Fundamenta Juris Publici

Edited by Rolf Gröschner, Matthias Jestaedt and Anna-Bettina Kaiser

The *Fundamenta Juris Publici (FJP)* series is based on the discussion group on »Fundamentals of Public Law,« which was created in 2011 as a subsection of the Conference of German Professors of Constitutional Law. The volumes, one each year, document the paper given in the section meetings as well as both commentaries on this. The title of the series affirms the group's intention of concentrating on the »fundamentals« in their scholarly discussions: the foundations of ius publicum which are in the history of ideas, of the constitution and administration as well as the philosophies of law, the social sciences and political science, legal theory and dogmatics and the sociology of law.

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Reimer, Franz

Gerechtigkeit als Methodenfrage

Volume 9
2020. VII, 92 pages.

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Is justice an argument in the close-meshed contemporary legal order? Or does justice only apply to the extent the legislator wants to accomplish through its norms? Franz Reimer shows that even in strictest adherence to the law, justice is an omnipresent and indisputable question of methodology.

Di Fabio, Udo

Staat im Recht

Mit Kommentaren von Karl-Heinz Ladeur und Christoph Möllers

Volume 8
2020. VIII, 90 pages.

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This volume sharpens the perspective of contemporary constitutional theory by accentuating the institution of the state as a structural link between the social systems of law and politics. Against the background of a newly emerging multipolar and digital world order, the functional conditions of differentiated law are changing.

Somek, Alexander

Wissen des Rechts

Mit Kommentaren v. Andreas Funke u. Thomas Vesting

Volume 7
2018. VIII, 146 pages.

ISBN 9783161564895
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Positive law is the object of legal studies. But what is its subject? Is it legal scholarship qua mystical collective body? Is it the courts? Or is it, possibly, the law itself? The main thrust of this volume is to defend the claim that the law is not only the object of legal knowledge, but also its subject. The key to unlocking this somewhat mysterious claim is a theory of the sources of law. These can be understood as forms of judgement, for example in the form of the assertion that something does not work because it has never existed (customary law), or that something is not allowed because it has been decreed so (statutory law). No source can speak for itself, but needs to be assisted by others. As a result, atense relationship of mutual recognition and rejection arises between and among sources. When it comes to the practice of courts and legal scholarship, this relationship can be reconstructed in Hegelian terms as a dialectic of domination and servitude. The only way out of this dead-end is to extend the theory of legal sources to that of the legal relation. On this basis, legal validity can be understood as a construct we use to deal with reasonable moral disagreements.

Stolleis, Michael

Verfassungs(ge)schichten

Mit Kommentaren von Christoph Gusy u. Anna-Bettina Kaiser

Volume 6
2017. VII, 90 pages.

ISBN 9783161554049
sewn paper 14,00 €

How does constitutional history link in with the general political and cultural history of a country? Why is »constitutional history« necessary when considering topical questions of state and constitution? The speakers who addressed the »The Fundaments of Public Law« discussion group at the German Constitutional Law Professors Association's 2016 conference in Linz dealt with the current status, methodological problems, and future prospects of the branch of constitutional history. Their answers to these questions are, as always in the recording of history, shaped by the political and cultural context of the time. Not unintentionally do they interpret the history of constitutions. After all, in order to construct constitutional law theories, an historical basis is required. This means that constitutional history and theory are interdependent, with each in its own way accompanying the path to the present. As the guiding light of the nineteenth century's national state fades, so constitutional history too adapts, spreading into European territory and reflecting current global developments.

Lepsius, Oliver

Relationen: Plädoyer für eine bessere Rechtswissenschaft

mit einem Kommentar von Ino Augsberg

Volume 5
2016. VIII, 93 pages.

ISBN 9783161549144
sewn paper 14,00 €

As an object of legal scholarship, norms have a peculiar quality in that they reveal their meaning in a relational way only and not in absolute forms. This book demonstrates the value of a relational approach towards norms in the study of law and sets out a fitting research agenda.

Schönberger, Christoph

Der »German Approach«

Die deutsche Staatsrechtslehre im Wissenschaftsvergleich

Mit Beiträgen v. Atsushi Takada u. András Jakab

Volume 4
2015. VII, 121 pages.

ISBN 9783161542053
sewn paper 16,00 €

German constitutional scholarship is still influenced by the systematic »scientific law« tradition inherited from Friedrich Carl von Savigny. Analysing its peculiarities, Christoph Schönberger compares German scholarship to the completely different path taken in France following the French Revolution. He shows how the particular institutional shortcomings of a »latecomer« nation were offset by a prolific scholarship whose role has later been taken over by the Federal Constitutional Court. Today's challenges of Europeanisation and internationalisation call for a renewal of the »German approach".

Survey of contents

Morlok, Martin

Soziologie der Verfassung

mit Kommentaren v. Indra Spiecker gen. Döhmann u. Wolfgang Hoffmann-Riem

Volume 3
2014. IX, 143 pages.

ISBN 9783161536243
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It was not until recently that studies of »The Sociology of the Constitution« have begun. What is behind this is the guiding principle of the sociology of law: the clarification of the prerequisites and consequences of the law, in particular of its potential impact. There is another reason for this. Due to international integration, confining the concept of the constitution to the nation state has become questionable, and the fulfillment of constitutional functions is also being demanded for legislative contexts which are above statehood and for systems other than politics. In this work, Martin Morlok explores these issues. He argues that one of the basic functions of a constitution is to ensure the compatibility of the various subsystems. Domestically, the fulfillment of this constitutional function assumes the form of the so-called constitutionalization of the legal system. Furthermore, the author takes a look at various topics which are part of the sociology of the constitution.

Dreier, Horst

Säkularisierung und Sakralität

Zum Selbstverständnis des modernen Verfassungsstaates

Mit Kommentaren v. Christian Hillgruber u. Uwe Volkmann

Volume 2
2013. XIII, 151 pages.

ISBN 9783161529627
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The return of religion presents a challenge to constitutional law as well. The structures of the modern, free constitutional state with extensive religious and ideological freedom for its citizens and religious and ideological state neutrality do appear to be firmly joined. However the question is whether sacral elements have been admitted constitutively into the supposed completely secularized political community or are conceptually, institutionally or functionally inherent in it. This question can clearly be answered in the negative. The free constitutional state can and must administer the return of the religious secularly. The separation of politics and religion is and will continue to be the basis of the political community's freedom.

Grimm, Dieter

Das Öffentliche Recht vor der Frage nach seiner Identität

mit Kommentaren von Otto Depenheuer und Ewald Wiederin

Volume 1
2012. VII, 104 pages.

ISBN 9783161522543
sewn paper 12,00 €

Dieter Grimm describes the factors which led to the separation of public and private law and studies the changes which have occurred since then, in particular the changes in government functions and the erosion of statehood in the course of internationalization and globalization. In spite of this, the author still sees a criterion for identification in the connection to sovereignty which justifies retaining the category even although its boundaries have become blurred.