

## DOES LAW EXIST IDEALLY? LORENZ KAEHLER'S ONTOLOGY OF LAW REVISITED

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*The relevance of the topic* of this paper is due to the insufficient study of Lorenz Kaehler's new legal theory of the ideal dimension of law in contemporary philosophy of law. The problem considered in the paper is the philosophical justification of the ontological ideality thesis, according to which legal norms exist as abstract propositional entities independent of any of their physical or institutional characteristics.

*The subject of the research* is the analysis of Kaehler's arguments distinguishing the claim to correctness thesis, legal ideality, and ontological ideality, together with his critique of Robert Alexy's discourse theoretical account of law's ideal dimension and his relation to Gustav Radbruch's formula on statutory lawlessness.

*The purpose of the work* is to theoretically reconstruct and critically assess Kaehler's ontological argument for the ideal dimension of law from the perspective of the legal positivism and other approaches in legal philosophy.

*The novelty of the topic* is due to the lack of critical studies in the modern scientific papers examining Kaehler's paper *What Is the Ideal Dimension of Law?* and the related debate initiated by Vitaly Ogleznev on the modal and epistemic status of ontologically ideal legal entities, as well as the need to rethink Kaehler's terminology of "ontological ideality" from a social fact based legal argumentation perspective.

*The research methods* used in the paper are those characteristic of analytical jurisprudence, including methods of logical and conceptual analysis, comparative legal analysis, and critical textual interpretation of primary philosophical sources.

*The main conclusions of the paper* are to reveal the key arguments of Kaehler's ontological ideality thesis and to demonstrate their limitations: it is argued that Kaehler's objections to the claim to correctness thesis are largely persuasive, but his positive ontological thesis, modelled on abstract objects such as numbers, Fregean thoughts, or Popper's "world 3" is not adequately supported by the examples he offers, and that these examples are better explained by a modest positivist account according to which law persists through copies, institutional memory, and interpretive communities rather than through an independent immaterial realm of propositional legal content.

**Keywords:** philosophy of law; legal positivism; ontological ideality; claim to correctness; legal interpretation; L. Kaehler, R. Alexy, G. Radbruch, V. Ogleznev.

### Introduction

Lorenz Kaehler's argument, developed most fully in his paper *What Is the Ideal Dimension of Law?* published in *Ratio Juris* in 2024, offers an elegant defense of the ideal, propositional nature of law, but several of its central ideas are philosophically and methodologically controversial. The paper itself is broader than the ontological thesis discussed below. Kaehler distinguishes three independent senses in which law may be called "*ideal*": a moral ideal dimension, a legal ideal dimension internal to law itself, and an ontological ideal dimension concerning what kind of entity a legal norm is [1, pp. 210–213]. Our attempt of extended explanation the ontological thesis within this broader legal-philosophical context

that reconstructs Kaehler's supporting arguments in more detail, and sharpens the objections already advanced against it.

### Materials and Methods

The paper uses research methods characteristic of analytical jurisprudence, including those related to the use of methods of logical and linguistic analysis, as well as special legal methods (formal legal method of interpretation of regulatory prescriptions and legal rules).

### Main Provisions

#### *Kaehler's Three Dimensions of Legal Ideality*

Kaehler's paper is written as a direct response to Robert Alexy's long standing claim that law necessarily possesses an ideal dimension because it raises a "claim to correctness", a thesis most recently restated in Alexy's collection *Law's Ideal Dimension* [2]. Alexy's dual nature thesis holds that law combines a *real dimension* (defined by authoritative issuance and social efficacy) with an *ideal dimension* (defined by that claim to correctness), which he takes to include at minimum a claim to justice [2].

