ISSN 2085-5303 NSSI

JURISPRUDENSI

Jurnal ilmu syari'ah, Perundang-undangan Dan Ekonomi Islam

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ISLAM DAN EKONOMI ACEH

URF DAN PENGARUHNYA DALAM HUKUM ISLAM

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JURNAL JURISPRUDENSI
(Jurnal Ilmu Syari'ah, Perundang-Undangan dan Ekonomi Islam)

ALAMAT REDAKSI
Jurusan Syari'ah STAIN Zawiyah Cot Kala Langsa,
Jalan Meurandeh–Langsa Lama–Kota Langsa,
Provinsi Aceh

DAFTAR ISI

DAFTAR PUSTAKA

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COMPARATIVE LAW IN THE MIDDLE EAST AND ITS RELATION TO THE ISLAMIC LEGAL MODERNIZATION

Mhd. Syahnan*

Abstrak:

Tulisan ini berupaya menstudi sejarah perkembangan Perbandingan Hukum di kawasan Timur Tengah dalam kaitannya dengan pembaruan Hukum Islam. Penulis mengemukakan bahwa pengkajian hukum dengan pendekatan komparatif secara intens muncul seiring dengan kedatangan kolonialisme. Tulisan ini menemukan bahwa studi Perbandingan dalam bidang hukum dalam bentuk yang ada saat ini berawal dari usaha ahli hukum Mesir yang telah meletakkan dasar-dasar perbandingan. Penulis juga mengemukakan Kebutuhan terhadap Perbandingan Hukum semakin terasa mendesak di negara-negara Muslim untuk mencari fromat peraturan baru yang bersifat kombinatif, mudah diakses dan berlaku dalam suatu situasi ruang dan waktu tertentu.

Kata Kunci : *Comparative Law, Islamic Legal Modernization*

A. Defining Comparative Law

The primary question to be asked is what is the nature of comparative law, is it a subject resembles that of other branch of law like family law or commercial law, or is it a method? Comparatists have divergent view in designating comparative law. Some of them reject such term maintaining that it is being a misnomer, and instead they search for new terms as "Comparative Legal History," Comparative Legal Traditions," Comparative Legal Systems," "Comparative Jurisprudence," the "Comparative Study of Law," "Comparative Legislation." Accordingly, Edwin Patterson prefers to describe it by its French equivalent – *droit compare*. These terms does not only qualify the term "comparative law" more meaning but they also pointed to which aims the comparatists set out to pursue. In response to the question above, as an academic pursuit, comparative law does not have a core content of subject areas and does not denote a distinct branch of substantive law. Similarly, as Zweigert and Kotz put it, it describes 'an intellectual activity with law as its object and comparison as its process.'[1]

Conventionally, comparison of the numerous legal systems existing in the world has been focused on three major legal families, namely the civil law system, common law and other legal systems.[2] Therefore, the

*Presented in the Syari'ah Faculty Session of the New Academic Year on September 3rd, 2008, State Institute for Islamic Studies of North Sumatra, Medan. Mhd. Syahnan is a lecturer at Syari'ah Faculty and Graduate Program at the same Institute. He is the member of National Syari'ah Arbitration Council/ BASYARNAS.

[1] See K. Zweigert and H. Kotz, *An Introduction to Comparative Law* (1977), p.2.

[2] The legal system of the countries in the world constitutes of no less than 42. Before the break of the Soviet Union, its socialist legal system had been

Comparative law may be defined to describe the systematic study of particular legal traditions and legal rules on a comparative basis. To qualify as a true comparative law enterprise, it also requires the comparison of two or more legal systems, or two or more legal traditions, or selected aspects, institutions or branches of two or more legal systems. Thus, in other words, comparative law is primarily a method of study rather than a legal body of rules.

