

1. Record Nr.	UNINA9910821548403321
Titolo	State law and legal positivism : the global rise of a new paradigm // edited by Baudouin Dupret and Jean-Louis Halperin
Pubbl/distr/stampa	Leiden, Netherlands ; ; Boston, Massachusetts : , : Brill Nijhoff, , [2022] ©2022
ISBN	90-04-49871-0
Descrizione fisica	1 online resource (275 pages)
Collana	Legal History Library ; ; 55
Disciplina	340/.112
Soggetti	Customary law - History Law reform - History Legislation - History Rule of law - History
Lingua di pubblicazione	Inglese
Formato	Materiale a stampa
Livello bibliografico	Monografia
Note generali	Includes index.
Nota di bibliografia	Includes bibliographical references and index.
Nota di contenuto	Half Title -- Series Information -- Title Page -- Copyright Page -- Contents -- Notes on Contributors -- Introduction -- Chapter 1 The Great Divide in Legal Discourse: Towards a Global Historical Ontology of the Concept of Positive Law -- 1 Introduction -- 2 Historical Ontology of the Concept of Law -- 3 The Positivism of the Science of Law: A Paradigmatic Revolution -- 4 The Positivization of the Law: Global Positive Law and Its Local Variants -- 5 For a Historical and Pragmatic Ontology of Law -- References -- Chapter 2 Historical Landmarks in Mapping the Spread of Positive Law Teaching -- 1 How Should "Tradere jura positiva" Be Understood? -- 1.1 An Initial Definition of Legal Education: The Birth of Law Faculties -- 1.2 First Reforms to Promote the Teaching of Positive Law -- 2 Were There Two or Three European Models during the Nineteenth Century? -- 2.1 The French Model of National Programs -- 2.2 The German Model: Teaching Positive Law without a Fixed Program -- 2.3 Can One Speak of Law Faculties in England? -- 3 The Spread of the Law Faculty Model and Local Pragmatism in Extra-European Legal Education -- 3.1 The Diversity of American and Australian Legal Education Institutions -- 3.2 The Adaptation of the Faculty Model in Asia and Africa -- 3.3

Movement of Professors and the Pervasiveness of Western Models outside Europe -- References -- Chapter 3 Writing Customs: Three Episodes in the Process of Positivization of Berber Customary Law in Morocco -- 1 Writing as a Legal Technique -- 2 Inscribing Customs in the Pluralist Legal System of the Protectorate -- 3 Prelude: An Islamic Textual Model to Write Customs at the Dawn of Modernity -- 4 Interlude: Independence, Legal Unification and the Obliteration of Customary Law -- 5 Post-Colonial Rewritings and Recyclings of Customary Law -- 6 Conclusions: Positivizing Customs through Writing.

References -- Chapter 4 Ambiguities and Interdependencies: The Relationship between Legal Positivization and Islamic Law in Colonial India, 1765-1909 -- 1 Ideological Foundations of Anglo-Indian Utilitarian and Contractual Positivisms -- 2 Utilitarian Positivism and the Foundation of a Legal Order through Law: The Need to Recognize the Indo-Islamic Order to Better Succeed It -- 3 A Far-from-Homogenous Positivization of Indian Law and the Progressive Predominance of Its Contractualist Side -- 4 The Implementation of Contractualist Positivization, or How to Delay the Inevitable Recognition of the Indian as a Subject in Law -- 5 The Useful Reintegration of Islamic Law into the Indian Legal Order -- 6 Conclusion -- References -- Chapter 5 The Positivization of Ottoman Law and the Question of Continuity -- 1 Epochal Thresholds or Epochal Fallacies: The Turtles Debate -- 2 A Comment on Legalism-as-Culture -- 3 New Meanings of Old Terms: Nizam, Kanun, Hukuk -- 4 Discontinuities and Continuities in Judicial Practice -- 4.1 Functions and Structure of the Courts -- 4.2 Normative Law -- 4.3 Styles of Dispute Resolution and Adjudication -- 5 The Discourse of Law -- 5.1 Legislation -- 5.2 Pre-Trial Processes -- 5.3 Trial Processes -- 5.4 Recording of Judgments -- 6 Conclusion -- References -- Chapter 6 How Government Jurists and Lawyering Approached the "Positivizing" of the Law in China -- 1 Introduction -- 2 The Approach of Government Jurists and Lawyering -- 3 China's Predecessor -- 3.1 Conventional Narrative: What Was Missing? -- 3.2 Japan's Institutional Design -- 4 China, from the Qing to the Guomindang -- 4.1 China's First Solution -- 4.2 China's Second Solution -- 5 Conclusion -- References -- Chapter 7 The Meiji Era: When Japanese Law Became Positivized -- 1 Introduction -- 2 Departure from Old Japanese Law -- 2.1 The Fall of the Old Regime. 2.1.1 The Edo System -- 2.1.2 The Breaking Point: Unequal Treaties -- 2.2 The Elimination of the Chinese Model -- 2.2.1 The Abolition of the Old Regime -- 2.2.2 The Attempt to Reformulate the Old Law: A Return to the Classics -- 3 Changing to Legal Positivism -- 3.1 Acquiring Legal Knowledge -- 3.1.1 Journeys of Discovery -- 3.1.2 Foreign Advisors -- 3.1.3 The Appropriation of New Legal Knowledge -- 3.2 The Positivization of Law and New Institutional and Social Patterns -- 3.2.1 Establishing a Collective, Centralized and Unified State -- 3.2.2 New Civil and Judicial Structures -- 4 Conclusion -- References -- Conclusion -- Index.

Sommario/riassunto

This volume formulates the hypothesis of a truly global revolution that reflected a Great Divide between ancient and new legal regimes. The volume brings together several case studies of transition from an ancient to a new legal regime characterized by the positivization of the law. This was an effect of Western imperialism, but also of local elites' conviction that positive law was an efficient instrument of governance. The contributors emphasize the depth and scale of the positivist legal revolution and explore the phenomenon whether it was the outcome of either direct colonialism (Morocco, Egypt, India) or indigenous reformism (Ottoman empire, China, Japan).

