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Contact:

Dr. Julia Caroline Scherpe-Blessing, LL.M. (Cantab)

Program Director Private Law, Criminal Law, and Procedural Law

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Weber, Ruth Katharina

Der Begründungsstil von Conseil constitutionnel und Bundesverfassungsgericht

Eine vergleichende Analyse der Spruchpraxis

Volume 26
2019. XXI, 384 pages.

ISBN 9783161568947
cloth 99,00 €

ISBN 9783161568954
eBook PDF 99,00 €

Is the French Constitutional Council an authoritative voice, the »bouche de la Constitution«, and the German Federal Constitutional Court a sophisticated embodiment of a constitutionalized state? Ruth Weber explains the distinct functioning as well as the legal-cultural and institutional context of the two courts, which serves to promote a constructive dialogue among Europe's constitutional court judges.

Reactive Instruments of Social Governance

Ed. by Alexander Bruns and Masabumi Suzuki

Volume 25
2019. VIII, 187 pages.

ISBN 9783161576546
sewn paper 69,00 €

ISBN 9783161576553
eBook PDF 69,00 €

This volume contains contributions to a symposium of scholars from the Nagoya Law School and the Faculty of Law of the Albert-Ludwigs-Universität Freiburg on the topic »Reactive Instruments of Social Governance«. Together with volume 20 of the *Freiburger Rechtswissenschaftliche Abhandlungen* it completes the documentation of the results of a joint research project funded by the Nagoya Institute of Advanced Research (IAR) and the Freiburg Institute for Advanced Studies (FRIAS). With the social governance by law and the interplay between substantive legal standards and procedural enforcement the symposium addressed a topic of both outstanding academic and practical importance. In the pursuit of certain political or social goals a legal system is basically faced with two options: the exertion of influence on the behaviour of its citizens by means of preventive or reactive instruments. The relationship of preventive and reactive regulatory instruments is a key element for the analysis and understanding of a legal system.

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Civil Procedure and Civil Law

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Müller, Matthias

Vergeltungsstrafe und Gerechtigkeitsforschung

Versuch über die zweckrationale Legitimation der tatproportionalen Strafe

Volume 24
2019. XVII, 211 pages.

ISBN 9783161559891
cloth 74,00 €

ISBN 9783161559907
eBook PDF 74,00 €

Crimes affect the sense of justice and social interactivity. Matthias Müller makes these impairments visible on the basis of empirical research in just-world theory and shows in his criminal-theoretical considerations what the function of retributive punishment is in the maintenance of a liberal order. The interdisciplinary approach opens up a new perspective on retributive justice.



Boerger, Björn Bastian

Zur Schutzfunktion des Wirtschaftsstrafrechts

Gemeinsamkeiten und Unterschiede im Einsatz von Vermögensstrafrecht zum Schutz von Wirtschaftsunternehmen vor pflichtwidrigem Fehlverhalten ihrer Führungskräfte in Deutschland und den USA

Volume 23
2018. XXIX, 600 pages.

ISBN 9783161559426
cloth 119,00 €

ISBN 9783161562495
eBook PDF 119,00 €

Criminal breach of trust is both one of the most important and most controversial offences in German white collar law. A direct comparison to fraud cases in US property law, especially those involving mail/wire fraud and misapplication, reveals what seem to be reasonable results, whereas Germany still has a long way to go along its chosen »special« path.

Rapp, Julian Philipp

Das Äquivalenzprinzip im Privatversicherungsrecht

Volume 22
2019. XXIX, 445 pages.

ISBN 9783161567902
cloth 109,00 €

ISBN 9783161567919
eBook PDF 109,00 €

Risk-adjusted pricing of insurance products is known as the »equivalence principle of private insurance law« and one of the insurance industry's basic principles. Julian Philipp Rapp scrutinizes the existence, scope, and limits of this legal construct and develops general guidelines for private insurance law.

Thönissen, Stefan Frederic

Die Versicherung von Bonitätsrisiken

Volume 21
2018. XXIX, 433 pages.

ISBN 9783161558283
sewn paper 79,00 €

Protection against credit risks is of central importance to modern economies. But while such insurance protects creditors from debtors' insolvency, it also allows borrowers with poor ratings to extend their credit – which ultimately led to 2008's financial crisis.

Preventive Instruments of Social Governance

Ed. by Alexander Bruns and Masabumi Suzuki

Volume 20
2017. VIII, 195 pages.

