

Contents

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

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	92
PART II HISTORICAL ONTOLOGIES		97
4	Politics Made into Law: Determinism and Contingency in Moroccan Constitutionalism	99
4.1	Long-Nineteenth-Century Constitutionalism: The Period of Reforms	101
4.2	Short-Twentieth-Century Constitutionalism: The Period of Independence	109
4.3	New Constitutionalism: Limited Pluralism and Accountability	115
4.4	Islam and Constitutionalism	121
4.5	Conclusion: Constitutionalism and the Positivization of Law	127
5	The Legal Reification of the Mind: The Development of Forensic Psychiatry in Egyptian Law and Justice	132
5.1	Positivizing the World	134
5.2	Modern Psychiatry	137
5.3	Egyptian Cases	141
5.4	Conclusion	151
6	From 'Urf to <i>Qânûn 'Urfî</i>: The Legal Positivization of Customs	154
6.1	Custom and Customary Law: Clearing the Mist around Concepts	155
6.2	Islamizing and Positivizing Customs	160
6.3	Customary Law in Colonial Morocco	165
6.4	From 'Amal to <i>Mudawwana</i> : The Place of Custom in Moroccan Positive Law	167
6.5	Conclusion	171
PART III LEGAL PRAXEOLOGIES		175
7	General and Particular: The Legal Rule and an Islamic Swimsuit in a Secular Context	177
7.1	The General and the Particular as Legal Categories	178

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
7.5	Conclusion	192
8	Filling Gaps in Legislation: The Use of <i>Fiqh</i> in Contemporary Courts 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 Authentication	199
8.3	Marriage Authentication: How Do Judges Manage the Reference to <i>Fiqh</i> ?	204
8.4	Conclusion: The Legal Positivization of Islamic Normativity	214
9	Playing by the Rules: The Search for Legal Grounds in Homosexuality Cases – Indonesia, Lebanon, Egypt, and 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: Legal Reasoning in Practice	236
9.4	How to Do Things with Rules: The Reference to Rules in the Life of the Law	249
	Conclusion: A Praxeological Approach to Positive Law	253
	<i>Notes</i>	263
	<i>Bibliography</i>	277
	<i>Index</i>	299