine Kuwaiti members in addition to the full-time members of the original committee which had drafted the legislation. The review committee would have a Kuwaiti chairman and would decide on the draft legislation by a two-thirds majority. After the draft legislation had been reviewed, it would go back to the original committee for further consideration and preparation of an explanatory memorandum. As a final step, both draft and explanatory memorandum would be submitted to a ministerial legislative committee.

This momentous task was carried out under the personal supervision and guidance of the Minister of State for Legal and Administrative Affairs, Shaikh Salman al-Duaij al-Sabah, a distinguished lawyer with long experience in public service who, prior to becoming Minister in 1976, was head of the State Legal Department. He was the architect and moving force behind developing the Kuwaiti legal system from 1969