However, this view in contrast with Salielles, Rabel, Rheinstein and Hall who argue that comparative law should be seen as a social science, so that the data obtained should be seen not just as part of its method, but as forming part of a separate body of knowledge. It would appear that this social science theory has lost ground in more recent times. Yet, another view has been to accept both interpretations so that it may be seen both as a science in its own right, and as a method.[3]

In its later development in modern era, comparatists incorporated a wide variety of disciplines in approaching comparative law, so that such scholars as Alan Watson maintains that it is: "...the study of the relationship between legal systems or between rules of more than one system ... in the context of a historical relationship ... [a study of] the nature of law and the nature of legal development."[4]

From this assertion it may be understood that modern comparative law acknowledges the significance of interconnectedness between law, history and culture prevailing within respective legal systems, or between rules of more than one system. Accordingly, legal history and 'step beyond into jurisprudence' may be perceived as the essential ingredients of comparative law as an academic discipline in its own right, and thus a mere comparison of rule *per se* does not constitute comparative law.

B. The Function and Aim of Comparative law

1. As an Aid to Legislation and Law Reform

The initial utilization of the comparative method for legislative purposes goes back as early as when Greek and Romans visited cities, which they perceive, could provide them with models of laws that were worth enacting in their respective country.

Instances in which legislators borrowed foreign ideas are numerous, but it suffices to mention a few which perhaps the most significant are: the Prussian company law of 1843 which was formed taking after the model of French Commercial Code of 1807; the Internal Revenue Code of the United States has inspired German legislators in adopting the doctrine of proper allowances for dealings between connected enterprises. A number of ideas in the Swiss Law of

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recognized as the third major legal system adding up to civil and common law system. K. Zweigert and H. Kotz, *An Introduction to Comparative Law* (1977), p. 3.

[3] Winterton, "Comparative Law Teaching," *American Journal of Comparative Law* 23 (1975): p. 71.

[4] Alan Watson, *Legal Transplant* (1974), p. 6-7.

Obligations of 1881 to a lesser or greater degree has also been adopted in the German Civil Code.[5]

During the first half of the 20th century history of developing countries, adoption and adapting to Western or socialist law whether voluntarily or by force occurred. One obvious reason for this process has been colonialism and numerous wars, which resulted in hybrid systems, exist side by side with native customary law. Another reason has been the international relation that have resulted from Western influence which have led to expatriate Western academics setting up institutions of learning. Led to the founding of the American Law institute in 1932, the primary task of which to hold meetings and conferences as well as conducting research on various aspects of legal related issues.

2. An Instrument of Construction

Another function of acquiring knowledge of the positive law with comparative approach is as an instrument of construction.[6] At the practical level comparative method has been of the utmost important to fill the lacunae in legislation or in case law of the courts and judicial process. It also functions as a tool in acquiring historical origins of a particular legal rules and concepts which have been inherited or transplanted from other jurisdictions. The case of European Community set the best example, of which Court of Justice (ECJ) with the affinity of legal history and derivation, judges are bound to draw upon their own experience as lawyers within the member states.

Different to unification, which contemplates the substitution of two or more legal systems with one single system, harmonizations of law arises exclusively in comparative law literature, and especially in conjunction with inter jurisdictional, private transactions. Harmonization seeks to 'effect an approximation or co-ordination of different legal provisions or systems by eliminating major differences and creating minimum requirements or standards.'[7]

Thus, comparative as a tool for reconstruction help to promote the clarification and simplication of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work.

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[5] For details on the subject, see generally Grossfeld, *The Strength and Weakness of Comparative Law* (1990), especially Chapter III.

[6] This function is particularly advocated by those whom Riles calls the Categories Schools designating the three communities in comparative law, the other two of which are The Context, and the Discourse Schools consecutively. See Annelise Riles, "Wigmore's Treasure Box," p. 231-250.

[7] Kamba, "Comparative Law: A Theoretical Framework," *ICLQ* 23 (1974): p. 501.

C. Survey of the Method of Comparative Law

The question of method has been the main concern of the comparatists and the source for on-going debate to the present time. Due to its diverse methodologies which arise from different perspective underlying the paradigms of comparative law what follows will be focused on predominant methodologies.[8]

During the span of the history of the discipline of comparative law it is established that there was a clear-cut distinction between the pre-modernist nineteenth century and the advent of modernism in the early twentieth century. Precisely, comparative law studies in the former have not necessarily cosmopolitan in which comparativists were engaged in suspicious and unscientific typologies of legal systems of the world on the basis of a rudimentary evolutionary type of social and legal development. Accordingly, they worked with little actual knowledge of the legal systems they studied.

