

Cambridge University Press 978-1-108-84521-2 — Positive Law from the Muslim World Baudouin Dupret Table of Contents More Information

Contents

Ack	Acknowledgments			
		duction: Law Properly So Called, from an Islamic age Point	1	
	PART	TI THE CONCEPT OF LAW	27	
1	Law	as a Concept	29	
	1.1 1.2	Uses and Abuses of the Concept of Law The Concept of Law from Its Zone of Penumbra: The Case	29	
		of Islamic Law	35	
	1.3 1.4	A Conceptual Inquiry Conclusion: The Contingent Concept of Positivism	43 50	
2	The	Great Divide in Legal Discourse: Toward a Global orical Ontology of the Concept of Positive Law	53	
	2.1	A Historical Ontology of the Concept of Law The Positivism of the Science of Law: A Paradigmatic	55	
	2.3	Revolution The Positivization of the Law: Global Positive Law and Its	62	
		Local Variants	68	
	2.4	For a Historical and Pragmatic Ontology of Law	73	
3	Lega	l Praxeology: Into Perspective and into Practice	76	
	3.1 3.2 3.3	Into Perspective: Some Seminal Studies Into Perspective: Ethnographic Re-specification Into Perspective: What Relationships with the Sciences	77 81	
	ر.	of Law?	82	



Cambridge University Press 978-1-108-84521-2 — Positive Law from the Muslim World Baudouin Dupret Table of Contents More Information

κii		Contents	
	3.4	Into Practice: Context, Legal Relevance, Procedural Correctness	86
	3.5	Into Practice: The Documentary Method of Interpretation and the Normativity of Legal Cognition	
	DADE	,	92
	PART		97
4		cics Made into Law: Determinism and Contingency Ioroccan Constitutionalism	99
	4.1	Long-Nineteenth-Century Constitutionalism: The Period of Reforms	101
	4.2	Short-Twentieth-Century Constitutionalism: The Period	
	4.3	of Independence New Constitutionalism: Limited Pluralism	109
		and Accountability Islam and Constitutionalism	115
	4·4 4·5	Conclusion: Constitutionalism and the Positivization	121
		of Law	127
5		Legal Reification of the Mind: The Development	
	of Fo	orensic Psychiatry in Egyptian Law and Justice	132
	5.1	Positivizing the World	134
	5.2	Modern Psychiatry	137
	5.3	Egyptian Cases Conclusion	141
_	5.4		151
6		n 'Urf to Qânûn 'Urfî: The Legal Positivization of Customs	154
	6.1	Custom and Customary Law: Clearing the Mist around	
	6.2	Concepts Islamizing and Positivizing Customs	155 160
	6.3	Customary Law in Colonial Morocco	165
	6.4	From 'Amal to Mudawwana: The Place of Custom	105
	٠. 4	in Moroccan Positive Law	167
	6.5	Conclusion	171
	PART	THE LEGAL PRAXEOLOGIES	175
7		eral and Particular: The Legal Rule and an Islamic	
	Swin	nsuit in a Secular Context	177

7.1 The General and the Particular as Legal Categories

178



Cambridge University Press 978-1-108-84521-2 — Positive Law from the Muslim World Baudouin Dupret Table of Contents More Information

		Contents	xiii	
	7.2	Praxeological Re-specification: Ordinary Reasoning, Legal Reasoning, and Categorization of the General		
		and the Particular	181	
	7.3	Community-Based Particularism and National Community: Much Ado about a Bathing Costume	186	
	7.4	Generality and Particularity as Practical Accomplishments	189	
	7· 4 7·5	Conclusion	192	
8	Filli	ng Gaps in Legislation: The Use of Fiqh in Contemporary		
	Cou	rts in Morocco, Egypt, and Indonesia	194	
	8.1	Institutional and Legal Transformations in Morocco,		
		Egypt, and Indonesia	196	
	8.2	Statutes and Legislative Gaps in Family Law: Marriage		
	8.3	Authentication Marriage Authentication: How Do Judges Manage	199	
	٥.5	the Reference to Figh?	204	
	8.4	Conclusion: The Legal Positivization of Islamic Normativity	214	
9	Playi	ing by the Rules: The Search for Legal Grounds		
		omosexuality Cases - Indonesia, Lebanon, Egypt,		
	and S	Senegal	219	
	9.1	Criminal Law and the Repression of Homosexuality	221	
	9.2	Looking for Relevant Rules: Homosexuality at the Bar	227	
	9.3	Facts, Evidence, Rules, Procedures, and Interpretation:	_	
	0.4	Legal Reasoning in Practice How to Do Things with Rules: The Reference to Rules	236	
	9.4	in the Life of the Law	249	
	0			
	Conc	lusion: A Praxeological Approach to Positive Law	253	
Not	Notes			
	Bibliography			
Inde	Index			