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Positive Law from the Muslim World

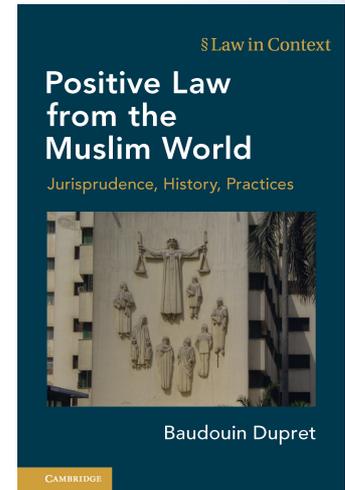
Jurisprudence, History, Practices

Baudouin Dupret

Sciences Po Bordeaux

Can the concept of law be indiscriminately extended to times and places in which it did simply not exist? Such an extension is at best useless and at worst misleading. Producing an intelligible jurisprudence of the concept of law means keeping it within the reasonable boundaries of its contemporary common-sense understanding: positive law. Parallel to Western societies in which it firstly emerged, the concept of positive law developed in many places, including countries characterized as Muslim. There, it faced other existing normativities, like customs and the Sharia. This book aims, from the Muslim world's perspective, to clarify the uses of the concept of law and the ways of studying it, to describe some of its historical developments, including the ideas of constitutional law, customary law and forensic evidence, and to describe present-day practices, including reference to law sources, rules and interpretation.

Law properly so-called, from an Islamic vantage point: an introduction; Part I. The Concept of Law: 1. Law as a concept; 2. The great divide in legal discourse: towards a global historical ontology of the concept of positive law; 3. Legal praxeology: into perspective and into practice; Part II. Historical Ontologies: 4. Politics made into law: determinism and contingency in Moroccan constitutionalism; 5. The legal reification of the mind: the development of forensic psychiatry in Egyptian law and justice; 6. From 'urf to qānūn 'urfī: the legal positivization of customs; Part III. Legal Praxeologies: 7. General and particular: the legal rule and an Islamic swimsuit in a secular context; 8. Filling gaps in legislation: the use of fiqh in contemporary courts in Morocco, Egypt, and Indonesia; 9. Playing by the rules: the search for legal grounds in homosexuality cases (Indonesia, Lebanon, Egypt, Senegal); Conclusion – a praxeological approach to positive law; Bibliography; Index.



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