Kaehler challenges these arguments on the next reasons. He distinguishes four possible readings of the claim to correctness thesis: a *foundation thesis* (that the claim constitutes law's ideal dimension in all fundamental questions), a *capability thesis* (that law is even capable of raising such a claim, given that it is not a person able literally to perform a speech act), a *strong claim thesis* (that law claims full moral correctness), and a *weak claim thesis* (that law claims merely not to be extremely unjust) [1, pp. 214–222]. Against the foundation thesis Kaehler argues that law's ontological status (what kind of entity it is) is a more fundamental question than whether it raises any claim about itself, since the very possibility of "claiming" presupposes that law belongs to a category of entities capable of containing propositional claims at all. Against the strong claim thesis he constructs another example: a constitution whose preamble openly states, "as fallible human beings, we know that this constitution is not perfectly just, but it is the best we could agree on" which would not thereby collapse into "power relations" [1, p. 219]. Against the weak claim thesis he argues that distinguishing "extreme" from "ordinary" injustice is itself a sophisticated theoretical achievement, one that took Radbruch a lifetime to formulate [3] and cannot be assumed to be implicit in every legal system whatsoever [1, pp. 220–223]. But after explaining the claim to correctness thesis Kaehler turns to what he regards as the more defensible ground for calling law "ideal": its ontological nature.

#### *On Propositional Content of Law*

The argument says that because law can appear in many forms (such as text, speech, or gestures), its propositional content is more important than its physical form. Kaehler states this position sharply: "law differs from empirical facts about the outside world, it is tempting to situate it instead in the inner world of thoughts and attitudes" [4, p. 26]. Law cannot consist solely of material things or physical events, because physical events by themselves cannot prescribe what ought to be done, and because any particular manifestation of a norm might disappear without the norm losing its normative force.

From this point of view, he concludes that law is "ontologically ideal" being immaterial and consisting of a certain propositional meaning, comparable in this respect to numbers, stories, games, or algorithms [1, pp. 223–226].

However, this reasoning moves too quickly. It is reasonable to say that content matters for guiding actions (this is an epistemic point), but it is a much stronger claim to say that law is fundamentally abstract (an ontological claim). The fact that the same legal norm can be communicated in different ways does not prove that law exists as an abstract entity. It only shows that norms can function independently from their specific forms to some extent. Kaehler himself anticipates a version of this worry when he insists that "ontologically ideal" should not be equated with "abstract object," precisely because documents such as a statute or the Universal Declaration of Human Rights are, in his words, "concrete at least insofar as they designate particular propositional objects", unlike universal properties such as "whiteness" [1, p. 216]. Yet this terminological refinement does not resolve the underlying difficulty: whether one calls the entity "abstract" or "ontologically ideal", the inference from *communicability across media* to *independent immaterial existence* remains an logical leap rather than a demonstrated conclusion.

A legal positivist might argue instead that what really exists are social facts such as how people recognize, use, and interpret legal rules. In this view “propositional content” is not an independent reality but a theoretical idea built on these social practices. For example, the meaning of a police officer’s gesture or a legal rule depends on social conventions, institutional roles, and shared practices. These are real empirical factors. By separating legal content from these factors, the argument risks treating something as independent when it actually depends on social reality.

Kaehler is aware of this positivist rejoinder and attempts to neutralize it by arguing that the “social fact thesis” which the most fundamental of positivism’s core commitments is in fact compatible with ontological ideality since social facts can themselves consist of or generate propositional content that lacks physical properties [1, p. 227]. This compatibility claim, however, is asserted rather than proven: Kaehler concedes that “a normative prescription does not need a factual basis in order to remain valid (unless the conditions of its validity are restricted in this way). The reason for this is that norms apply to all people, places and times that meet the conditions stated either in them or in the norms regulating their application” [4, p. 28]. It leaves open exactly the question, whether propositional content genuinely floats free of social practice or is simply an abstraction constructed from it, in the way that “the average taxpayer” is an abstraction from actual taxpayers rather than an independently existing entity.

