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Spiecker gen. Döhmman, Indra

## Staatliche Entscheidungen unter Unsicherheit

2024. Approx. 600 pages.  
forthcoming in June

ISBN 9783161502781  
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Public decision making is increasingly facing conditions of uncertainty, especially if analyzed under a governance perspective. The law tends to look at decisions under uncertainty as an exception from decisions under certainty. However, so far the legal prerequisites for decisions under uncertainty and their monitoring have been little researched. Indra Spiecker has developed a theory, that does justice to the specific features of decisions under uncertainty and assures their constitutional legality. She employs an intra-disciplinary approach, including insights from neighboring sciences such as economy and behavioral sciences. This approach stresses the importance of the preparation of decision making, such as the collection and transfer of information and its end. Rules of uncertainty can guide public decisions makers in the evaluation of a lack of knowledge as a risk or a chance. Consequently, control norms change. The principle of proportionality in particular gains a new and increased importance. The author shows that strengthening the importance of procedure and the application of the uncertainty rules enables effective control under changing conditions of uncertainty.

Frau, Robert

## Rohstoffe und staatliches Handeln

### Versorgung mit und Schutz von natürlichen Ressourcen im Öffentlichen Recht

2024. Approx. 720 pages.  
forthcoming in July

ISBN 9783161589553  
cloth approx. 135,00 €

ISBN 9783161589560  
eBook PDF approx. 135,00 €

German manufacturers depend on both foreign and domestic natural resources. At the same time, these also need to be secured for future generations to enjoy. Robert Frau analyses conflicting priorities and public law instruments in the field of sustainable use of nature's wealth.

Reiling, Katharina

## Seeverwaltungsrecht als internationales Verwaltungsrecht

Volume 328  
2024. XXXV, 625 pages.

ISBN 9783161620942  
cloth 139,00 €

ISBN 9783161620959  
eBook PDF 139,00 €

Maritime shipping is the prime example of a globalised industry. In this volume, Katharina Reiling develops a concept for international administrative law based on the idea that because maritime shipping administration is conglomerate in its structure, its instruments and legal framework for coordinating international administrative activity must be orientated towards this. The work examines the organization, instruments used, administrative legitimacy as well as legal protection in international administration before going on to explore whether and to what extent legal principles of international administrative law could provide an alternative to constitutional thinking.

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Gesamtschau

Schaks, Nils

## Demokratische Dekonsolidierung

Eine rechtsdogmatische und rechtsvergleichende Untersuchung zum Schutz der liberalen Demokratie durch das Grundgesetz



Volume 327  
2023. XXI, 495 pages.

ISBN 9783161622380  
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eBook PDF 114,00 €

Liberal democracy is under pressure, and thus in this work Nils Schaks does a study of »democratic deconsolidation.« He studies the topic through a comparative law lens and concludes that the essential content guarantee (Art. 19 para. 2 German Basic Law) may prevent democratic deconsolidation. His example is freedom of assembly.

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Rauber, Jochen

## Kompensation durch Verfahren

### Zu Formen, Notwendigkeit und Grenzen der Prozeduralisierung im Verwaltungs- und Verfassungsrecht

Volume 326  
2024. XXXIV, 648 pages.

ISBN 9783161626999  
cloth 119,00 €

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eBook PDF

It is a common belief in public law scholarship that the procedural containment of state decisions compensates for the fact that substantive law requirements only weakly determine the content of the decision. Jochen Rauber examines this thesis and shows that the conditions it rests upon are more fragile than is often acknowledged.

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Buckler, Julius

## Infrastrukturen der Digitalisierung

### (Verfassungs)Rechtliche Rahmenbedingungen für Gigabitausbau und Verwaltungsdigitalisierung

Volume 325  
2023. XXII, 498 pages.

ISBN 9783161623202  
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Germany is still lagging behind when it comes to digitisation, with the federal state set-up proving to be the biggest challenge to the gigabit roll-out and the upgrading of digital administrative processes, which between them form the infrastructure of digitisation.

Pernice-Warnke, Silvia

## Demographischer Wandel, altersgruppenbezogene Partizipation und Generationengerechtigkeit

### Zur rechtlichen Ordnung einer alternden Gesellschaft

Volume 324  
2023. XXIX, 478 pages.

ISBN 9783161623677  
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As the ratio of old to young increases in German society, so does the elder generation's political influence, a situation which could lead to – at worst – irreversible decisions that are too focused on the present and contrary to younger generations' interests. Silvia Pernice-Warnke highlights the reform potential of age-related participation as a way to realize intergenerational justice from a legal perspective.

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Roth-Isigkeit, David

## Verfassungsordnung und Verwaltungsorganisation

Volume 323  
2023. XXI, 674 pages.

ISBN 9783161621468  
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eBook PDF

What does the constitution have to say about the organisation of state rule? David Roth-Isigkeit develops a comprehensive picture of which actors in the constitutional state have a say in the organisation of public administration and which constitutional standards they have to observe.

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Lange, Pia

## Staatliche Wohnraumvorsorge

Volume 322  
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Germany's basic law does not contain any fundamental social rights and thus no right to housing. Yet as Pia Lange demonstrates in this study, the social state principle implies that the state does indeed have a special responsibility to provide a reasonable amount of housing for the populace.

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 Resümee und Ausblick

Lennartz, Jannis

## Kanzlerdemokratie

Volume 321  
 2023. XV, 387 pages.

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 eBook PDF 114,00 €

The Federal Chancellor is the most important office of the German Federal Republic. Jannis Lennartz describes the constitutional basis of this form of governing in relation to the Bundestag, the Bundesrat and the Federal President.

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Einleitung: Das Regieren und seine Subjekte  
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Kuch, David

## Freiheitsentziehung

**Eine Reinterpretation der Freiheit der Person (Art. 2 Abs. 2 S. 2, 104 GG) unter besonderer Berücksichtigung präventiver Haft- und Unterbringungsformen**

Volume 320  
 2023. XXI, 528 pages.

ISBN 9783161619625  
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David Kuch offers a comprehensive reinterpretation of the right to personal freedom according to Germany's basic law. His approach connects legal history and social theory with constitutional doctrine. A critical examination of current forms of arrest or detention shows that all measures of preventive detention are in principle problematic.

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Baade, Björnstjern

## Wahrheit und Recht

**Störung und Schutz regulatorischer, asylrechtlicher und medialer Wahrheitsfindung**



Mohr Siebeck

Jus Publicum.  
 Beiträge zum öffentlichen Recht  
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Volume 319  
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Can we still find truth in a »post-truth« world? Be it the carcinogenicity of glyphosate, the credibility of an asylum seeker's account or disinformation in the media: the law can shield our quest for truth from distortive influences, creating a form of objectivity that avoids naivety but is pragmatic enough to hope for societal acceptance.

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Kießling, Andrea

## Das Recht der öffentlichen Gesundheit

### Krankheitsprävention und Gesundheitsförderung als Aufgaben des Staates

Volume 318  
2023. XXVIII, 462 pages.

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eBook PDF

Based on the discoveries made by public health research, Andrea Kießling analyzes the general framework in constitutional law for the prevention of disease and the promotion of health by the state. In this way she makes an attempt to systematize public health law, something which has not been done in Germany up to now.