ISBN 9783161557040
sewn paper 69,00 €

This volume contains contributions to a symposium of scholars from the Nagoya Law School and the Faculty of Law of the Albert-Ludwigs-Universität Freiburg on the topic »Preventive Instruments of Social Governance«. With the social governance by law and the interplay between substantive legal standards and procedural enforcement the Symposium addressed a topic of both outstanding academic and practical importance. The legal framework is an essential instrument in modern rule-of-law societies for defining standards of societal life. Of course, ways of governance by law may vary between legal systems and cultures, but in the analysis of legal governance instruments, the interplay between substantive standards and their procedural enforcement is always of central importance. In the pursuit of certain political or social goals, a legal system is basically faced with two options: the exertion of influence on the behaviour of its citizens either by means of preventive or of reactive instruments. The relationship of these two regulatory tools is a key element for the analysis and understanding of a legal system.

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Tradition und Innovation im Recht

Hrsg. v. Alexander Bruns

Volume 19
2017. IX, 335 pages.

ISBN 9783161557408
cloth 124,00 €

Technical innovations and developments in modern society naturally affect how law and legislation are shaped. The contributions by Japanese and German experts contained in this volume show that the law is by no means paralysed by tradition, but rather frequently opens itself to innovation, without automatically completely conceding traditional conceptions of justice.

Survey of contents

I. Grundlagen des Rechts

Kenichi Moriya: Innovation aus Tradition. Zur Aufdeckung der spezifisch juristischen Dimension bei Saburo Kurusu (Eine Studie über Kurusu Saburos zivilistische Werke (II)) – *Frank L. Schäfer*: Tradition und Innovation. Juristische Germanistik als Rechtsgeschichte von 1968 bis zur Jahrtausendwende

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V. Strafrecht

Mari Kanazawa: Entwicklung der Versuchslehre in Japan. Tradition und Innovation im Strafrecht – *Wolfgang Frisch*: Tradition und Innovation im Strafprozess. Von Beweisregeln über die freie zur strukturierten Beweiswürdigung

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Masahiro Takada: Einführung der Verbandsklage und traditionelles Zivilprozessrecht in Japan. Eine Betrachtung unter besonderer Berücksichtigung der zivilprozessualen Parteilehre – *Shigeru Tsuruta*: Tradition und Innovation im japanischen Zivilprozessrecht. Zur Notwendigkeit der Streitgenossenschaft bei Klagen von Miteigentümern – *Alexander Bruns*: Beweisregeln im modernen Zivilprozess?

Buchheim, Johannes

Actio, Anspruch, subjektives Recht

Eine aktionenrechtliche Rekonstruktion des Verwaltungsrechts

Volume 18
2017. XVII, 285 pages.

ISBN 9783161547966
cloth 79,00 €

Law, in order to be law, relies on being justiciable and enforceable. Insofar, it is procedure that makes the law. Nonetheless, procedure and remedies lead lives in the shadows, being often discarded as »mere technicalities«, strictly depending on what parties to a controversy »actually« owe one another. The present work takes on a different perspective in the context of German administrative law – with quite surprising results.

Ketterer, Lena

Zustimmungserfordernis beim Europäischen Stabilitätsmechanismus

Zugleich ein Beitrag zur Dogmatik der besonderen Gesetzesvorbehalte des Art. 23 Abs. 1 GG

Volume 17
2016. XVII, 493 pages.

ISBN 9783161546716
sewn paper 74,00 €

The European Stability Mechanism (ESM) is one of the key measures for overcoming the so-called Eurozone crisis and raises fundamental issues for European and constitutional law. Lena Ketterer places the development of the mechanism in the context of the European Union's bailout policy of the years 2010 to 2014 and analyzes the necessary change to the European treaties as well as the international ESM treaty with regard to the legal reservations of the »Europe article« written into the Basic Law for the Federal Republic of Germany (Art. 23 Para. 1 GG). Did the change to the European Union treaties and the international ESM treaty require a constitution-changing approval act with a two-thirds majority in both houses of the German parliament? In her discussion of this issue, Ketterer redefines the scope of the Europe article.

Braun, Johanna

Leitbilder im Recht

Volume 16
2015. XV, 247 pages.

ISBN 9783161539381
cloth 79,00 €

Guiding principles are all the rage! This observation not only raises questions about the meaning, the achievement potential and potential risks of guiding principles in law but rather diverts attention to a hitherto largely neglected aspect of this concept, namely its imagery.