### Sources of Law and Roman Law Example

The argument claims that if a written law is destroyed (for example, burned), the law itself still exists. This example is used to show that law is immaterial and persistent. Kaehler frames this feature technically as *persistence*, one of three properties he attributes to ontologically ideal norms alongside *ubiquity* (independence from a particular place) and *translatability* (the possibility of formulating the same norm in different languages). He develops the persistence claim further in a paper *The Attenuated Reality of Law*, where he explicitly notes that “Roman law, for instance, is still a subject of discussion despite its invalidity” [4, p. 41] and that legal norms once created exist independently of any particular utterance about them, and “the fact that legal norms have only an attenuated reality is especially important for fundamental norms, which define which laws are part of the legal system” [4, p. 39]. For this argument Vitaly Ogleznev and V.G. Bondarev assert that on Kaehler’s account “even immoral, fictitious, or long-forgotten norms continue to exist as ideal objects, since they possess the same formal characteristics: immateriality and propositional structure” [5, p. 45].

However, law survives such destruction because copies, memories, and institutional records still exist, and people continue to treat those rules as valid. If all copies and memories disappeared at the same time, and no legal practices remained, it would be much harder to say that the law still exists. So the persistence of law can be explained by stable institutional memory, not necessarily by the existence of abstract entities. Kaehler’s own psychologism directed argument runs the opposite risk here: he insists that even “even if everybody loses all recollection of a certain norm once it is adopted as law, and even if no remnants of its formulations are left in anyone’s brain, it can still be valid law” [1, p. 215]. But this qualification is telling and back in to precisely the material trace (the book) whose destruction was supposed to be irrelevant to the norm’s continued existence. If recovery from a surviving physical or institutional record is what makes it plausible to say the norm “still exists” then persistence is being explained through distributed material and social nature, not through an ontologically ideal realm operating independently of all implementations.

The same issue arises in the example of Roman law. The author says that Roman law is “still regarded as law” even though it is no longer in force. However, today we usually call Roman law “law” in a historical or conceptual sense, not as a currently existing legal system. Kaehler concedes that ontologically ideal entities such as legal norms possess only an “attenuated” or “weakened” form of reality, because the “law’s reality would become a concept that is neither suitable to understand law nor its importance in practice” [4, p. 36].

Kaehler’s own admission that ontological ideality yields at best a weakened sense of “reality” undercuts the stronger persistence claim advanced in the *Ratio Juris* paper, where considering propositional identity is treated as sufficient to say that law “continues to exist” in any strong sense. If a repealed statute enjoys the same ontological status as a merely imagined or never enacted one, the concept of “existence” being

defended does very little independent explanatory work: it cannot by itself distinguish law that is currently binding from law that is dead history or pure fiction.

The argument does not clearly distinguish between “this was law” and “this is law now” and this weakens the claim that law exists independently of social facts.

### ***Ontological Ideality versus Psychologism***

It is worth noting that Kaehler does not defend ontological ideality only against positivist reductionism to social facts. He also directs it against a rival non-materialist theory, psychologism, according to which legal norms are mental or “psychical” entities. He cites Karl Olivecrona's description of legal norms as psychical and Paul Amselek's claim that they “belong to our inner universe, to the world of our thoughts” [1, p. 215].

Kaehler rejects this view on two grounds. First, that establishing a norm's content does not require examining anyone's mental states, since a forgotten norm could later be recovered from a document. Second, that the inference from “law is not physical” to “law is psychical” commits a false dichotomy, because entities such as geometrical figures or algorithms are neither physical nor psychical. He invokes Gottlob Frege's postulate of a “third realm of thoughts” belonging neither to the external world nor to subjective representation, and Karl Popper's ontology distinguishing “world 1” (the physical), “world 2” (conscious experience) and “World 3” (objective ideas) [1, pp. 216].