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Wischmeyer, Thomas

## Informationssicherheit

Volume 317  
2023. XXI, 415 pages.

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Democratic societies depend on secure networks and information systems. Thomas Wischmeyer analyses the regulatory measures that have been taken at national and European level to this end, showing how the law can promote a stable and secure cyberspace.

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Geminn, Christian Ludwig

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### Grundrechte und Digitalisierung

Volume 316  
2023. XVIII, 714 pages.

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This work by Christian Ludwig Geminn examines the implications of digitization for selected fundamental rights and their concretizations in sub-constitutional law – especially in data protection law as a central regulatory matter regarding digitization – as well as conversely the controllability of digitization through fundamental rights and the legal system that they shape.

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Mohr Siebeck

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Beiträge zum öffentlichen Recht  
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von Weschpfennig, Armin

## Strukturen des Bergrechts

### Verfassungs- und verwaltungsdogmatische Grundfragen im Lichte des Eigentums-, Umwelt- und Ressourcenschutzes

Volume 315  
2022. XXV, 455 pages.

ISBN 9783161617706  
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eBook PDF 119,00 €

Armin von Weschpfennig sheds light on the structures that have developed throughout the history of German mining law, examines constitutional requirements and integrates the sometimes very specific regulatory system into the dogmatics of general administration law as well as planning and environmental law.

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Zusammenfassende Thesen



Kern, Markus

## Versorgungspflichten in der Europäischen Union

Mitgliedstaatliche Ursprünge und europäische Perspektiven im Telekommunikations-, Post-, Energie- und Eisenbahnbereich

Volume 314  
2022. XXXVII, 988 pages.

ISBN 9783161613944  
cloth 174,00 €

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eBook PDF 174,00 €

Is a separate model of public service provision currently being developed in the European Union? To find out, Markus Kern's comparative study goes back to the roots of Member States' public service concepts, mapping their origins and contrasting them with the EU's emerging provisions.

Straßburger, Benjamin

## Herrschaft als Auftrag

Der Verfassungsbegriff des demokratischen Konstitutionalismus und seine Bedeutung für die supranationale Integration Deutschlands

Volume 313  
2022. XVIII, 443 pages.

ISBN 9783161612947  
cloth 119,00 €

ISBN 9783161612954  
eBook PDF 119,00 €

There is increasing uncertainty concerning the type and form of integration of the European States under the umbrella of the European Union. In view of this, Benjamin Straßburger investigates the fundamental constitutional structures of sovereignty in a united Europe. In doing so, he focuses on determining the relationship between the Basic Law for the Federal Republic of Germany and EU primary law.

Weilert, A. Katarina

## Ressortforschung

Forschung zur Erfüllung öffentlicher Aufgaben unter besonderer Berücksichtigung des Bereichs staatlicher und unionsrechtlicher Gesundheitsverantwortung

Volume 312  
2022. XXXIV, 670 pages.

ISBN 9783161616716  
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eBook PDF

Departmental research enables the state to perform its tasks in accordance with the findings in scientific research. A. Katarina Weilert analyzes the conceptual and functional definition of departmental research and presents the characteristics and legal structures of this research in the Federal Republic of Germany and the European Union.

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 D. Institutionelle Kompetenz zur Errichtung von Ressortforschungseinrichtungen  
 E. Formen institutionalisierter (Gesundheits-) Ressortforschung auf Unionsebene  
 F. Beurteilungsspielraum (ressort-)forschungsgestützter Entscheidungen im Politikbereich der Gesundheitsvorsorge  
 G. Verbot der Legitimationsforschung  
 H. Systematisierung einer unionalen Ressortforschung  
**5. Teil: Fazit**

Fontana, Sina

## Integrationsrecht

Volume 311  
 2022. XXV, 494 pages.

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Integration law has established itself as an independent field of law within the legal order. With reference to the future development of the law as well, Sina Fontana puts this field of law into a coherent order and in doing so creates a normative basis for an integrative legal order.

Hilbert, Patrick

## Die Informationsfunktion von Parlamenten

Zugleich ein Beitrag zur demokratischen Bedeutung des Europäischen Parlaments

Volume 310  
 2022. XXXII, 497 pages.

ISBN 9783161609909  
 cloth 119,00 €

ISBN 9783161609916  
 eBook PDF 119,00 €

Parliaments are information actors. Based on this observation, Patrick Hilbert substantiates three core theses: Parliaments fulfil a specific informing function. The informing function is an original parliamentary function that complements the established parliamentary functions. Furthermore, the informing function of parliaments has an added democratic value, although the information activity itself does not generate democratic legitimacy.

Spitzlei, Thomas

## Nichtiges Verwaltungshandeln

Volume 309  
 2022. XXI, 571 pages.

ISBN 9783161616495  
 cloth 134,00 €

ISBN 9783161616556  
 eBook PDF 134,00 €

At what point is an administrative action rendered invalid through error? Thomas Spitzlei's form-related study of the prerequisites for void administrative action critically evaluates the allegedly certain knowledge of the nullity of administrative acts and indicates relevant directives.

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- E. Die Satzung
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- G. Der Kollegialbeschluss



4. Teil: Thesenartige Zusammenfassung

Froese, Judith

## Der Mensch in der Wirklichkeit des Rechts

### Zur normativen Erfassung des Individuums durch Kategorien und Gruppen

Volume 308  
2022. XVIII, 567 pages.

ISBN 9783161610271  
cloth 119,00 €

ISBN 9783161610288  
eBook PDF 119,00 €

How does law perceive the individual and form its own picture of »reality«? The legal system can hardly escape identity-political discourses and their linguistic emanations. This leads to the question of the achievements and limitations of legal conceptualizations. On the basis of a sociologically inspired theory of classifications, Judith Froese analyzes the extent to which law captures the human being categorically and in relation to groups.

Gillich, Ines

## Die integrierte Staatlichkeit der Länder

### Die deutschen Länder im Bundesstaat des Grundgesetzes und in der Europäischen Union

Volume 307  
2022. XXV, 487 pages.

ISBN 9783161613579  
cloth 114,00 €

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The principle of the federal state is one of the unchangeable constants of the German Basic Law. This makes it necessary to ascertain the content of the so-called »statehood« of the federal states (the »Länder«) with respect to the central state. Also, the European integration, gearing towards continuous change, repeatedly calls for re-measurements and re-evaluations of the guarantee of the federal principle. Ines Gillich develops a conceptual framework to break down the elements of statehood of the »Länder« and examines whether this concept is preserved or relativized in the process of European integration.

Lehner, Roman

## Souveränität im Bundesstaat und in der Europäischen Union

### Eine Untersuchung auf Grundlage des deutschen und schweizerischen Verfassungsrechts

Volume 306  
2021. XXI, 695 pages.

ISBN 9783161598333  
cloth 154,00 €

ISBN 9783161600135  
eBook PDF 154,00 €

Roman Lehner analyses the problem of sovereignty as it unfolds in the law of the European Union and those of Germany and Switzerland. He shows that even in consolidated federal states, entirely different constellations of sovereignty can be established. Based on these findings, the author presents his own model of conceptualising the European Union as a specific association of states combining their sovereignties while remaining sovereign.