Wachter, Matthias

Das Unrecht der versuchten Tat

Volume 15
2015. XV, 282 pages.

ISBN 9783161537851
sewn paper 74,00 €

Matthias Wachter aims at furthering in a systematic way the application of theories on the purpose of punishment in the field of attempted crime. Based on a liberal understanding of felony, he develops a concept of crime which can be of use for legitimizing the punishment of attempted criminal acts.

Globalisierung und Sozialstaatsprinzip

Ein japanisch-deutsches Symposium

Hrsg. v. Rolf Stürner u. Alexander Bruns

Volume 14
2014. IX, 357 pages.

ISBN 9783161534751
cloth 124,00 €

This volume contains the contributions to a symposium which in keeping with a long tradition of friendly relations between the faculties of law of the Albert-Ludwigs-Universität Freiburg and Osaka City University was held in Osaka between March 23 and 26, 2012.

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I. Die Veränderung der Rolle des Staates und die Wissenschaft des Öffentlichen Rechts *Thomas Würtenberger*: Die Wissenschaft des Öffentlichen Rechts angesichts des Wandels der Rolle des Staates - *Hiroshi Matsudo*: Die Wissenschaft des Öffentlichen Rechts angesichts des Wandels der Rolle des Staates **II. Der Einfluss völkerrechtlicher Rahmenbedingungen auf die Entwicklung sozialer staatlicher Strukturen** *Shogo Noda*: Wo ist nun eigentlich der Sozialstaat? - *Silja Vöneky*: Der Einfluss völkerrechtlicher Rahmenbedingungen auf die Entwicklung sozialer staatlicher Strukturen **III. Zivilrecht im Zeitalter des Interventionsstaates** *Kenichi Moriya*: Zivilrecht im Zeitalter der Ideologie. Eine Studie über Kuru Saburos zivilistische Werke (I) - *Uwe Blaurock*: Regulierung und Wettbewerb **IV. Das Gesellschaftsrecht und der Schutz der Arbeitnehmer** *Eiji Takahashi*: Der Schutz der Arbeitnehmer im Gesellschaftsrecht. Zur Harmonisierung von Eigentumsgarantie und Sozialstaatsprinzip im japanischen Gesellschaftsrecht - *Hanno Merkt*: Unternehmensmitbestimmung für ausländische Gesellschaften? **V. Refinanzierung durch Zession und Schutz des Schuldners** *Narunobu Fujii*: Finanzierung durch Globalsicherung an beweglichen Sachen bzw. Forderungen. Aktueller Zustand und Rechtsprobleme - *Rolf Stürner*: Refinanzierung durch Zession und Schutz des Schuldners **VI. Wollen wir einen klassisch-liberalen Zivilprozess oder eher einen sozialen?** *Masahiro Takada*: Die Theorie des sozialen Zivilprozesses und deren Bedeutung für den japanischen Zivilprozess - *Dieter Leipold*: Sozialer Zivilprozess, Prozessmaximen und Prozessgrundrechte im 21. Jahrhundert - *Alexander Bruns*: Gruppenklagen als Erscheinungsform eines sozialen Zivilprozesses in der Marktgesellschaft? **VII. Der global beeinflusste Arbeitsmarkt und arbeitsrechtliche Regulierung** *Itaru Nemoto*: Das Spannungsverhältnis zwischen den arbeitsrechtlichen Regelungen und der Flexibilität auf dem Arbeitsmarkt in Japan - *Sebastian Krebber*: Arbeitnehmerschutz im liberalisierten Welthandel als Problem der Mehrebenenregulierung **VIII. Die »soziale« bzw. »transnationale« Veränderung des Strafbildes?** *Mari Kanazawa*: Die japanische Strafvollzugsreform und die (Re-)Sozialisierung - *Wolfgang Frisch*: Die Sicherungsverwahrung auf dem Prüfstand transnationalen Rechts

Bartel, Louisa

Das Verbot der Rekonstruktion der Hauptverhandlung

Versuch einer Legitimation

Volume 13
2014. XXI, 381 pages.

ISBN 9783161525629
cloth 99,00 €

The »ban on reconstructing the trial« during an appeal on questions of law only in criminal proceedings, developed by the German Federal Supreme Court, has been subjected to criticism. Louisa Bartel shows the possibilities of a legal justification for this basic principle, but also points out its limitations.

