## Contents

## Part I Law as a Complex Practice: The Rule-Based Model

1	Legal Theory as a Scientific Discipline and the Variety of Rules			
	1.1	Preliminary	5	
	1.2	Austin and the Autonomy of Legal Theory	6	
	1.3	Kelsen and the Scientific Amendment of Legal Positivism	10	
	1.4	Beyond Commands and Imperatives:		
		The Puzzle of Secondary Rules	13	
2	Legal Validity and the Problem of Rule-Acceptance			
	2.1	Preliminary	19	
	2.2	Four Notions of Acceptance	21	
	2.3	The Ambiguities of Acceptance as Observance	27	
3	Refl	ective Acceptance: Reasons for Action and Criterion-Rules	31	
	3.1	Preliminary	31	
	3.2	Internal Point of View and Rule-Government	33	
	3.3	Rules as Reasons for Action	36	
	3.4	Habits, Rules and the Limits of Hart's Approach	- 38	
	3.5	A Quasi-Wittgensteinian Reading of the Practice Theory	41	
	3.6	Criterion-Rules and Conditions of Thinkability	46	
4	The	The Legal Practice and Its (Vanishing) Borders		
	4.1	Preliminary	49	
	4.2	The 'Payne Problem': Relevant Population and Lay People	50	
	4.3	Rule-Based Model of What?	54	
	4.4	Law as a Practice Among Practices	60	

## Part II Law as a Selective Practice: The Social and the Legal

5	The	Pluralist Divide	67
	5.1	Preliminary	67
	5.2	The Reasons for Legal Pluralism:	
		Pragmatic and Conceptual Arguments	68
	5.3	First Type of Pluralism: Law as Organisation	71
		5.3.1 Eugen Ehrlich: The Living Law of Associations	72
		5.3.2 Santi Romano: Institutions as Legal Orders	76
	5.4	Second Type of Pluralism: The Artificial Character of Law	79
		5.4.1 Sally Falk Moore: The Dialectic	
		Spontaneity/Artificiality	79
		5.4.2 Marc Galanter: The Historicity of Legal Borders	83
	5.5	Third Type of Pluralism: The Dissolution of Legal Pluralism	86
		5.5.1 Sally Engle Merry: Law as Frame of Significance	87
		5.5.2 Brian Tamanaha: The Praxiological Way-Out	90
	5.6	Legal Pluralism: A Provisional Assessment	94
6	Leg	al Pluralism Revised: Law as the Product of Selection	99
Ū	6.1	Preliminary	99
	6.2	The Root of All Evils: The Malinowski Problem	99
	6.3	Legal Selection and Legitimate Coercion: Hoebel's View	105
	6.4	Towards a Concept of Law as a Selective Practice	111
7		ssic Institutionalism: Jural Reality and Legal Selection	113
	7.1	Preliminary	113
	7.2	Institutions, Inner Orders, and Romano's Dilemma	114
	7.3	Jural Reality and Official Law	119
	7.4	Integrating Institutionalism: Thin Functionalism	125
8	Exp	loring the Jural Continuum	127
	8.1	Preliminary	127
	8.2	The Background of Social Practices	128
	8.3	Criterion-Rules, Instance-Rules, Norm-Rules	132
	8.4	The Jural Continuum: Practices, Institutions, Organisations	139
	8.5	Relevant Population and Lay People Reconsidered	144
Par	t III	The Law as a Special Practice: Legal Field and Social Reality	

9	Negotiating Reality: Knowledge and Categories			
	in the Legal Field		151	
	9.1	Preliminary	151	
	9.2	Law as a Trans-Sectional Venue	152	
	9.3	Law and Its Custodians: The Paradigmatic Case		
		of the Roman ius	157	

## Contents

	9.4	The Semiotic Circuit of Law: The Intriguing Case		
		of Mekgwa Le Melao	162	
	9.5	Is Productive Circularity Really Distinctive? A Theoretical		
		Objection	167	
	9.6	The Indispensable Self-sufficiency	173	
10	The <b>J</b>	Ritual Dimension of Law: Normality, Normativity,		
	and (	Critique	177	
	10.1	Preliminary	177	
	10.2	Ritual and the 'Question of Plausibility'	178	
	10.3	Law's Nondiscursive Dimension:		
		Normality and Normative Facts	187	
	10.4	Law's Discursive Dimension: The Space for Critique	190	
Epi	Epilogue			
	Defending a Pluralist Critical-Institutional View of Law			
Bibliography			201	
Author Index				
Subject Index				