This part of the argument is more successful as a critique of psychologism than as a positive proof of ontological ideality. Showing that “physical” and “psychical” do not exhaust the possible categories of being does not establish by itself that law occupies the specific third category modeled on Fregean thoughts or Popperian “world 3” objects. Frege's and Popper's ontologies were designed primarily to explain the objectivity of mathematical and logical truths, entities whose content does not vary with linguistic community, historical period or institutional recognition. Legal norms differ from numbers in exactly the respect a positivist would emphasize: a statute's content depends on enactment, can be validly changed by a subsequent legislature and derives its normative force from recognition within a particular institutional order, none of which is true of the number seven or another number.

Kaehler's own discussion of Hans Kelsen illustrates the difficulty from within legal theory itself. Kaehler shows that Kelsen's *Pure Theory of Law* fluctuates between describing legal validity as an “ideal existence” independent of empirical acts and tying the “objective ought” of a norm closely to the concrete act of will that created it, before ultimately embracing in his later work a “realist” monism that confines itself to the “humanly created positive real order” and appears to reject a separate transcendental “ideal order” altogether [1, pp. 217–218]. Kaehler reads this as an unresolved tension in Kelsen. But it can equally be read as evidence that even a theorist deeply committed to the separation of “is” and “ought” ultimately found it necessary to anchor legal validity in social and institutional acts rather than in a free standing ideal reality.

## **Discussion**

### ***Remarks on “Reasons” and Existence***

A central Lorenz Kaehler's thesis is that empirical facts are insufficient to establish the existence of law and that “reasons” are needed to classify propositional content of law, where these reasons are distinct from grounds of validity [1, p. 215, 219]. These reasons are said to be different from reasons that make law valid. It is unclear what kind of reasons these are. They could be: *conceptual* (how we use the word “law”), *moral* (what should count as law), *methodological* (how legal theory should classify things). Without this clarification the claim that reasons “shape the existence of law” becomes unclear and may confuse different issues such as existence and classification.

This uncertainty recurs throughout Kaehler's treatment of validity. Discussing Radbruch's famous argument that positivism can appeal only to power, and that “power cannot yield an ‘ought’”, Kaehler acknowledges that Radbruch's move from the inability to derive validity from empirical facts to the conclusion “that law must rest on a value” leaves questions unanswered about the precise relationship between values, validity and norms [1, p. 219; 3].

Kaehler nonetheless treats the argument as supporting ontological ideality on the ground that empirical facts do not themselves possess validity or invalidity, so that “once law is characterized as either valid or invalid, it cannot be reduced to empirical fact” [1, p. 219]. This inference again moves faster than the premises allow: validity might instead be understood as a status conferred by a rule of recognition operating within a social practice: a status that is genuinely not empirical fact itself, yet is wholly grounded on empirical, institutional facts for its content and application, without requiring an independent ontological register in which “validity” resides.

Also separating reasons for existence from reasons for validity does not fit well with many legal theories. For example, in Hart’s theory the rule of recognition both defines what counts as law and explains why it is valid. The same social practice explains both existence and authority in a clear way. The Lorenz Kaehler’s thesis criticizes fact-based approaches but does not clearly show why a more advanced account of social practices cannot already include the role of reasons as part of those practices. But if legal content is whatever a recognized law-making procedure enacts, then the reasons that “shape” that content are simply the reasons operative within the social and institutional practice of law-making – they need not be relocated to an independent ontological plane to do their explanatory work.

### ***Legal Interpretation and Ontology of Law Revisited***

The argument also claims that some legal outcomes already exist, even if no one has thought about them yet, because they logically follow from existing rules. It suggests that if most competent lawyers would reach the same conclusion, then law must depend not only on facts but also on reasons.

However, this idea has a problem. Saying what competent interpreters would decide is still a factual claim about how a certain group behaves under certain conditions. This agreement can be explained by shared language, professional training, and institutional standards – all of which are social facts. Therefore, “reasons” can be understood as part of these social practices, not as proof of a separate abstract level of law.

