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Introduction

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CONFERENCE ON COMPARATIVE LINKS BETWEEN ISLAMIC LAW AND THE COMMON LAW

INTRODUCTION

JOHN MAKDISI
CONFERENCE CHAIRMAN

On March 1-2, 1985, the Cleveland-Marshall College of Law sponsored the conference on **COMPARATIVE LINKS BETWEEN ISLAMIC LAW AND THE COMMON LAW**. Nine lectures were delivered by jurists and legal historians from the United States, England, and Canada who are recognized specialists in Islamic law. The topics on the first day of the conference ranged from the legal history of Islamic law and the English common law through areas of the positive law of property, criminal law, and contracts. The second day covered legal reasoning in Islamic and common law and concluded with the cross-cultural interaction which exists between Islamic law and other legal systems. These lectures were original, enlightening, and very well received by the audience of students, lawyers, and scholars who attended. Lively discussion periods followed the lectures with thought-provoking questions from both the lecturers and the audience. In order to provide others with the opportunity of sharing the ideas generated by this conference, the Cleveland State Law Review now presents each of the nine lectures expanded into article form.

Events over the past decade make it imperative that we reach a deeper understanding of the legal systems of North Africa, the Middle East, and South Asia. Comparative legal studies offers the vehicle by which this understanding can be reached. Through the efforts of scholars who have immersed themselves in both the Islamic and the common law systems, foreign ideas become comprehensible and begin to offer insights which may ultimately lead to peace and understanding between our peoples. It is time that we expanded the domain of comparative law to focus more directly on this major legal system of the world, one that has endured for over a millennium and one which continues to direct the lives of a major portion of the human race. As the world becomes smaller with rapidly increasing technology and communication systems, the problems of the world are no longer distant and isolated. As technology brings these problems closer to home, we need the tools of comprehension to deal with them intelligently. Comparative legal studies offers these tools.

One concern which has been raised against an expansive view of comparative law studies is the lack of focus which appears to characterize the

field. Support has been sought in favor of consolidating and promoting a shared body of information and theory for comparative law such as can be found in the civil law system. This approach, while not denying the validity and values of comparative work in other areas, nevertheless discourages diversity in order to promote a common intellectual experience. One of the beauties of comparative law, however, is the exposure it provides to the many uncommon alternatives which other legal systems have to offer. Comparativists rather should be encouraged to seek out novel legal systems such as Islamic law in order to make the contrasts and comparisons in a particular subject area all the more sharp and significant.

It is hoped that the lectures presented here will bring about a greater interest in Islamic law as a subject for comparative law study. The richness of the Islamic culture finds expression in its law as a central concern. The law has grown and flourished under the guiding hands of the most learned people of that society. During the last two centuries this law has undergone a transformation to become a hybrid system of Islamic law and civil or common law. It is still in the midst of this transformation as revolutionary and reactionary forces continue to pull and tug at its fabric. To understand Islamic law in the wealth of its history and tradition is to begin truly to understand this conflict in Islamic countries today.