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Kazimierz Opalek

# Selected Papers in Legal Philosophy

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# Kazimierz Opalek Selected Papers In Legal Philosophy

**Michael Baurmann**



### **Kazimierz Opalek Selected Papers In Legal Philosophy:**

*Kazimierz Opalek Selected Papers in Legal Philosophy* Jan Wolenski, 2013-06-29 Philosophical aspects of law and jurisprudence are investigated from various points of view This collection represents the analytic approach to legal philosophy However this approach is not extreme in the sense that it is limited exclusively to linguistic matters The concept of norm as a directive of conduct is the central category analyzed in particular essays The structure of directives as well as their semantic and pragmatic roles are studied Pragmatic functions of directives are linked with their functioning as speech acts Moreover existence and validity of norms are analyzed The author also touches on general methodological problems of legal theory and philosophy particularly their relations to social sciences The collection covers material interesting for philosophers lawyers and social scientists

*The Invisible Origins of Legal Positivism* W.E. Conklin, 2012-12-06 Conklin's thesis is that the tradition of modern legal positivism beginning with Thomas Hobbes postulated different senses of the invisible as the authorising origin of humanly posited laws Conklin re-reads the tradition by privileging how the canons share a particular understanding of legal language as written Leading philosophers who have espoused the tenets of the tradition have assumed that legal language is written and that the authorising origin of humanly posited rules norms is inaccessible to the written legal language Conklin's re-reading of the tradition teases out how each of these leading philosophers has postulated that the authorising origin of humanly posited laws is an unanalysable externality to the written language of the legal structure As such the authorising origin of posited rules norms is inaccessible or invisible to their written language What is this authorising origin Different forms include an originary author an a priori concept and an immediacy of bonding between person and laws In each case the origin is unwritten in the sense of being inaccessible to the authoritative texts written by the officials of civil institutions of the sovereign state Conklin sets his thesis in the context of the legal theory of the polis and the pre polis of Greek tribes The author claims that the problem is that the tradition of legal positivism of a modern sovereign state excises the experiential or bodily meanings from the written language of the posited rules norms thereby forgetting the very pre legal authorising origin of the posited norms that each philosopher admits as offering the finality that legal reasoning demands if it is to be authoritative

*Studies in Legal Logic* Jaap Hage, 2006-03-30 *Studies in Legal Logic* is a collection of nine interrelated papers about the logic epistemology and ontology of law All of the papers were written after the publication of the author's *Reasoning with Rules* and supplement the issues addressed therein Some of the papers are new others have been revised substantially after the publication of their original versions The emphasis is on analysis not on logical technicalities *Studies in Legal Logic* contains chapters about the nature of norms the role of coherence in the law the nature of defeasibility the role of dialectics in law and artificial intelligence the statics and dynamics of the law and the consistency of rules Moreover it contains a new simplified and yet more powerful version of Reason based Logic and extensive examples of how it can be used for the analysis of legal reasoning The examples deal with legal theory construction

case based reasoning and judicial proof      The Concept of Ideals in Legal Theory Sanne Taekema, 2002-12-31 Talk about law often includes reference to ideals of justice equality or freedom But what do we refer to when we speak about ideals in the context of law This book explores the concept of ideals by combining an investigation of different theories of ideals with a discussion of the role of ideals in law A comparison of the theories of Gustav Radbruch and Philip Selznick leads up to a pragmatist theory of legal ideals which provides an interesting new position in the debate about values in law between legal positivists and natural law thinkers Attention for law's central ideals enables us to understand law's autonomous character while at the same time tracing its connection to societal values Essential reading for anyone interested in the role of values or ideals in law      The Rule of Law History, Theory and Criticism Pietro Costa, Danilo Zolo, 2007-05-06 Authors Costa and Zolo share the conviction that a proper understanding of the rule of law today requires reference to a global problematic horizon This book offers some relevant guides for orienting the reader through a political and legal debate where the rule of law and the doctrine of human rights is a concept both controversial and significant at the national and international levels

*The Principle of Legal Certainty in EC Law* J. Raitio, 2013-03-14 The intertwinement of EC law and national law may create unforeseeability in situations where EC law invades the national cases which gives rise to the very question of legal certainty in EC law This study contributes to the contemporary discussion which wrestles with the following questions in particular What have been the visions and objectives for European integration in the last decades How to describe European Union as a political entity and a legal system What is the relationship between legal certainty rule of law various general principles and human rights What is the core of legal certainty on the basis of the case study What kind of legal arguments and patterns of justification are there from a comparative perspective How has the term legal certainty been defined in the Nordic legal theory How predictable and acceptable are the interpretations of the European Court of Justice is it running wild Legal certainty relates to the principle of non retroactivity and the protection of legitimate expectations in particular but more profoundly it can be related to the conceptual scale for weighing up and balancing between formal justice and material fairness in legal decision making This scale is illustrated by presenting the terms formal factual and substantive legal certainty