Kaehler’s broader arguments in *Ratio Juris* paper actually supplies materials that could be directed against his own ontological thesis on precisely this point. In distinguishing “legal ideality” from “ontological ideality” he defines the former as “the sum of all ideals contained within the law”, ideals that are, on his own account, internal to and dependent on a given legal system’s particular institutional history capable of diverging from morality [1, pp. 213]. If legal ideals of this kind are system, relative and historical in context, it becomes harder to see why the “ontological” level should be treated as an autonomous, non-relative field of propositional entities rather than as itself an example of the same social or institutional practices. Similarly Vitaly Ogleznev asserts that Kaehler’s “modal argument” concerning law’s claim to moral correctness secures only a logical, not an institutional necessity and therefore leaves open the possibility of a non-metaphysical explanation of normativity [6, pp. 95–97].

### **Conclusion**

Kaehler’s arguments against the strong and weak versions of the claim to correctness thesis are persuasive. It is indeed implausible to attribute to every legal system a necessary, self-referential claim either to full moral correctness or to the avoidance of extreme injustice.

Where the argument is least convincing is in the positive, ontological thesis that replaces the claim to correctness to the thesis that law is “ontologically ideal” in a sense modelled on numbers, Fregean thoughts or Popper’s “world 3”. The examples in support of this thesis (the persistence of Roman law as a topic of ongoing discussion, the survival of a forgotten norm recoverable from a book) are each compatible with and better explained by a more modest positivist account: law persists because copies, institutional memory and interpretive communities persist, not because propositional legal content occupies an independent immaterial field.

Kaehler’s own argumentation that ontologically ideal entities enjoy only an “attenuated reality” suggests that even the author is not fully committed to the strong metaphysical reading that his terminology invites. A revised formulation that asserts “ontological ideality” as a form of imaging the legal content and not exhausted by any single physical token, rather than as evidence of independent field of legal entities would remain everything valuable in Kaehler’s theory.

**Дидикин А.Б., ф.ғ.д., з.ғ.к., Мақсұт Нәрікбаев атындағы Университеттің Жоғары Заң Мектебінің Associate Professor, Орталық Азиядағы IVR Аймақтық филиалының жетекшісі (Қазақстан Республикасы, Астана қ.): Заң идеалды түрде бар ма? Лоренц Келердің заң онтологиясы қайта қаралды.**

Бұл жұмыстың тақырыбының өзектілігі Лоренц Келердің қазіргі құқық философиясындағы құқықтың идеалды өлшемі туралы жаңа құқықтық теориясының жеткіліксіз зерттелуіне байланысты. Жұмыста қарастырылған мәселе онтологиялық идеализм тезисінің философиялық негіздемесі болып табылады, оған сәйкес құқықтық нормалар олардың кез-келген физикалық немесе институционалдық ерекшеліктеріне тәуелсіз дерексіз пропозициялық субъектілер ретінде өмір сүреді. Зерттеу пәні-Келердің дұрыстығын, құқықтық идеалдылығын және онтологиялық идеалдылығын талап етуді Ажырататын дәлелдерін талдау, Оның Роберт Алексидің дискурстық теориялық есебін сынға алуымен бірге заңның идеалды өлшемі және Оның Густав Радбрухтың заңмен бекітілген заңсыздық формуласымен байланысы. Жұмыстың мақсаты – Келердің құқықтың идеалды өлшемі туралы онтологиялық дәлелін теориялық тұрғыдан қайта құру және сыни тұрғыдан бағалау құқықтық позитивизм көзқарас және басқа құқықтық философия тәсілдер. Тақырыптың жаңалығы Келердің еңбегін зерттейтін заманауи ғылыми еңбектерде сыни зерттеулердің болмауына байланысты Құқықтың Идеалды Өлшемі қандай? Виталий Оглезневтің бастамасымен онтологиялық тұрғыдан идеалды заңды тұлғалардың модальді және гносеологиялық мәртебесі, Сондай-ақ Келердің «онтологиялық идеализм» терминологиясын әлеуметтік фактілерге негізделген құқықтық дәлелдеу тұрғысынан қайта қарау қажеттілігі туралы осыған байланысты пікірталастар. Жұмыста қолданылатын зерттеу әдістері аналитикалық құқықтануға тән әдістер болып табылады, оның ішінде логикалық және концептуалды талдау әдістері, салыстырмалы құқықтық талдау және бастапқы философиялық дереккөздерді сыни мәтіндік түсіндіру. Жұмыстың негізгі тұжырымдары Келердің онтологиялық идеализм туралы тезисінің негізгі дәлелдерін ашып көрсету және олардың шектерін көрсету болып табылады: Келердің дұрыстығы туралы тезиске қарсылықтары негізінен нанымды, бірақ оның позитивті онтологиялық тезисі, сандар, Фрегиялық ойлар немесе Поппер Әлемі 3 сияқты дерексіз объектілерге негізделген, ол ұсынған мысалдармен жеткілікті түрде расталмаған және бұл мысалдар қарапайым позитивистік есеппен жақсы түсіндіріледі, оған сәйкес заң көшірмелер арқылы сақталады, Және институционалдық жады, және интерпретациялық қауымдастықтар пропозициялық құқықтық мазмұнның тәуелсіз материалдық емес саласы арқылы емес.