Wilensmann, Javier

Freiheitsdistribution und Verantwortungsbegriff

Die Dogmatik des Defensivnotstands im Strafrecht

Volume 12
2014. XIII, 487 pages.

ISBN 9783161532900
sewn paper 74,00 €

In distinguishing among three forms of justification in situations of necessity (necessity *stricto sensu*, defensive necessity and self-defense), criminal law in Germany aims at reaching a high level of precision in the theory of justification. However the concept of defensive necessity has been dealt with in a rather unsystematic and fragmented form. Javier Wilensmann establishes the philosophical foundations, systematic position and legal prerequisites of this central institution of criminal law in Germany.

Tanneberger, Steffen

Die Sicherheitsverfassung

Eine systematische Darstellung der Rechtsprechung des Bundesverfassungsgerichts. Zugleich ein Beitrag zu einer induktiven Methodenlehre

Volume 11
2014. XVIII, 458 pages.

ISBN 9783161530104
cloth 99,00 €

The German Federal Constitutional Court has set the lawmakers who are in charge of providing security narrow limits for surveillance measures such as data preservation, online searches or telecommunications surveillance. Steffen Tanneberger endeavors to systematize the impressive judicial decisions of the past decade, thus listing the security provisions established by the Federal Constitutional Court.

Kümper, Boas

Risikoverteilung im Staatshaftungsrecht

am Beispiel amtshaftungsrechtlicher Gefahrvermeidungspflichten bei fehlerhafter Planung, Genehmigung und Aufsicht

Volume 10
2011. XIX, 380 pages.

ISBN 9783161510243
sewn paper 74,00 €

The decision regarding the government's liability for damages due to faulty administrative actions often causes considerable difficulties, since it concerns interdependent government and private spheres of responsibility. Making use of civil law structures, Boas Kümper analyzes central cases in government liability law and in this way establishes criteria for an appropriate allocation of damages.

Grundfragen des Strafzumessungsrechts aus deutscher und japanischer Sicht

Hrsg. v. Wolfgang Frisch

Volume 9
2011. XI, 259 pages.

ISBN 9783161516849
cloth 84,00 €

Sentencing law has been neglected by legal science for a long time, although it is of great importance for legal practice. This volume deals with basic issues of sentencing. It is based on the lectures given at an international symposium on sentencing law and the reality of punishment in Kyoto in September 2009. The articles show that there are common ideas of justice as well as differences due to legal culture.

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I. Normative Grundlagen der Strafzumessung

Wolfgang Frisch: Zur Bedeutung von Schuld, Gefährlichkeit und Prävention im Rahmen der Strafzumessung – *Takaaki Matsumiya*: Zur Bedeutung von Schuld, Gefährlichkeit und Prävention für die Strafzumessung

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Scherpe, Julia Caroline

Das Prinzip der Gefahrgemeinschaft im Privatversicherungsrecht

Volume 8
2011. XXVII, 391 pages.

ISBN 9783161508639
sewn paper 69,00 €

The existence of a legally relevant risk-bearing community of insured persons has always been highly controversial. Contrary to the prevailing individualistic trend, also followed in the 2008 reform of the German Insurance Contract Act, Julia Caroline Scherpe provides dogmatically substantiated evidence of the principle of the risk-bearing community and based on this develops guidelines for private insurance law.

Krausbeck, Matthias

Konfrontative Zeugenbefragung

Vorgaben des Art. 6 Abs. 3 lit. d EMRK für das deutsche Strafverfahren

Volume 7
2010. XIII, 359 pages.

ISBN 9783161506499
cloth 104,00 €

Dealing with the right to confrontation, Matthias Krausbeck gives a thorough scrutiny of a subject that is becoming increasingly significant in the law of criminal evidence. His analysis not only produces practical guidelines, it also provides fundamental insights into due process and the human rights theory.

Die Bedeutung der Rechtsdogmatik für die Rechtsentwicklung

Ein japanisch-deutsches Symposium

Hrsg. v. Rolf Stürner

Volume 6
2010. IX, 345 pages.

ISBN 9783161504402
cloth 109,00 €

This volume contains the contributions to a comparative Japanese-German symposium held at the University of Freiburg in 2009. The symposium was designed to discuss the significance of legal dogmatics in the various fields of law.

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Gleichbehandlungsgrundsatz und Treuepflicht im japanischen Gesellschaftsrecht

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Öffentlich-rechtliche und privatrechtliche Wirkungen der arbeitsrechtlichen Gesetzesvorschriften – Ursula Köbl: Die Bedeutung der Dogmatik im Sozialrecht

Bader, Mathis

Organmangel und Organverteilung

Volume 5
2010. XXVII, 544 pages.