Marxsen, Christian

## Völkerrechtsordnung und Völkerrechtsbruch

### Theorie und Praxis der Illegalität im ius contra bellum

Volume 305  
2021. XVIII, 577 pages.

ISBN 9783161607585  
cloth 144,00 €

ISBN 9783161607592  
eBook PDF

Focusing on the *ius contra bellum* – the prohibition on the use of force in international law – this study explores the phenomena of contestation of norms and of illegality. It develops a typology of illegality that provides the conceptual framework to better understand the partly constructive but also partly destructive effects of deviance in international law.

Markus, Till

## Rechtsvergleichung im Völkerrecht

Volume 304  
2021. XXII, 498 pages.

ISBN 9783161595684  
cloth 129,00 €

ISBN 9783161595691  
eBook PDF 129,00 €

This book investigates comparative law's relevance to the development of international law, particularly the way it functions when it comes to designing and applying international treaties, determining customary law, and ascertaining general principles. Based on a broad assessment of decision-making practices of various international courts as well as on selected works of the International Law Commission, the author lays the groundwork for a methodology for comparative analyses in international law. This study is based on the assumption that methodologically guided comparative legal analyses can contribute to promoting international law's coherence and effectiveness, mainly by increasing the rationality, clarity, and legitimacy of international treaty-making and judicial decision-taking.

Goldhammer, Michael

## Die Prognoseentscheidung im Öffentlichen Recht

Volume 303  
2021. XIV, 505 pages.

ISBN 9783161598340  
cloth 134,00 €

ISBN 9783161598357  
eBook PDF 134,00 €

Decisions governments make for the future are ambivalent. While they promise to create fresh opportunities and new chances, they also harbour risks and uncertainty. Michael Goldhammer shows how public law enables the various government bodies to bridge this gap by applying an appropriate understanding of interdisciplinarity.

Mangold, Anna Katharina

## Demokratische Inklusion durch Recht

### Antidiskriminierungsrecht als Ermöglichungsbedingung der demokratischen Begegnung von Freien und Gleichen

Volume 302  
2021. XIX, 486 pages.

ISBN 9783161552786  
cloth 129,00 €

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eBook PDF 129,00 €

Anti-discrimination law is a fiercely contested issue – for some it is a frontal assault on their private autonomy, for others long-yearned-for protection against discrimination. This apparent fundamental contradiction begs the question of how the law is legitimized. Anna Katharina Mangold's constitutional study argues that anti-discrimination law is vital to democratic inclusion.

Eichenhofer, Johannes

## e-Privacy

### Theorie und Dogmatik eines europäischen Privatheitsschutzes im Internet-Zeitalter



Volume 301  
2021. XXIII, 488 pages.

ISBN 9783161598807  
cloth 134,00 €

ISBN 9783161599828  
eBook PDF 134,00 €

In times of Big Data and ubiquitous computing, privacy appears as an anachronism. At the same time it is recognized as a fundamental right in European law and protected by secondary law. Johannes Eichenhofer's study explains the European attempt to protect »e-privacy« from a theoretical and doctrinal perspective.

Sauer, Heiko

## Öffentliches Reaktionsrecht

### Theorie und Dogmatik der Folgen hoheitlicher Rechtsverletzungen

Volume 300  
2021. XXXVII, 605 pages.

ISBN 9783161600814  
cloth 144,00 €

ISBN 9783161601194  
eBook PDF 144,00 €

The rule of law is challenged if public authority infringes on its legal obligations. It is thus of central importance which legal consequences such infringements have. These consequences are conceived of as legal reactions, and they are analyzed both from the perspective of legal theory and in their positive expressions in German and European constitutional and administrative law.

Broemel, Roland

## Interaktionszentrierte Grundrechtstheorie

The effectiveness of basic rights depends on their respective social context. Roland Broemel describes the ambivalent effects of social interactions on the practice of basic rights at national and European levels.

Volume 299  
2021. XIX, 621 pages.

ISBN 9783161558849  
cloth 149,00 €

ISBN 9783161558856  
eBook PDF 149,00 €

Farahat, Anuscheh

## Transnationale Solidaritätskonflikte

### Eine vergleichende Analyse verfassungsgerichtlicher Konfliktbearbeitung in der Eurokrise

Volume 298  
2021. XXII, 445 pages.

ISBN 9783161594717  
cloth 129,00 €

ISBN 9783161594724  
eBook PDF 129,00 €

Anuscheh Farahat suggests understanding legal disputes surrounding the Eurozone crisis as transnational solidarity conflicts. By developing a standard of reflexive democracy that allows constitutional courts to channel the destructive potential of such large-scale social conflicts, her study provides an approach that also helps to get to grips with current solidarity conflicts in the EU.

Wolff, Johanna

## Anreize im Recht

### Ein Beitrag zur Systembildung und Dogmatik im Öffentlichen Recht und darüber hinaus



Volume 297  
2021. XII, 253 pages.

ISBN 9783161595301  
cloth 94,00 €

ISBN 9783161595318  
eBook PDF 94,00 €

Incentives are omnipresent in law. However, dogmatic jurisprudence struggles with the legally non-binding content of the law. Johanna Wolff shows that splicing together the classical legal perspective with the control perspective provides a new view of incentives and overcomes the methodological dispute.

Boysen, Sigrid

## Die postkoloniale Konstellation

### Natürliche Ressourcen und das Völkerrecht der Moderne

Volume 296  
2021. XI, 382 pages.

ISBN 9783161575648  
cloth 114,00 €

ISBN 9783161575655  
eBook PDF 114,00 €

The struggle for distribution and control of natural resources has been at the heart of international legal developments over the last decades. Sigrid Boysen's study sets out to show that the idea of legitimacy international environmental law relies on is fundamentally flawed in relation to both genealogy and substance. What is usually described as a self-transcendence of the sovereign state, is in fact the darker side of the shifting world order during the twentieth century: the transformation of classical imperialism.

Krönke, Christoph

## Öffentliches Digitalwirtschaftsrecht

### Grundlagen – Herausforderungen und Konzepte – Perspektiven

Volume 295  
2020. XXVII, 733 pages.

ISBN 9783161595943  
cloth 194,00 €

ISBN 9783161595950  
eBook PDF 194,00 €

The digital economy raises fundamental challenges for the law: digital enterprises operate on digital platforms and networks, they use artificial intelligence, and they do not stop at national borders. With awareness of the opportunities and risks involved, Christoph Krönke develops the regulatory approaches, legal standards, and administrative elements that public economic law adopts, or should adopt, in order to cope with these challenges.

Finke, Jasper

## Krisen

### Ein Erklärungsversuch dynamischer Rechtsentwicklungen in Krisenzeiten

Volume 294  
2020. XV, 202 pages.

ISBN 9783161565571  
cloth 99,00 €

ISBN 9783161565588  
eBook PDF 99,00 €

Conceptualizing crises as part of the normality-exception dichotomy turns a blind eye to the long-term effects of crises, especially the impact they have on the meaning of existing legislation. Jasper Finke reveals why changing interpretations in response to a crisis are to be understood as a process that is inherent to law and not something that is imposed on law.