In addition, it appears that comparative law functioned as a means of strengthening the authority of the colonizing powers as a grand producer of rationalizations for the expansion of Euro-American interests and law throughout the world.[9] Consequently, at the methodological level, law is signified in an exceptionally narrow definition "a limited conception of law as the edicts of legislatures or courts alone that too often led to the conclusion that those who had no such institutions had no law." Thus, it is not an exaggeration to assert that comparative legal study during the early period consisted principally of the "pigeon holing" of legal systems into clearly differentiated traditions.

In the twentieth century, however, it was soon perceived that this method was fundamentally unsatisfactory, a sense of what the actual law was like in its operation was needed. Comparative legal study is now beginning to go beyond mere formal analysis of legal systems. It became more "scientific" and more "dynamic" and abandoned its evolutionary framework in favor of a more functionalist understanding of the law. Stemming from this vantage point, therefore, the methodological debate in comparative law at this stage is simply a question of what and how much context we include , or what kind of scientific methods we choose.

As far as the paradigms of comparative law are concerned, comparatists have developed a variety of methodologies in accordance with the requirement of changing conditions in social, political and economy. Among the numerous methodologies, perhaps the most predominant of them is encyclopedic comparison. This method which was based on the proposition

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[8] Most often than not, scholars would rather deal with paradigm than trying to provide the ultimate defenition of comparative law. See generally Gunter Frankenbersg, "Critical Comparison: Re-Thinking Comparative Law," *Harvard International Law Journal* 26 (1985): 426-7; See also Annelise Riles, "Wigmore's Treasure Box: Comparative Law in the Era of Information," *Harvard International Law Journal* 40 (1999): p. 221-2.

[9] See Riles, "Wigmore's Treasure Box," p. 227.

of Leibniz' design for a *Theatrum legale mundi*, is the comparative depiction or representation of the laws of all peoples, places and times. John Henry Wigmore[10] adopted this method and applies it into scholarly practice. Similarly, toward the end of the 1980s the international Encyclopedia of Comparative Law followed Wigmore's lead.[11]

The second method is Constructive Comparison, which constitutes the only prescriptive approach to comparative law. This method of comparison varies from reasoned speculation of Aristotle pertaining to the ideal constitution based on a comparison of the constitutions of the Greek city states via Montesqieu's *De l'esprit des loix* to more current endeavor leading to modernization, unification and improvement of the international legal order through comparative legislation.[12]

The third method is Comparative Historical Reconstruction the primary objective of which was to uncover the origins and developments of institutions, forms and categories of modern law and the evolutionary principles of law. In addition, it is also aimed at providing a comprehensive account of legal pluralism or rather to find out 'the appropriate law' that satisfied the cultural demands of a particular phase of human social development.

The fourth method is combination-plus. Strictly speaking, it is not a paradigm or ideal type because it draws from and cuts across the other approaches to comparative law.[13]

The Fifth method is comparative functionalism, which claims to have solved the problem of establishing a neutral referent for comparison.[14]

Different to Frankenberg's proposition mentioned above, Riles on the other hand, discusses three methodological positions that constitute three groups of scholars working under the disciplinary umbrella of comparative law, namely schools of Categories, Context and Discourse respectively.[15]

With regard to the former, the Categories School, which is occasionally designated as "mainstream" or "traditional," is characterized in their predominant role in the writing of all most important case-books and treaties in the realm of comparative law.

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[10] While criticizing Wigmore's scholarship enterprise such comparativists as Annelise Riles acknowledges that perhaps some of the former's ideas, or at least the challenges that he poses to comparativists, may serve as sources of inspiration for our current disciplinary problem. p. 228, 260.