**The Legal Essays of Michael Bayles** W.L. Robison, 2002-06-30 The legal essays by Michael Bayles in this collection display his commitment to utilitarianism both as a moral theory and an analytical device A utilitarian must choose between the best of all possible alternatives and so must lay out the alternatives and thus their consequences carefully and completely As it happens there is no better way of understanding why something is as it is in the law and no better way to lay the foundations for criticism and improvement than to lay out what the alternatives are carefully distinguishing them their justifications and their implications for changing other areas of the law and for changing our relation to the law Bayles was a master at such work and each essay thus repays careful study for anyone concerned about the law The essays cover a wide variety of topics from contract law to the criminal law from torts to theory and form a natural set Laying out the alternatives

in one area makes it much clearer how and why alternatives in other areas are acceptable or required Interconnections within the legal system as a whole not readily visible when studying one area of the law become obvious when several are laid out side by side using the analytical skill required by a good utilitarian **The Scepter of Reason R.**

Gargarella,2012-12-06 It is not unusual that formal and informal discussions about the political system its virtues and its many defects conclude in a discussion about impartiality In fact we all discuss impartiality when we talk about the best way to equally consider all viewpoints We show our concerns with impartiality when facing a particular problem we try to figure out the best solution for all of us given our conflicting interests Thus the quest for impartiality tends to be a common objective for most of us although we normally disagree on its particular contents Generally these formal and informal discussions about impartiality conclude in a dispute between different epistemic conceptions That is to say simply that in these situations we begin to disagree about best procedure to define the more neutral impartial solution for all of us Basically trying to answer this question we tend to fluctuate between two opposite positions According to some the best way to know which is the more impartial solution is to resort to a process of collective reflection in those situations we have to consider the opinions of all those who are possibly affected **On the Interpretation of Treaties** Ulf Linderfalk,2007-09-11 1

**PURPOSE AND TOPIC** We live in the age of treaties Increasingly bilateral and multilateral written agreements are used for the creation of new international legal standards For political reasons states are decreasingly less willing to rely upon customary international law for the regulation of legal matters New technology and growing international exchange have established the need for an ever more precise and flexible international law a need not satisfactorily met by customary law In many fields of activity we can seriously question whether the creation of a rule of custom is at all possible Considering also that the number of states capable of drafting and concluding treaties seems to be growing it is not surprising that treaties are concluded far more frequently than ever before In several ways this is a development that should be met with approval By entering into written agreements states avoid the difficulties inherent in customary international law At the same time the increasing number of treaties should also be causing concern The more treaties that are concluded the more treaties that will have to be applied and the more treaties that are applied the more often the question will arise To what extent and under what specific conditions should such an application occur Naturally this includes the question of how treaties should be interpreted **Legal Method and the Rule of Law** Sebastián Urbina,2002-08-31 We cannot see the world as it is because we face it in a contaminated vein That is our conceptual scheme and biological constitution condition our world view The legal normative world we are dealing with has some special features like the primacy of practical reason over theoretical reason and the primacy of the internal point of view over the external point of view Although it is not a feature of all legal traditions legal dogmatics is a privileged way of knowing legal normative object that is our legal orders But we are not undertaking as legal scholars an empiricist enterprise because among other reasons we are not interested in the reality in

itself but in the relevant reality at least for us In this respect we do not only depend on theories like physicists but also on legal authoritative sources that is power and legitimacy Legal scholars and other participants in the legal life are not neutral observers of their own world trying to discover some hidden truth They are committed experts trying to describe justify and improve the legal order

*Constitutional Justice, East and West* Wojciech Sadurski, 2002-12-31 How can the power of constitutional judges to overturn parliamentary choices on the basis of their own reading of the constitution be reconciled with fundamental democratic principles which assign the supreme role in the political system to parliaments This time honoured question acquired a new significance when the post communist countries of Central and Eastern Europe without exception adopted constitutional models in which constitutional courts play a very significant role at least in theory Can we learn something about the relationship between democracy and constitutionalism in general from the meteoric rise of constitutional tribunals in the post communist countries Can the discussions and controversies relating to constitutional review which have been going on for decades in more established democracies illuminate the sources of the strength of constitutional courts in Central and Eastern Europe These questions lie at the center of this book which focuses on the question of constitutional review in postcommunist states from a theoretical and comparative perspective The chapters contained in the book outline the conceptual framework for analyzing the sources the role and the legitimacy of constitutional justice in a system of political democracy From this perspective it assesses the experience of constitutional justice in the West where the model originated and in Central and Eastern Europe where the model has been implanted after the fall of Communism