Grosche, Nils

## Die unsichtbare Hand des Staates

### Untersuchung zu Möglichkeiten der Gestaltung hoheitlicher Preisbeeinflussung im Recht



Volume 293  
2020. XI, 395 pages.

ISBN 9783161594946  
cloth 109,00 €

ISBN 9783161594953  
eBook PDF 109,00 €

Legal rules limiting state action can provoke stretching and bending of the respective rules by state authorities. Nils Grosche analyses this constructive dimension of state action and its theoretical as well as normative underpinnings.

Münkler, Laura

## Expertokratie

Zwischen Herrschaft kraft Wissens und politischem Dezisionismus

Volume 292  
2020. XVI, 749 pages.

ISBN 9783161596421  
cloth 159,00 €

ISBN 9783161596438  
eBook PDF 159,00 €

Democracy should be neither expertocratic nor populist. In order to be able to include expertise in sovereign decision-making without undermining democratic decision-making sovereignty, various institutional arrangements must be made.

Kulick, Andreas

## Horizontalwirkung im Vergleich

Ein Plädoyer für die Geltung der Grundrechte zwischen Privaten

Volume 291  
2020. XVIII, 480 pages.

ISBN 9783161594038  
cloth 129,00 €

ISBN 9783161594045  
eBook PDF 129,00 €

Recent developments reveal that many central questions about the horizontal effect of fundamental rights between private actors under German law remain unresolved. In light of this, Andreas Kulick calls for a modified approach of direct applicability of fundamental rights between private actors.

Peters, Birgit

## Legitimation durch Öffentlichkeitsbeteiligung?

Die Öffentlichkeitsbeteiligung am Verwaltungsverfahren unter dem Einfluss internationalen und europäischen Rechts

Volume 290  
2020. XXIV, 421 pages.

ISBN 9783161591600  
cloth 114,00 €

ISBN 9783161591617  
eBook PDF 114,00 €

Today, decisions about large infrastructure projects cannot be made without the participation of the public. This trend has its roots in modern international environmental law and has had a deep impact on national perceptions of public participation. Birgit Peters investigates how internationalised and Europeanised public participation affects the German constitutional perception of democracy and shows how international and European rights to participate in environmental decision-making could be incorporated into the German conception of representative democracy.

Thiemann, Christian

## Verluste im Steuerrecht

Verfassungs- und unionsrechtliche Bedingungen legislativer Gestaltung

Volume 289  
2020. XXIII, 579 pages.

ISBN 9783161549649  
cloth 139,00 €

ISBN 9783161549663  
eBook PDF 139,00 €

What are the framework conditions for the legislator when it comes to regulating tax losses? Christian Thiemann sets out the foundation and contents of ordinary tax law and identifies the legal constitutional and union requirements that are to be observed when forming such statutory provisions.

Barczak, Tristan

## Der nervöse Staat

### Ausnahmestand und Resilienz des Rechts in der Sicherheitsgesellschaft

Volume 288  
2nd unchanged edition with  
supplementum 2021.  
XXXI, 847 pages.

ISBN 9783161607455  
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The risks and threats to security currently looming over society have led to the constitutional institute of state of exception becoming a permanent one, where a jumpy legislator committed to the precautionary principle seeks to hinder exceptional circumstances. Tristan Barczak's multi-faceted and critical portrayal of the situation reveals that only a reliable rule of law fortified with constitutional resilience can calm things down.

Barczak, Tristan

## Der nervöse Staat

### Ausnahmestand und Resilienz des Rechts in der Sicherheitsgesellschaft

Volume 288  
2020. XXXI, 828 pages.

ISBN 9783161590849  
eBook PDF 174,00 €

The risks and threats to security currently looming over society have led to the constitutional institute of state of exception becoming a permanent one, where a jumpy legislator committed to the precautionary principle seeks to hinder exceptional circumstances. Tristan Barczak's multi-faceted and critical portrayal of the situation reveals that only a reliable rule of law fortified with constitutional resilience can calm things down.

Kleinlein, Thomas

## Grundrechtsföderalismus

### Eine vergleichende Studie zur Grundrechtsverwirklichung in Mehrebenen-Strukturen – Deutschland, USA und EU

Volume 287  
2020. XXXIX, 627 pages.

ISBN 9783161548161  
cloth 144,00 €

ISBN 9783161548673  
eBook PDF 144,00 €

Thomas Kleinlein examines the federal fundamental rights systems of Germany, the USA and the EU, comparing their varying potential for a dialogic and pluralistic judicature. His resulting suggestions could serve as guidelines for action in multilayered structures.

Peuker, Enrico

## Verfassungswandel durch Digitalisierung

### Digitale Souveränität als verfassungsrechtliches Leitbild



Mohr Siebeck

Jus Publicum.  
Beiträge zum öffentlichen Recht  
Last updated: 20/04/2024

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Volume 286  
2020. XX, 408 pages.

ISBN 9783161582103  
cloth 119,00 €

ISBN 9783161582110  
eBook PDF 119,00 €

Digitalization has transformed modern life and left no part of society untouched. Enrico Peuker analyzes the impact digitalization has and will have on Germany's Basic Law from the perspective of structural constitutional change. Focusing on constitutional aspects of digital infrastructures and the protection of fundamental rights in the digital age, he develops and concretises the constitutional guiding principle of digital sovereignty.

Kaiser, Anna-Bettina

## Ausnahmeverfassungsrecht

Volume 285  
2020. XV, 416 pages.

ISBN 9783161564123  
cloth 114,00 €

ISBN 9783161564130  
eBook PDF 114,00 €

The state of exception is one of the most ambitious as well as problematic concepts in modern constitutional law. At its heart lies a paradoxical aim: enabling the state to act effectively in existential crises while still limiting its powers. This makes it prone to abuse. The »Emergency Constitution« (»Ausnahmeverfassungsrecht«) of the German Basic Law tries to solve the paradox in a distinctive way that is defined by the peculiarities of German and French constitutional and political thought. Does it succeed? Anna-Bettina Kaiser analyses the strengths and weaknesses of the German Emergency Constitution. She reveals that the crucial test for any state of exception is how it affects fundamental rights.

Hestermeyer, Holger

## Eigenständigkeit und Homogenität in föderalen Systemen

Eine vergleichende Studie der föderalen Ordnungen der Bundesrepublik Deutschland, der Vereinigten Staaten und der Europäischen Union

Volume 284  
2019. XXXII, 532 pages.

ISBN 9783161583292  
cloth 134,00 €

ISBN 9783161583308  
eBook PDF 134,00 €

The tension between autonomy and homogeneity that lies at the very heart of federal systems is the topic of this study. Holger P. Hestermeyer compares the German, US and EU federal systems, including their historical contexts, and reveals the balance that has been struck in each between the two opposing tendencies.

Valta, Matthias

## Staatenbezogene Wirtschaftssanktionen zwischen Souveränität und Menschenrechten

Volume 283  
2019. XVII, 280 pages.