[11] *The International Encyclopedia of Comparative Law* is unquestionably the most ambitious and prestigious enterprise in global comparison. The contribution of hundreds of scholars up to 1980s amounts to more than fifteen volumes.

[12] K. Zweigert and H. Kotz, *An Introduction to Comparative Law* (1977): 44-5, as quoted in Gunter Frankenhersg, "Critical Comparison: Re-Thinking Comparative Law," *Harvard International Law Journal* 26 (1985): p. 427.

[13] Gunter Frankenberg, "Critical Comparisons," p. 427.

[14] Gunter Frankenberg, "Critical Comparisons," p. 428.

[15] See Riles, "Wigmore's Treasure Box," p. 230-260.

The primary concern that matters for this group of scholars are such questions as how norms are similar or different from one jurisdiction to another, how such a norms are borrowed or transplanted, and how they are expressed in differing or similar kind of rules. How are the doctrines of contract law similar or different from one jurisdiction to another, for example ? What is the functional equivalent of a particular doctrine in another jurisdiction ?

As far as The Birth of Modern Comparative LawIt has been widely accepted that the International Congress of Comparative Law held in 1900 in Paris, marked the beginning of modern comparative law.
Lamberts asserted that: "comparative law must resolve the accidental and divisive differences in the laws of peoples at similar stages of cultural and economic development, and reduce the number of divergences in law, attributable not to the political, moral or social qualities of the different nations but to historical accident or to temporary or contingent circumstances."[16]

At the turn of the 21st century that brought with it the era of globalization has been one of the source for the renewed interest in comparative law. This can be discerned from new enthusiasm of scholars of constitutional law and others to comparative cases and materials.

D. The Development of Comparative Law in the Middle East

The emergence of the contemporary movement to reform Islamic legal system in the Muslim countries by codification gives an impetus for consciousness of the importance of comparative studies. However, as has been asserted, since comparativism run parallel with the urgent call for the process of codification, therefore it is undeniable that discussion should be directed to the framework of historical context of codification in general.

1. Initial Idea of *Taqnīn*/ Codification

The impetus to make Islamic law both more unified and applicable to the actual life throw light for renewed consciousness of Islamic legal scholars to introduce codification, the idea of which is undeniably owing very much to the thought of Ibn Muqaffa'.[17]

In his letter to the Caliph al-Mansūr[18] regarding this matter, Ibn al-Muqaffa' wrote: What the Amīr al-Mu'minīn sees, regarding

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[16] Eduard Lambert "Proces-verbaux des seances et documents, Congres international de droit compare (1905).

[17] Bearing the full name Abū Muhammad ibn al-Muqaffa' (102 H/ 720 CE – 139 H/ 756 CE) he is a man of Arabic literature and played an important role in effort to translate various works in Persian and Indian Literatures into Arabic. Abū al-'Abbās Shams al-Dīn Ahmad Ibn Khallikān, *Wafayāt al-A'yān wa Abnā' Abnā' al-Zamān*, vol. 2, (Qum, Iran: 1343 H), p. 151.

[18] Abd Allāh ibn Muhammad ibn 'Alī ibn al-'Abbās Abū Ja'far al-Manshūr, the second Abbasid Caliph was born in Jami'iya near Ma'ān in 714 CE. and died in Bi'r Maymūn while performing pilgrimage in 775 CE. He is knowledgeable of *fiqh* and *adab*, leading in philosophy and monarchy, loving the learned persons/*'ulamā*.

the matter of those two cities; Bashra and Kufa and other cities and regions, of the differences of these contradictory rulings which has reached great proportion regarding rulings pertaining to life, chastity and property. The rules concerning life and chastity allowed in Bashra is forbidden in Kufa, such disagreements are taking place in the heart of Kufa, something is allowed in one area but not in the other. However, al-Manshūr did not act according to this letter although he was influenced by it. His influence made him to make the *fuqahā'* and the *muhadditsūn* to record what has reached them until people had references to which they could refer. The reason for al-Manshūr for not acting upon the opinion of ibn al-Muqaffa' in laying down a constitution and canons for the state, which would have brought the people together on specific rulings/ *ahkām* was what happened between him and Mālik.