*Түйінді сөздер: құқық философиясы; құқықтық позитивизм; онтологиялық идеализм; дұрыстығына талап қою; құқықтық түсіндіру; А. Кэлер, Р. Алекси, Г. Радбрух, В. Оглезнев.*

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Актуальность темы данной статьи обусловлена недостаточным изучением новой теории права Лоренца Кэлера об идеальном измерении права в современной философии права. Проблема, рассматриваемая в статье, заключается в философском обосновании тезиса об онтологической идеальности, согласно которому правовые нормы существуют как абстрактные пропозициональные сущности, независимые от каких-либо их физических или институциональных характеристик. Предметом исследования является анализ аргументов Кэлера, в которых он выделяет тезис о притязании на корректность, правовую идеальность и онтологическую идеальность, а также его критику теоретико-дискурсивного подхода Роберта Алексиса к идеальному измерению права и его отношение к формуле Густава Радбруха о законном неправде. Цель работы – теоретически реконструировать и критически оценить онтологический аргумент Кэлера в пользу идеального измерения права с точки зрения юридического позитивизма и других подходов философии права. Новизна темы обусловлена отсутствием критических исследований в современных научных статьях, посвященных статье Кэлера «Что такое идеальное измерение права?». и связанная с этим дискуссия, инициированная Виталием Оглезневым о модальном и эпистемологическом статусе онтологически идеальных сущностей, а также о необходимости переосмысления кэлеровской терминологии «онтологической

идеальности” с точки зрения юридической аргументации, основанной на социальных фактах. В статье использованы методы исследования, характерные для аналитической юриспруденции, включая методы логического и концептуального анализа, сравнительно-правового анализа и критической текстологической интерпретации первоисточников. Основные выводы статьи заключаются в выявлении ключевых аргументов тезиса Кэлера об онтологической идеальности права и демонстрации их пределов: утверждается, что возражения Кэлера против тезиса о притязании на корректность в значительной степени убедительны, но его позитивный онтологический тезис основан на абстрактных объектах, таких как числа, мысли Фреге или “третий мир” Поппера не подкрепляется в достаточной мере примерами, которые он предлагает, и что эти примеры лучше объясняются скромным позитивистским подходом, согласно которому закон сохраняется благодаря копиям, институциональной памяти и интерпретирующим сообществам, а не через независимую нематериальную сферу пропозиционально содержания.

*Ключевые слова:* философия права; правовой позитивизм; онтологическая идеальность; и притязание на правильность; юридическая интерпретация; Л. Келер, Р. Алекси, Г. Радбрух, В. Оглезнев.

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