ISBN 9783161555268  
cloth 104,00 €

ISBN 9783161555275  
eBook PDF 104,00 €

In times of worldwide economic interdependence, economic sanctions are the instrument of choice to counter violations of international law by states, even if they affect the population first. International trade law, an increasing materialization of sovereignty and the non-intervention principle, the law of counter-measures, basic and human rights and proportionality provide the basis as well as limitations for their use.

Hofmann, Claudia

## Jenseits von Gleichheit

Gleichheitsorientierte Maßnahmen im internationalen, europäischen und nationalen Recht

Volume 282  
2019. XXI, 364 pages.

ISBN 9783161559914  
cloth 104,00 €

ISBN 9783161559921  
eBook PDF 104,00 €

Social inequality is one of the most pressing challenges of our times. So how does the law deal with the question of distributing scarce goods fairly? Claudia Hofmann's study of international, European, and German measures reveals that the focus is mainly on legal equality and equality of opportunity rather than substantial equality, which in turn generates further inequality. What can be done to break the seemingly never-ending cycle of equality and inequality?

Meinel, Florian

## Selbstorganisation des parlamentarischen Regierungssystems

Vergleichende Studien zu einem Verfassungsproblem der Bundesrepublik Deutschland

Volume 281  
2019. XIV, 481 pages.

ISBN 9783161562037  
cloth 134,00 €

ISBN 9783161562044  
eBook PDF 134,00 €

The autonomy of legislatures to determine their rules of procedure seems to be a long-established pattern of modern constitutional law. But the normative foundations and legal implications of this principle vary greatly between the different constitutional traditions. Florian Meinel's seminal study traces these differences back to conflicting concepts of parliamentary representation.

Lampert, Steffen

## Investitionsschutz im Zulassungsrecht

Private economic activity requires prior state approval. Because administration can have a varied effect on this, how the investment is protected deserves special attention. Steffen Lampert develops a regulatory system based on the evaluation and basic structures of, in particular, public economic, constitutional, and administrative law, which allows consistent control that safeguards freedom.

Volume 280  
2019. XXVIII, 556 pages.

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Wendel, Mattias

## Verwaltungsermessen als Mehrebenenproblem

Zur Verbundstruktur administrativer Entscheidungsspielräume am Beispiel des Migrations- und Regulierungsrechts

Volume 279  
2019. XXIX, 511 pages.

ISBN 9783161566875  
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Discretionary powers of the executive are a cornerstone of public law. While the classic discussion on such leeway usually relates to the horizontal division of powers within a nation state, Mattias Wendel focuses on the composite structure of administrative discretion within a multi-level system, exemplified with regard to migration law and regulation law.

Hong, Mathias

## Todesstrafenverbot und Folterverbot

Grundrechtliche Menschenwürdegehalte unter dem Grundgesetz

Volume 278  
2019. XIX, 274 pages.

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Taking human dignity seriously as a constitutional right means defining it inductively by specifying the essence of dignity contained in other fundamental rights. Mathias Hong investigates the rights not to be subjected to torture and to the death penalty as two such specific prohibitions.

The three volumes (JusPubl 276, 277, 278) can either be purchased separately or as a set.

Hong, Mathias

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### Von Alexys Prinzipien zum Modell der Grundsatznormen

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Absolute rights can be defended against Alexy's argument that weighing and balancing remain necessary in all cases of doubt. Rights can be balanced against counter-arguments but still claim to take precedence over them with sufficient certainty in all cases.

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Hong, Mathias

## Der Menschenwürdegehalt der Grundrechte

### Grundfragen, Entstehung und Rechtsprechung

Volume 276  
2019. XXXIX, 777 pages.

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The right to human dignity enshrined in Art. 1 Sec. 1 of Germany's Basic Law is also intended to protect the essence of dignity in every other fundamental right. Taking human dignity seriously as a constitutional right therefore means defining it inductively by specifying the essence of dignity contained in each of these rights.

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Kluckert, Sebastian

## Zuwendung und Gesetz

### insbesondere zu Grund und Grenzen der Außenwirkung von Haushaltsgesetz und Haushaltsplan

Volume 275  
2018. XXXIII, 611 pages.

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Sebastian Kluckert deciphers normative control potentialities for the allocation of subsidies and other grants. Going on the fact that budgetary law has largely remained the same since constitutionalism, he develops a modern theory that enables effective control of the budget.

Schwerdtfeger, Angela

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### Funktionsgerechte Organstruktur und Funktionsfähigkeit als Maßstäbe der Gewaltenteilung



Volume 274  
2018. XVI, 429 pages.

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Legislation is influenced by crises, which then impact on legislative procedure and the drafting of laws. Angela Schwerdtfeger examines how crisis phenomena are to be appraised in constitutional terms, and develops proposals for sound legislation, fitting for times of crisis and beyond.

Seckelmann, Margrit

## Evaluation und Recht

Strukturen, Prozesse und Legitimationsfragen staatlicher Wissensgewinnung durch (Wissenschafts-)Evaluationen

Volume 273  
2018. XXVII, 685 pages.

ISBN 9783161543906  
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How does the state gather information on the impact of its regulations and the effect and success of money granted? Does it have to do this at all? Margrit Seckelmann takes research policy as an example and looks into how evaluations are increasingly used as tools to prepare decisions. She points out which possible mismanagements are to be avoided while selecting indicators and which further Basic Law (Art. 5, Para. 3) aspects are to be observed.

Polzin, Monika

## Verfassungsidentität

Ein normatives Konzept des Grundgesetzes?

Volume 272  
2018. XVI, 251 pages.

ISBN 9783161556432  
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ISBN 9783161556449  
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Constitutional identity has become a prominent concept in German constitutional law and is something that since its famous Lisbon Judgement in 2009, the country's constitutional court has further developed. Monika Polzin traces its historical background and examines its validity from a legal and theoretical perspective in order to answer the main question of her study, namely whether constitutional identity is actually a normative concept of Germany's constitution.

Edenharter, Andrea

## Grundrechtsschutz in föderalen Mehrebenensystemen

Inspiration des EU-Grundrechtsschutzes durch die Grundrechtsentwicklung in Deutschland und der Schweiz sowie durch die EMRK

Volume 271  
2018. XL, 1088 pages.

ISBN 9783161560132  
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The protection of fundamental rights in federal systems must ensure that legal unity is maintained, while at the same time taking into consideration the participating entities' specific characteristics. With her analysis of German and Swiss fundamental rights protection, Andrea Edenharter develops starting points for further improving EU fundamental rights protection.

Marsch, Nikolaus

## Das europäische Datenschutzgrundrecht

### Grundlagen – Dimensionen – Verflechtungen

Volume 270  
2018. XXIV, 407 pages.

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Challenging the established interpretation that takes its lead from the German model of the right to informational self-determination, Nikolaus Marsch reconstructs Article 8 of the EU's Charter of Fundamental Rights as placing an obligation on the legislator to draft and enact adequate rules for protecting personal data.

Grimm, Dieter

## Verfassung und Privatrecht im 19. Jahrhundert

### Die Formationsphase

Volume 269  
2017. IX, 244 pages.

