

**DePaul University**

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**From the Selected Works of M. Cherif Bassiouni**

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## Islamic Law

M. Bassiouni, *DePaul University*



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of multinational investors as a determining factor in why governments respond to foreign investment as they do. After all, the interests of both home and host governments will have to be taken into account. The United States and Canada, as major sources for and recipients of foreign investment, vis-à-vis one another and elsewhere in the world, should approach the subject with the utmost cooperation. We both have far too much at stake to do otherwise.

## ISLAMIC LAW

The panel convened at 2:30 p.m., April 22, 1982, M. Cherif Bassiouni\* presiding.

The CHAIRMAN opened the panel by observing that the present discussion was the first to be devoted by the Society to the subject of Islamic law. The occasion, therefore, was both historic and challenging, as it would be challenging to present in so short a time an American explanation of the common law.

The CHAIRMAN then noted the scope of the discussion, which included primary sources, secondary sources, jurisprudential schools of interpretation on each source, and the jurisprudential development of 14 centuries with different applications in parts of the world that have extended from Asia to Europe. As a result, it would be very difficult to generalize except for general principles of Islamic law as they applied to specific subjects. Whenever dealing with any particular subject, one had to deal with specificity by reference to one of the principal sources or its alternative secondary sources, one of the schools of interpretation, and the application of the school of interpretation in the course of time. There had been in the course of the development of Islamic law and jurisprudence an enormous wealth of material information and knowledge, which created a temptation, particularly among those who called themselves reformists of Islamic law, to try to cut across this historical baggage to attain something that approximated positive, contemporary legal systems in the world and to achieve whatever might be needed in terms of meeting the contemporary demands of legal problems. This was resisted by conservatives or by those who called themselves fundamentalists.

The dilemma was that there were no intermediate-ground scholars able to bridge the modern legal requirements of a contemporary legal system with the traditional fundamentals of Islam and who were able to argue with the fundamentalists for the progressive application of Islamic law. Because of this difficulty, the modernists or progressives found themselves more attracted to analogies with contemporary legal systems without being able to relate to the historical fundamental basis. The fundamentalists found themselves divorced from progressive and modern developments and were unable to relate those fundamentals to contemporary and future needs. These differences accounted for the big gap that existed between the groups, a gap made wider by the baggage of jurisprudential development.

Consequently in almost every question in Islamic law, there was both a position that would defend or justify and another one that would not. This had given rise to a variety of interpretations as well as a variety of abuses. It also could lead to another type of problem, that of reformists in various Islamic countries seeking a return to "fundamentalisms of Islam," who were unable to cope with

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