## Contents

Pre	eface		viii
Int	rodu	ction	1
	1.	Thinking law	2
	2.	Outline	4
	3.	Didactic concerns	6
1.	Leg	gal order	9
	1.	And there was law	10
	2.	The heptagon of law	12
	3.	The knurled edges of the heptagon	17
		3.1 Civil disobedience	18
		3.2 Fundamental social rights	24
		3.3 Torture	32
		Contractual thinking and naturalism	36
	5.	, , ,	41
		5.1 The basic fallacy of naturalism	43
		5.2 The need for needs	45
		5.3 Self-preservation, self-determination and	40
	_	self-awareness	48
	6.	Summary	51
2.		tice, rights and human dignity	53
	1.		55
		1.1 Contradiction?	55
		1.2 Self-determination and malleability	61
		1.3 The social imaginary of political power	69
		1.3.1 Some examples	69
		1.3.2 From the first person singular to the first	72
		person plural  1.4 The lures of self-determination	78
	2.	Self-awareness as respect for human dignity: the totalitarian	10
	~.	account	80
		2.1 Recognition of the other at false bay	81

		2.2 Law after Auschwitz	84
	3.	The first person: captor and captive	87
		3.1 The first person as the ultimate captor	89
		3.2 The 'I' as the final hostage	93
	4.	From recognition to a politics of recognition: handling two	
		opposing principles	102
		4.1 Alterity and alternity	102
		4.2 Justice as the politics of alterity	107
		4.3 Exemplifying the dynamics of justice	112
	5.	Summary	122
3.	Pos	sitive law and sovereign authority	125
	1.	Positive law – posited law	127
	2.	Why legal positivism?	130
		2.1 Two motives for legal positivism	132
		2.1.1 Apprehensibility	132
		2.1.2 Expediency	133
		2.2 The tension between the motives	134
	3.	The structure of legal positivism	135
		3.1 Norms as practical	136
		3.2 General norms	138
		3.3 Sovereignty	142
		3.3.1 Scientism	145
		3.3.2 Historicism	149
		3.3.3 The common fallacy of scientism and	
		historicism	152
	4.	Constituent power and constitutional power	154
		4.1 Making sense	154
		4.2 Making political sense: constituting constitutions	156
	5.	Authority	158
		5.1 Authority and reasons	159
		5.2 Authority of Law: Lisbon v Lisbon	163
	6.	Authority as opening up political identity	168
	7.	The institutionalisation of authority in law	171
		7.1 Independence of law	172
		7.1.1 Separation of powers	172
		7.1.2 Equality before the law	173
		7.1.3 Democracy	175
		7.1.4 Legal violence, coercion and punishment	176
		7.1.5 State	178
		7.2 Judging potential: law as a discipline	180
	8.	Summary	181

Contents	V11

4.	Le	gal knowledge and legal doctrine: validity of law	183
		Legal formalism	186
		1.1 In demand of purity	188
		1.2 Some distinctions	191
		1.3 Norm and validity	194
		1.4 Validity and effectiveness	202
		1.5 Formalism and morality	203
	2.	Legal realism	205
		2.1 Predictivism	206
		2.2 Social engineering	210
	3.	Validity: norm-claims warranted	212
		3.1 Practitions, propositions and domains of justification	213
			217
		3.3 Justification domains as vectors: law and language	222
	4.		227
	5.	Validity and bindingness	232
			233
			235
	6.	Summary	239
5.	Fol	llowing the law as following a rule	241
0.	1.		242
	2.		247
			248
			250
	3.		252
	~ .		253
			256
			256
			261
		AND THE RESERVE THE STATE OF TH	263
	4.		268
			268
			271
	5.		273
Rih	lios	ranhy	275
	Bibliography		