ISBN 9783161555572  
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ISBN 9783161556616  
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Constitutional history and the history of private law are usually dealt with separately, although this does not do their subjects justice. Constitutional and private law were closely connected even before the horizontal effect of fundamental rights was discovered in the twentieth century. However, their relationship changes depending on the context. The situation in France where the transition from monarchical absolutism and feudal society to bourgeois state and society was brought about by an already emancipated bourgeoisie through a revolutionary act differed from that in Germany where change emanated from the state and required a lengthy, legally-organised and evolutionary process. Bourgeois society's formative phase between revolution and restoration (1789 and 1820) furnishes a great variety of source material which could well provide the basis for analysing how the relationship between the two fields of law developed further.

Kreuter-Kirchhof, Charlotte

## Personales Eigentum im Wandel

Volume 268  
2017. XXI, 635 pages.

ISBN 9783161546464  
cloth 139,00 €

ISBN 9783161546853  
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The freedom to own personal property is guaranteed by Article 14 of the German Basic Law. Today, forms of ownership which are abstracted from the owned object or property owners themselves determine economic life. The question as to how this abstraction effects the personal substance of these forms of ownership and the legal protection of property thus arises.

Kempny, Simon

## Verwaltungskontrolle

### Zur Systematisierung der Mittel zur Sicherung administrativer Rationalität unter besonderer Berücksichtigung der Gerichte und der Rechnungshöfe

Volume 267  
2017. XXIV, 344 pages.

ISBN 9783161549458  
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ISBN 9783161552403  
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Where there is power, there needs to be supervision. Simon Kempny examines monitoring and audit of the administration in Germany and the European Union, systematising the forms they appear in from legal-theoretical, legal-dogmatic and administrative science perspectives.



Braun Binder, Nadja

## Rechtsangleichung in der EU im Bereich der direkten Steuern

### Analyse der Handlungsformen unter besonderer Berücksichtigung des Soft Law

Volume 266  
2017. XVIII, 254 pages.

ISBN 9783161552823  
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Nadja Braun Binder examines the types of action used to approximate legislation in the field of direct taxation within the European Union. She includes – inter alia – directives, European Court of Justice rulings, and state aid procedures as well as soft law instruments, and points out correlations between the various types of harmonisation.

Payandeh, Mehrdad

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Volume 265  
2017. XXII, 551 pages.

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Courts contribute to the interpretation and development of the law. Within the German legal system, however, there is no doctrine of binding precedent. Against this background, Mehrdad Payandeh develops a constitutional approach to the effects of judicial precedents and analyzes judicial law-making as a function of the third branch within the German constitutional order.

Hanschmann, Felix

## Staatliche Bildung und Erziehung

### Ganztagsschule, Bildungsstandards und selbständige Schule als Herausforderungen für das Verfassungs- und Schulrecht

Volume 264  
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The PISA study sent shock waves through the German education system in 2000 and led to dramatic changes. Taking sociological, educational and international relation aspects into consideration, Felix Hanschmann reveals the effects that changing to a system of all-day schools, implementing revised standards and extending schools' autonomy have had on constitutional and school laws in Germany.

Steinbach, Armin

## Rationale Gesetzgebung

Volume 263  
2017. XVI, 396 pages.

ISBN 9783161551529  
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ISBN 9783161552113  
eBook PDF

Do laws have to be rational? And what defines a rational law anyway? Rationality is neither a uniform nor a well-defined term. And neither is it exclusive to jurisprudence, having instead multidisciplinary origins. But what meaning does rationality reveal in each of its discipline-specific origins in relation to legislation? And do these extra-judicial attributes have a normative constitutional foundation? Armin Steinbach's study adopts an interdisciplinary perspective, and aims to highlight rationality's partly homogenous, partly contradictory attributes when it comes to law making.

Aust, Helmut Philipp

## Das Recht der globalen Stadt

### Grenzüberschreitende Dimensionen kommunaler Selbstverwaltung

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2017. XXIII, 479 pages.

ISBN 9783161547041  
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In times of rapid urbanization, municipalities have become increasingly relevant actors on the world stage, setting up networks, cooperating with international organisations and implementing international law. Helmut Philipp Aust analyses this development in light of constitutional and administrative law aspects as well as applicable international and EU law frameworks.

Lohse, Eva Julia

## Rechtsangleichungsprozesse in der Europäischen Union

### Instrumente, Funktionsmechanismen und Wirkparameter effektiver Harmonisierung

Volume 261  
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In this volume, the author asks fundamental questions about harmonisation processes in the EU by comparing six historic harmonising measures, both directives and from primary law. How does harmonisation work from the law's point of view? Which parameters might guarantee success? Are they located at EU or at national level? How should measures be designed in order to be successful? These questions are answered based on the paradigm of »legal transplants« as well as by using models from legal sociology and cultural theory.

Siehr, Angelika

## Das Recht am öffentlichen Raum

### Theorie des öffentlichen Raumes und die räumliche Dimension von Freiheit

Volume 260  
2016. XXXIV, 770 pages.

ISBN 9783161524509  
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Privatized inner-city areas raise the issue of the significance of public space as a condition of basic rights. Angelika Siehr explains why the citizens in a democracy have a basic right to public space, and why the loss of this and the erosion of civil rights is impending in semi-public space.

Kaufhold, Ann-Katrin

## Systemaufsicht

### Anforderungen an die Ausgestaltung einer Aufsicht zur Abwehr systemischer Risiken – entwickelt am Beispiel der Finanzaufsicht

Volume 259  
2016. XX, 433 pages.

ISBN 9783161543494  
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Systemic risks threaten the stability of social and natural systems, which are of vital importance to our general well-being, as e.g. the financial system and the climate system. Traditional legal instruments are, however, ineffective in preventing such risk. This became obvious most recently during the financial crisis of 2008/9.

Ann-Katrin Kaufhold specifies the characteristics and establishes a legal definition of systemic risk, distinguishing it from the traditional categories of danger and risk. She defines the standards, that a supervisory regime has to meet in order to be both effective and lawful. Systemic Supervision is thereby established as a new and unique form of supervision.

Berger, Ariane

## Die Ordnung der Aufgaben im Staat

### Zum Verfassungsgrundsatz getrennter Verwaltungsaufgaben

Volume 258  
2016. XIII, 370 pages.

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How a state arranges its tasks has, on one side, to be clear enough for it to be able to carry out its functions, and, on the other, flexible enough to allow administrative integration at a national, European and international level. Ariane Berger seeks the constitutional solution to this challenge.

Korte, Stefan

## Standortfaktor Öffentliches Recht

### Integration und Wettbewerb in föderalen Ordnungen am Beispiel der Gesetzgebung

Volume 257  
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Stefan Korte takes an economic competition model as a basis for showing that competition between states is possible if there is a competition order present in the superior law. After describing the five main components of the competition order, the author goes on to look at how they are projected on to European and German constitutional law.

Schaefer, Jan Philipp

## Die Umgestaltung des Verwaltungsrechts

### Kontroversen reformorientierter Verwaltungsrechtswissenschaft

Volume 256  
2016. XIV, 514 pages.

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The influence of supranational European law, the privatisation of public resources and the changing configuration of government impose major constraints on contemporary German administrative law. Jan Philipp Schäfer presents a structural survey in which »new public management« and other fundamental transformations are traced back to their ideological surroundings and founded in their legal ground-works.