*Legal Reductionism and Freedom* Martin V.B.P.M. van Hees, 2012-12-06 Martin van Hees presents a new approach to the study of law legal reductionism which combines elements of legal positivism new institutionalism and decision theory From legal positivism Van Hees derives some fundamental insights into the nature of legal systems but he also revises some of its key tenets He argues that law can be reduced to facts moreover he re-establishes the relation between law and morality by arguing that law and positive morality are inherently related He subsequently uses decision theoretic tools to develop and defend his reductionist methodology The second part of the study applies the resulting approach to an analysis of legal freedom By showing that legal reductionism allows us to analyse the value of liberal legal systems Van Hees makes a forceful case for including the study of law in moral and political philosophy The book is accessible to a wide readership including legal and moral philosophers political theorists and social scientists

**Methods of Legal Reasoning** Jerzy Stelmach, Bartosz Brozek, 2006-09-03 Anyone reflecting on the methodology of legal reasoning faces a difficult task The number of methodological theories in jurisprudence and the vast literature on the subject are not the only problems that have to be taken into account Perhaps the most striking difficulty concerning the methodology of legal argument is the heated debate between jurists legal theorists and philosophers of law that has been recurring since at least nineteenth century Therefore a justification is needed for writing yet another book concerning the methods of legal reasoning a

book that aims to cover a lot of what has already been proposed in legal theory We believe that there is such a justification First the perspective that we adopt in the present book is unique at least in some respects We venture to look at the methodology of legal reasoning from the outside i e from a more g eral philosophical perspective while taking into account the hard re ity of law This perspective enables us to ask questions about the justification for the methods of legal argument presented Second we do not want to defend one paradigmatic conception of legal reasoning On the contrary we put forward the thesis that there is a plurality of argumentative methods The plurality however does not lead to relativism in legal decision making Third we reject any hierarchy of the methods of legal reasoning and take the view that one can speak only of the precision and flexibility of different methodologies **The Concept of Rights** George W. Rainbolt,2006-07-08

Discussions of rights are ubiquitous One constantly hears things such as The Chinese are violating Tibetan rights Landlords have a right that their tenants pay their rent Students have a right to be graded fairly Animals have a right not to suffer merely to bring pleasure to humans Abortion violates a fetus right to life We violate the rights of future generations when we pollute the water These statements assert that Tibetans landlords students animals fetuses and future generations all have rights Tibetans landlords students animals fetuses and future generations do not seem to have much in common When one presses for clarity it is very dif cult to say precisely what a right is What is it to have a right That is the question this book seeks to answer To paint with an overly broad brush previous answers to this question can be divided into two groups Some hold interest bene t theories of rights while others hold choice will theories of rights Perhaps the rst person to propose an interest bene t theory was Jeremy Bentham Its most cited contemporary defender is Joseph Raz The seminal statement of the choice theory was made by H L A Hart Carl Wellman is perhaps the most able defender of a will theory of rights The debate between these two groups of theories has been a productive one **Knowledge Discovery from Legal Databases** Andrew

Stranieri,John Zeleznikow,2006-03-30 Knowledge Discovery from Legal Databases is the first text to describe data mining techniques as they apply to law Law students legal academics and applied information technology specialists are guided thorough all phases of the knowledge discovery from databases process with clear explanations of numerous data mining algorithms including rule induction neural networks and association rules Throughout the text assumptions that make data mining in law quite different to mining other data are made explicit Issues such as the selection of commonplace cases the use of discretion as a form of open texture transformation using argumentation concepts and evaluation and deployment approaches are discussed at length **Legal Institutions** D.W. Ruiter,2013-03-14 Building on his contributions to institutional legal theory in Institutional Legal Facts of 1993 Law and Philosophy Library volume 18 the author presents a comprehensive theory of legal institutions To that end the initial theoretical approach which mainly concentrated on problems connected with legal powers and legal acts acts in law is widened to allow for the development of a theory of legal judgements capable of accounting not only for enacted but also unwritten law legal principles and customary law With the

use of the concept of institutional legal facts the structure of legal institutions is analyzed in detail In addition to that a classification of legal institutions is provided Extensive attention is given to logical as well as doctrinal problems connected with a conception of legal validity as the mode of existence of legal conditions rather than as a value of legal norms similar to the truth of propositions The study results in an elaborate conceptual framework for institutional analysis of positive law In a final chapter the analytical potential of the framework is put to the test by applying it to the branch of public international law known as the law of treaties Readership Specialists in legal theory and lawyers interested in theoretical issues particularly in linguistic approaches and questions related to the institutional nature of law