Consequently, the schools and opinions were not unified and people exercised *ijtihād* and personal reasoning (*ra'y*) as a means of finding rulings they deemed correct. And the choice remained for judges and rulers to judge with what they perceived as appropriate, and therefore each *imām* of the school has students who came to study the former's opinion and explain his school. In addition, the outlook towards this disagreement that took place changed and it became a science on its own right which they called the science of controversy (*'ilm al-ikhtilāf*).

2. *Comparative* Studies in the Realm of Islamic Jurisprudence

In order to discuss the development of comparative studies in Islamic jurisprudence it is necessary to point out to the time prior to the 19th century in which learned Islamic scholars had underwent comparative studies in various field of knowledge.[19] In the realm of law, in particular, there were many a jurists who wrote treatise on Islamic law in line with comparative basis such as that of *Al-Fiqh 'alā al-Madhāhib al-Arba'ah*. The genre of this works that connote comparativism is generally called *muqāranah* or *muqāranat al-madhāhib* and others. The comparatist jurists provide rulings or *hukm* from diverse classic Islamic legal treatise of a given case. In their handling of this questions under discussion, the jurisprudents/ *fuqahā'* refer to multiple normative arguments.

Interestingly, in many instances, the jurisprudents discuss the rational of each view, and take stand of the most widely accepted or authoritative opinion. This is not to deny of course the possibility of scholar who only describe the opinion and left the readers to decide of what rulings are the favored most. In sum, seems to be,

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In addition, he is also responsible for establishing the city of Bashra.Al-Thabarī, *Tārīkh al-Thabarī*, vol. 9, p. 292.

[19] In the field of theology or *kalām*, for instance, *al-Milal wa al-Nihl* of Shahrastānī.

that legal comparativism in this period was limited within the realm of divergent opinion of the established schools of Islamic legal thoughts. Thus, it seems that legal comparativism in this period was limited within the realm of divergent opinion of the established schools of Islamic legal thoughts.

Although this type of comparativism has been found in the works of such great jurists as Shafi'is *al-Umm*, Sarakhsi's *al-Mabsūt*,[20] Ibn Rushd's *Bidāyat al-Mujtahid*, Ibn Qudāma's *al-Mughnī*,[21] these works, however, are not recognized to be the sort of what is intended in the genre of comparative law manner. The reason is because, it simply mentioning the different opinion, discussing it as a means of affirming the reliability of the view of the master who wrote the book.

The subsequent development of comparative study may be suggested to occur as consequence of the colonization throughout the Middle East. Brought with it tremendous changes to the colonized subject in most avenue of life from the questions of authority, politics, economy, law and education.

The most notable reform movement in the modern history of the Muslim world was resulted in *Tanzīmāt*, To prevent the disintegration of a pluralistic empire in terms of religion and ethnicity. To impress the western Capitulatory Powers and partly to reform the Empires's legal system.

Several codes were compiled, the most important of which was *Majallat al-Ahkām al-'Adliyyah*, promulgated in 1877 which marked the approximate beginning of comparative studies although still limited within the boundaries of Hanafī school.[22] In the international congress of comparative law held in Lahai in 1932 it gave room for preparedness Islamic law as a subject of their discussion. In its similar meeting in 1950, the congress regarded Islamic law as an element of comparative of jurisprudence and proposed to establish weekly series on Islamic law.[23]

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[20] In his book, al-Sarakhsi systematically expounds al-Shaybani's (d. 804) compilation of the legal doctrines of the two founders of the Hanafi school of law, Abū Hanīfah (d. 767) and Abū Yūsuf (d. 798). See Khalil al-Mays, *Fahāris al-Mabsūth* (Beirut: Dār al-Ma'rifah, 1980), p. 7-10.

[21] Muwaffaq al-Dīn Ibn Qudāmah, *Al-Mughnī'alā Mukhtasar Abī al-Qāsim 'Umar al-Khiraqī*. Rashid Rida, ed., 12 vols. (Cairo: Dar al-Manar, 1341-48/ 1922-30).