ISBN 9783161502644
sewn paper 89,00 €

Each year, approximately 1,000 patients die in Germany although they could have been saved by an organ transplantation. In view of these dramatic figures, Mathis Bader studies the two most pressing questions from the perspective of constitutional law and legal policy: the lack of organs and the allocation of organs. The author begins by examining the strategies used to deal with the lack of organs and then advocates a change in the current German regulation pertaining to the removal of organs, which stipulates the prior consent by the donor or consent by the relatives, to the opt-out solution, which means consent by default if not declared otherwise. After giving a comprehensive, critical description of the German organ allocation system from an historical, medical and legal perspective as well as depicting its basis in constitutional law, he explores applicable and feasible allocation criteria, and in doing so includes international discussions of medical ethics.

Reinhold, Joachim

Unrechtszurechnung und der Abbruch rettender Verläufe

Volume 4
2009. X, 384 pages.

ISBN 9783161500251
cloth 99,00 €

The concept of imputation has always been a key term in the dogmatics of criminal law, and forms the basis for Joachim Reinhold's study of the structures of offences in legal theory, in which he expresses his criticism of existing theories and models, and presents his own point of view. In doing so, he provides a framework for his theoretical outline by analyzing various types of cases in which the characteristic feature is the prevention of chances for rescue. This results in a comprehensive reflection on causality, obligation, participation and omission as fundamental concepts of criminal law. Thus the author provides the means required to comprehend the existing strategies for solving the problems dealt with in the context of the prevention of chances for rescue and to develop solutions as well.

Bredemeier, Barbara

Kommunikative Verfahrenshandlungen im deutschen und europäischen Verwaltungsrecht

Zugleich ein Beitrag zur Europäisierung des Verwaltungsverfahrensrechts

Volume 3
2007. XXX, 709 pages.

ISBN 9783161493454
sewn paper 104,00 €

Does traditional administrative procedural law meet the requirements of the information society? In dealing with some communicative procedural acts, such as for example the right to a fair hearing, Barbara Bredemeier focuses on the current discussion. A detailed and practical analysis of German procedural law, including the theory of the consequences of errors, is followed by an examination of the guidelines set down in constitutional law. The author investigates whether or not statutory law in fact does adhere to these guidelines, and also determines that there is a need for change. She does a comparative study of the various European administrative laws, and as a result of this shows which changes have to be made. In conclusion, she makes proposals for amendments to the Law of Administrative Proceedings and the Rules of the Administrative Courts.

Schober, Katharina

Der Zweck im Verwaltungsrecht

Zur Finalisierung der Verwaltungsrechtsordnung am Beispiel der Leitvorschriften des Bundesumweltrechts

Volume 2
2007. XXIII, 299 pages.

ISBN 9783161493744
sewn paper 74,00 €

Purpose thinking is something administrative law has been familiar with all times. Katharina Schober therefore begins her examination by studying the historical development of the application of purposes in administrative law. In doing so, she shows that a purpose orientation in the law is unavoidable, yet problematical because of the vagueness of purposes which eases the judicial attachment of administration and judicature. Due to the increasing finalization of administrative law, the problem of the vagueness of purposes is more urgent today than it used to be. Lawmakers are increasingly trying to solve this problem by using guidelines, with which they can make the purpose for which they are striving more concrete. Katharina Schober examines the extent to which this approach to a solution has been successful in a comprehensive empirical analysis of the way in which 22 guidelines in environmental law are dealt with in legislation, judicial decisions and literature.

Hollerbach, Alexander

Jurisprudenz in Freiburg

Beiträge zur Geschichte der Rechtswissenschaftlichen Fakultät der Albert-Ludwigs-Universität

Volume 1
2007. XIV, 430 pages.

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Focusing on scholarly and historical aspects, Alexander Hollerbach provides the essential elements of a history of the faculty of law in Freiburg since the university was founded in 1457. The various articles focus on the 19th and 20th century, and in particular on individual legal subjects such as the philosophy of law, canon law and public law as well as the development during the Nazi period. In addition to cross-sections from general history and the history of specific subjects, a substantial part of the book consists of biographical studies of eminent scholars who were in Freiburg. This work also contains an extensive bibliography on the history of the faculty of law in Freiburg.