Vosgerau, Ulrich

## Staatliche Gemeinschaft und Staatengemeinschaft

### Grundgesetz und Europäische Union im internationalen öffentlichen Recht der Gegenwart

Volume 255  
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Ulrich Vosgerau outlines a fundamental theory of international and European law in the spirit of the peoples' right to self-determination. He applies the concept of sovereignty of the people to the law of the European Union and the process of European integration and thus puts the rulings of the Federal Constitutional Court on barriers to integration in current German constitutional law in the context of today's international law.



Holzner, Thomas

## Konsens im Allgemeinen Verwaltungsrecht und in der Demokratietheorie

Untersuchungen zur Phänomenologie gruppenpluraler Konsensverwaltung unter besonderer Berücksichtigung des Sozialrechts als Referenzgebiet

Volume 254  
2016. XXXII, 652 pages.

ISBN 9783161543302  
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Thomas Holzner examines what various legal fields' consensual types of action and organisation have in common and establishes by way of their pluralistic consensus management classification their democratic legitimation and integration in general administrative law.

Simon, Sven

## Grenzen des Bundesverfassungsgerichts im europäischen Integrationsprozess

Volume 253  
2016. XVII, 352 pages.

ISBN 9783161541599  
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The European integration process has become the biggest institutional challenge facing Germany's Federal Constitutional Court. Sven Simon analyses the limits on the jurisdiction of the Court and outlines the constitutional framework for future decisions.

Kau, Marcel

## Rechtsharmonisierung

Untersuchung zur europäischen Finalität dargestellt am Beispiel des Grenzkontroll-, Ausländer- und Asylrechts

Volume 252  
2016. XXXIII, 772 pages.

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The development of a European area of justice depends heavily on legal harmonization a development which has become increasingly compelling since the 1980s. This progressive legal convergence has an equal effect on the present state of development and the future finality of the EU.

Schröder, Meinhard

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Meinhard Schröder analyzes the law of public permits and licenses. He systemizes the existing administrative law and examines the limitations the legislator is subjected to by constitutional and European law.



Reimer, Philipp

## Verfahrenstheorie

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Although procedural law is intertwined with law's very structure, there is still a constant tendency to dismiss it as being merely adjective law, a technical issue. To correct this misapprehension, the present volume evaluates which research questions can be – and are – pursued in procedural law study. Beyond doctrinal questions, juridical procedural law theory can put norms into empirical and other contexts and so function as a discipline of outside reflection and discipline-relay. The book explores this theoretical perspective, casting a new light on familiar as well as introducing innovative approaches.

Bäcker, Carsten

## Gerechtigkeit im Rechtsstaat

### Das Bundesverfassungsgericht an der Grenze des Grundgesetzes

Volume 249  
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In appealing to justice as a legal argument the Federal Constitutional Court confronts the limits of the law. On this issue Carsten Bäcker adopts a thoroughly critical position, arguing that the Court treats a question that goes well beyond the positive law, the question of the relation between legal certainty and justice.

Ingold, Albert

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Political opposition is the basis of conflict and contingency for democratic formation of political objectives. Albert Ingold presents the constitutional structural framework in which the rights and entitlements of opponents are found in equal measure: the right of oppositions.

Bäcker, Matthias

## Kriminalpräventionsrecht

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The police undertake ever further-reaching crime prevention measures in order to suppress complex criminal structures and minimize opportunities to commit crime. Matthias Bäcker examines how the law can facilitate these activities but at the same time can also delimit their scope to ensure that constitutional requirements are met.

Klement, Jan Henrik

## Wettbewerbsfreiheit

### Bausteine einer europäischen Grundrechtstheorie

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Can fundamental Rights lead the way of European Competition Policy or are they merely alien ingredients in a legal system which focusses on »free« and »undistorted« competition? Jan Henrik Klement understands fundamental rights as independent factors in the Discovery Procedure of law-making which mediates between the aims of freedom, justice and utility.

Spilker, Bettina

## Behördliche Amtsermittlung

Volume 245  
2015. XX, 460 pages.

ISBN 9783161538674  
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Whether a state functions properly or not is dependent on the general acceptance of its legal system. From that point of view, it is vital that the state treats citizens solicitously when carrying out its administrative duties. Bettina Spilker uncovers deficiencies in the system and in particular through the use of guidelines for official ex officio investigations and a codification of the exclusions of evidence codification in public law, seeks to make a beneficial contribution to the democratic constitutional order.

Towfigh, Emanuel V.

## Das Parteien-Paradox

### Ein Beitrag zur Bestimmung des Verhältnisses von Demokratie und Parteien

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2015. XV, 286 pages.

ISBN 9783161536977  
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Emanuel V. Towfigh analyses the ambivalent impact political parties have on democratic decision-making. The traditional institutional implementation of democracy by means of aggregation of interests through competition thus leads to a situation where, in terms of the legitimation of political decisions, we cannot do without parties, but we cannot do with them either. Only an alternative conceptualization of the institutions implementing democracy may hope to overcome this problem.

Schubert, Mathias

## Maritimes Infrastrukturrecht

Volume 243  
2015. XXIV, 409 pages.

ISBN 9783161535147  
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With the »energy turnaround,« the installation of infrastructure facilities in the maritime region has reached its culmination. Current planning law and project approval law are however scarcely able to cope adequately with the conflicts this has triggered. Mathias Schubert attempts to lay the foundation for a sustainable maritime infrastructure law.

Nolte, Jakob Julius

## Die Eigenart des verwaltungsgerichtlichen Rechtsschutzes

### Grund und Grenzen der Anwendung des Zivilprozessrechts im Verwaltungsprozess

Volume 242  
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How independent is administrative procedure law compared to the law of civil procedure? And what are the possibilities and boundaries for transferring the law of civil procedure to administrative procedure law? Jakob Nolte is not concerned with making an overall case for or against the application of the law of civil procedure; his concern is the dogmatically faultless systematization of the selective adoption of the law of civil procedure in administrative procedure law.

Kemmler, Iris

## Geldschulden im Öffentlichen Recht

Entstehung, Erlöschen und Verzinsung von Zahlungsansprüchen im Abgabenrecht, Sozialrecht und Allgemeinen Verwaltungsrecht

Volume 241  
2015. XXXIII, 829 pages.

ISBN 9783161536540  
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Unlike its private law, Germany's tax, social and administrative laws provide no coherent law of obligations. Iris Kemmler examines the fragmented rules regarding, for example, the statute of limitation, forfeiture of claims, the rules of offsetting and the possibility to relinquish a right. The author is able to show on the one hand that the existing system does contain some common rules, but that on the other there is obvious need to develop further legislation.

Wapler, Friederike

## Kinderrechte und Kindeswohl

Eine Untersuchung zum Status des Kindes im Öffentlichen Recht

Volume 240  
2015. XXIV, 631 pages.

ISBN 9783161533754  
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Whereas the legal position of the child in civil law has been dealt with in detail in various works, up to now there has been no large-scale studies on the status of the child in public law. Friederike Wapler deals with this issue on the level of constitutional law considering the references to international law as well as to the law on child and youth welfare. Added to this are her thoughts on philosophy of law as well as proposals from the standpoint of legal policy.