[22] In addition to *Majallat al-Ahkām al-'Adliyyah*, other field of law were also codified which include *Majallat al-Ittizāmāt wa al-'Uqūd*.

[23] The First series was convened in Paris in 1951, in which Islamic law was characterized as a great system of jurisprudence and that the value of its subjects are beyond questions. See 'Abd al-Nāshir al-'Aththār, *Tathbīq al-Shari'ah al-Islāmiyyah*, p. 52.

In 1891 Muhammad Qadrī Pāshā[24] made a similar attempt to push the reform ahead in which he individually produced *Murshid al-Hayrān*,[25] a treatise in the form of code covering important areas of civil law such as contracts, land ownership, properties and agencies based on Hanafi school of law. In addition, he also wrote a code exclusively dealing with *waqf* or endowment *Qānūn al-'Adl wa al-insāf li al-Qadā"Ala Mushkilāt al-Awqāf*.

Although never implemented, it was considered as authoritative textbook in government schools. However, Egypt from 1875 onward had gone even further than the Ottomans in adopting the French laws in promulgating their penal, commercial, and maritime codes, and in setting up a secular legal system.

The most important codification of civil law in the Middle East came after independent. During the 1940's, it was the outcome of the work directed by Sanhuri who advanced the process of reform a step forward in which a compromise between Shari'a and secular laws was reached.26

The emphasis of the need of comparative study between Islamic law and secular law continued to be voiced after the death of Sanhuri which was evident in the first meeting of Dean of Law faculty of Arab Universities held in April 1973 in the University of Beirut.[27]

In the following year the second meeting of this council was held in Baghdad, which came to very important recommendations: 1) to seriously concentrate on studying Islamic law since the final end of Arab identity requires that of looking back to the Shari'a and having full confident in it as a main source for a unified Arab legislation, 2) principal source, 3) to establish center or institution that will deal with a standardized Shari'ah and codification throughout Arab world.[28]

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[24] See Qadri Pasha's unique career, which combined traditional training in Islamic law and modern legal studies in Europe, in Muhammad Husayn Haykal, *Tarājim Mishriyyah wa Gharbiyyah* (Cairo, 1929), p. 109-18; cf. Tawfīq Askarūs, "Muhammad Qadrī Pāshā," *al-Muqtathaf* 48 (1916): p. 253-63.

[25] The full title of this treatise is *Murshid al-Hayrān ilā Ma'rifat ohwāl al-Insān* (*A Guide to the Confused leading to Knowledge of the Condition of Man*), the aim of which is an attempt to codify Islamic law for Egypt along the lines of the better known Ottoman Civil Code or the *Mecelle*. It remained in manuscript form only until 1889.

[26] For further discussion on the role played by Sanhuri in drafting the New Egyptian Civil Codes see generally Muhammad Syahnan "A Brief Note on Abd Razzaq al-Sanhuri: the Master Architech of Civil Codes of Arab Countries," in *Analytica Islamica*, Graduate Program of IAIN Sumatera Utara, vol. 8, no. 2 (November 2006): p. 117-130.

[27] M. Farūq Nabhān. *al-Madkhal li al-Tasyrī' al-Islāmī* (Beirut: Dār al-Qalam, 1981), 361. Herein after quoted as Nabhān. *al-Madkhal*.

[28] Nabhān. *al-Madkhal*, p. 362.

This board is aimed at setting up a comprehensive study of both shari'ah and legislation that will be valuable for positive law legislator. In addition this body is also expected to breakthrough views required by Arab states and the official committee and giving suggestion, and to systematically arrange the work of the board close examination to shari'ah in the Arab world.

E. Sanhuri and Comparative law

Considering the fact that during the first half of the 19th century, Egypt was in search of appropriate legislation, the process of which involved two contradicting interests, the Islamist vis a vis the secular. In addition, the situation became even more complex with the deteorating political and economic conditions.

The development of comparative law in the Middle East owed chiefly to the role played by Sanhuri.[29] The use comparative law method is an essential means for legal development Sanhuri's scheme of reforming the legal system of the Arab world, which also a corner stone of the historical origin of comparative law in the region.