*The Market of Virtue* Michael Baurmann, 2002-08-31 The Market of Virtue Morality and Commitment in a Liberal Society is a contribution to the present controversy between liberalism and communitarianism This controversy is not only confined to academic circles but is becoming of increasing interest to a wider public It has become popular again today to criticize a liberal market society as being a society in which morality and virtues are increasingly being displaced by egoism and utility maximization According to this view the competition between individuals and the dissolution of community ties erode the respect for the interests of others and undermine the commitment to the common good The present book however develops quite a different picture of a liberal society An analysis of its fundamental principles shows that anonymous market relations and competition are by no means the only traits of a liberal society Such a society also provides the framework for freedom of cooperation and association It gives its citizens the right to cooperate with other people in pursuit of their own interests Just as the rivalry between competitors is a basic element of a liberal society so is the cooperation between partners Thus not only self centred individualism is rewarded The main part of the book explains how the freedom to cooperate and to establish social ties lays the empirical foundation for the emergence of civil virtues and moral integrity It is the basic insight of this analysis that it can no longer be maintained that a liberal society is incapable of producing moral attitudes and social commitment If a civil society can develop under a liberal order then one can reckon with citizens who voluntarily contribute to public goods and who commit themselves of their own accord to the society its constitution and institutions However this book not only develops further arguments for the current debate between liberalism and communitarianism by explaining the emergence of morality and virtue in a market society It also provides new aspects for the present theoretical and methodological controversies over the fundamentals of the social sciences and contributes to the advancement of the modern individualistic approach in social theory In this context it aims especially at an improvement of a sociological model of behaviour

*Mutual Expectations* Govert Hartogh, 2002-05-31 The law persists because people have reasons to comply with its rules What characterizes those reasons is their interdependence each of us only has a reason to comply because he or she expects the others to comply for the same reasons The rules may help us to solve coordination problems but the interaction patterns regulated by them also include Prisoner s Dilemma games Division problems and Assurance problems In these games the



rules can only persist if people can be expected to be moved by considerations of fidelity and fairness not only of prudence This book takes a fresh look at the perennial problems of legal philosophy the source of obligation to obey the law the nature of authority the relationship between law and morality and the nature of legal argument from the perspective of this conventionalist understanding of social rules It argues that since the resilience of such rules depends on cooperative dispositions conventionalism properly understood does not imply positivism *Living Lawfully* Z. Bankowski,2013-04-17 The aim of this book is to explore what it means to live a life under the law Does a life of law preclude love and does a life of love preclude law Part of the theme of the book is that social questions also raise individual moral and ethical questions that to live lawfully implies both a question of how I should live in my relations with my fellows and how society should be organised These questions must be looked at together The book explores these questions and in looking at the articulation of law and love touches upon debates in personal morality aesthetics epistemology social and political organisation institutional design and the form and substance of law It raises questions that are of interest to students and those working in law theology and social and political theory **Group Rights as Human Rights** Neus Torbisco Casals,2006-06-30 Liberal theories have long insisted that cultural diversity in democratic societies can be accommodated through classical liberal tools in particular through individual rights and they have often rejected the claims of cultural minorities for group rights as illiberal Group Rights as Human Rights argues that such a rejection is misguided Based on a thorough analysis of the concept of group rights it proposes to overcome the dominant dichotomy between individual human rights and collective group rights by recognizing that group rights also serve individual interests It also challenges the claim that group rights so understood conflict with the liberal principle of neutrality on the contrary these rights help realize the neutrality ideal as they counter cultural biases that exist in Western states Group rights deserve to be classified as human rights because they respond to fundamental and morally important human interests Reading the theories of Will Kymlicka and Charles Taylor as complementary rather than opposed Group Rights as Human Rights sees group rights as anchored both in the value of cultural belonging for the development of individual autonomy and in each person's need for a recognition of her identity This double foundation has important consequences for the scope of group rights it highlights their potential not only in dealing with national minorities but also with immigrant groups and it allows to determine how far such rights should also benefit illiberal groups Participation not intervention should here be the guiding principle if group rights are to realize the liberal promise

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