Sanhuri started his legal studies at *Madrasah al-huqūq al-Khidiwiyyah* the School of Administration and Languages which was transformed into a law school and marked the beginning of law studies in the country. He obtained *licence en droit* from this school in 1917. During the span of its history the School itself had become the target of dispute between the French and British administration in Cairo.[30] Lambert became the last French dean of the Khedivial Law School, and his resignation and departure for France caused an outcry from both French and Egyptian nationalists. In the following years, he was followed by to France by over fifty of his Egyptians, forming the core of what Sanhuri was later to call "*l'ecole Lambert Egyptienne*."[31]

Upon his return to France, Lambert reassumed once again his original post as professor of civil law at the University of Lyon, and made an excuse of his come back as being preoccupied by a caveat for mentoring a large adopted family of Egyptian students who followed him to Lyon. Professor Lambert's teaching on Egyptian students continued uninterrupted until it was discontinued by the First World War. Nonetheless, Lambert was very proud of his association with his Egyptian students.

Thus, the newly invented discipline called comparative law suddenly posed as a serviceable tool in the actual struggle of a colonized people to modernize their nation. Political activism thus joined with intellectual

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[29] See Nabil Saleh, "Civil Codes of Arab Countries: The Sanhuri Codes," *Arab Law Quarterly* IIX(ii) (1993): p. 161-7.

[30] Reid, Donald M. *Lawyers and Politics in the Arab World* (Minneapolis and Chicago: Bibliotheca Islamica , 1981), p. 17.

[31] Amr Shalakany, "Sanhuri: the Historical Origins of Comparative Law in the Arab World," p. 170.

evangelism, and comparative law was transformed at the hands of Lambert and his students. It took the University of Lyon another fourteen years to transform the *Seminaire* into the more status senior status of a comparative law institute. In 1921, Lambert became the head of the *Institute de Droit Comparé*, the very first of its kind to be established in France, a position that conferred on him a reputation of the foremost comparativist in the country.[32]

It is conceivable that while pursuing their further study in Lyon under the supervision of Lambert, the Egyptians produced comparative law scholarship the prime spins around two major concerns. On the one hand, several doctoral dissertations were occupied with the modernization of certain aspects of Islamic law such as the doctrine of *abus de droit* (abuse of rights), the political structure of the caliphate or such general areas of private law as the sources of obligation and testamentary law.

Later that year, both student and mentor were appointed as the only two members of the legislative committee entrusted by the Egyptian government to draft the new Egyptian civil Code. The Mixed Courts regime had been abolished by the 1937 International Treaty of Montreal, and the country's legal establishment was seized with nationalist fervor at the restoration to full judicial sovereignty.[33] Lambert and Sanhuri were thus responsible for writing the core document that would be credited with reunifying the universe of Egyptian private law. Promulgated in 1949.

Thus it may be asserted that the comparative study manifests itself in the present form in the time of 'Abd al-Razzāq al-Sanhūrī who laid its very foundation in which he made a thorough study concerning various views on a particular case within the boundaries of Islamic law and, at the same time, these were compared to those concepts of secular civil law. This is evident in his endeavor as academician and politician in such works as as *Al-Wasīth fī Sharh al-Qānūn al-Madanī al-Jadīd* and . *Mashādir al-Haqq fī al-Fiqh al-Islāmī, Dirāsah Muqāranah bi al-Fiqh al-Gharbī* to motion few. Interestingly, the comparative studies discourse became even more intense with its introduction in higher learning at the university level around the world.[34]

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[32] Amr Shalakany, "Sanhuri: the Historical Origins of Comparative Law in the Arab World," p. 172.

[33] M.H. Davis, *Business Law in Egypt*, (London: Kluwer Law and Taxation Publisher, 1984), p. 30.

[34] Ever since, the comparative law studies had become the subject of interest of significant number of scholar to acquire degrees at graduate level. See Thāni, *Al-Harakah al-Fiqhiyyah al-Islāmiyyah*, p. 385.

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