Hornung, Gerrit

## Grundrechtsinnovationen

Gerrit Hornung analyzes the development of written fundamental rights and their interpretation from a new perspective: innovation theory. Fundamental rights innovations occur as radical or incremental innovations. The author describes examples of innovations for constitutional amendments and the interpretation by constitutional courts. Based on the results of contemporary innovation research, it is possible to draw conclusions for the understanding of fundamental rights, their relationship to each other, the competence to create »new« fundamental rights and the value of an up-to-date catalogue of those rights in constitutional texts.

Volume 239  
2015. XXVII, 674 pages.

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Petersen, Niels

## Verhältnismäßigkeit als Rationalitätskontrolle

Eine rechtsempirische Studie verfassungsgerichtlicher Rechtsprechung zu den Freiheitsgrundrechten



Volume 238  
2015. XIV, 334 pages.  
ISBN 9783161535642  
eBook PDF

Balancing in constitutional adjudication is often understood as an instrument of judicial activism. In order to examine this thesis, this study undertakes an empirical analysis of the jurisprudence of the German and the South African Constitutional Court as well as the Canadian Supreme Court.

Nowrot, Karsten

## Das Republikprinzip in der Rechtsordnungsgemeinschaft

### Methodische Annäherungen an die Normalität eines Verfassungsprinzips

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What is a republic? Challenging the traditional perception of the republican principle as a concept of constitutional law that is distinctively awkward and difficult to approach, Karsten Nowrot identifies new suitable perspectives and methodological approaches aimed at specifying the normative content and structure of this legal principle. The book illustrates the current notable potential of the republic as a normative guiding idea for the emerging community of domestic, supranational as well as international law.

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Schladebach, Marcus

## Lufthoheit

### Kontinuität und Wandel

Volume 236  
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Marcus Schladebach investigates the current meaning and character of the principle of air sovereignty, identifies new regulations limiting and expanding it, whilst also systematizing its obvious tendency to change.

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Proelß, Alexander

## Bundesverfassungsgericht und überstaatliche Gerichtsbarkeit

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Volume 235  
2014. XVII, 342 pages.

From the perspective of German constitutional law, Alexander Proelß addresses the legal basis, scope and consequences of procedural mechanisms whose purpose is to prevent or solve potential conflicts of jurisdiction between the Federal Constitutional Court and international and supranational courts.

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Engels, Andreas

## Die Verfassungsgarantie kommunaler Selbstverwaltung

### Eine dogmatische Rekonstruktion

Volume 234  
2014. XXVIII, 682 pages.

ISBN 9783161533556  
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The image of municipal self-government has undergone considerable changes. The dogmatics of the constitutional guarantee in Article 28 Section 2 of the German Basic Law has not kept up with these changes. Using a dogmatic reconstruction, it is the author's goal to create a reliable basis for coming to terms with the challenges of municipal self-government.

Müller, Thomas

## Wettbewerb und Unionsverfassung

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Volume 233  
2014. XXXI, 681 pages.

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Thomas Müller deals with a crucial matter in the European Union: What role does competition play in European Union law? In view of the current social and economic crises, this issue is highly controversial. The author analyzes European Union law, in particular case law, which regards competition as a principle that should and can be balanced with other constitutional principles such as solidarity. The treatise proves that primary competition law can be interpreted in a way which ensures this balance.

Klatt, Matthias

## Die praktische Konkordanz von Kompetenzen

### Entwickelt anhand der Jurisdiktionskonflikte im europäischen Grundrechtsschutz

Volume 232  
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Conflicts of competences frequently arise in multi-level systems. Matthias Klatt analyses the conflicts in the system of fundamental rights protection in Europe. With the help of a new theory of formal principles, complementing Alexy's principles theory, the author develops a flexible, but nonetheless legal rather than political solution, forcefully supporting the idea of pluralistic constitutionalism.

Herbst, Tobias

## Gesetzgebungskompetenzen im Bundesstaat

### Eine Rekonstruktion der Rechtsprechung des Bundesverfassungsgerichts

Volume 231  
2014. XVI, 412 pages.

ISBN 9783161519963  
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ISBN 9783161530258  
eBook PDF 134,00 €

Tobias Herbst provides systematic access to the solution of conflicts of powers between the lawmakers of the federal government and those of the federal states on the basis of the judicial decisions made by the federal constitutional court.

Bickenbach, Christian

## Die Einschätzungsprärogative des Gesetzgebers

### Analyse einer Argumentationsfigur in der (Grundrechts-)Rechtsprechung des Bundesverfassungsgerichts



Volume 230  
2014. XXII, 572 pages.

ISBN 9783161528262  
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ISBN 9783161528873  
eBook PDF 149,00 €

This book deals with one of the Federal Constitutional Court's most important lines of reasoning. Christian Bickenbach explores issues pertaining to the separation of powers and the principle of democracy, constitutional interpretation, the impact of fundamental rights as well as to legislative procedure and focuses on the temporal dimension of each government activity.

Thiele, Alexander

## Finanzaufsicht

### Der Staat und die Finanzmärkte

Volume 229  
2014. XVII, 620 pages.

ISBN 9783161529221  
cloth 139,00 €

ISBN 9783161529238  
eBook PDF 139,00 €

The financial crisis has once again brought up the question of the role of the state in a market economy and especially in what way the state should interfere with the so-called financial markets. This study examines how potential reforms of the national supervisory structure are determined by the Basic Law.

Saurer, Johannes

## Der Einzelne im europäischen Verwaltungsrecht

### Die institutionelle Ausdifferenzierung der Verwaltungsorganisation der Europäischen Union in individueller Perspektive

Volume 228  
2014. XXII, 550 pages.

ISBN 9783161519581  
cloth 139,00 €

ISBN 9783161524790  
eBook PDF 139,00 €

Johannes Saurer contrasts the traditional institutional access to the European Union's administrative structures, which is related to organization, with an individual perspective. In doing so, he shows how the concept of the »individual« is a normative construction which brings together numerous socially and economically very different actors.

Augsberg, Ino

## Informationsverwaltungsrecht

### Zur kognitiven Dimension der rechtlichen Steuerung von Verwaltungsentscheidungen

Volume 227  
2014. XI, 351 pages.

ISBN 9783161528101  
cloth 114,00 €

ISBN 9783161528880  
eBook PDF 114,00 €

The law of information administration is the term used for administrative law under the conditions of the globalized knowledge-based society. It is a law which adapts itself to the alternate influencing of its normative and its cognitive principles and which takes an active part in shaping this process.

Fraenkel-Haeberle, Cristina

## Die Universität im Mehrebenensystem

### Modernisierungsansätze in Deutschland, Italien und Österreich



Volume 226  
2014. XIX, 455 pages.  
ISBN 9783161525780  
cloth 129,00 €  
ISBN 9783161526060  
eBook PDF 129,00 €

Since they originated in the Middle Ages, universities have been in a permanent state of change. Cristina Fraenkel-Haeberle describes the origins of institutions of higher education as well as their current developments using the keywords internationalization and Bologna Process, the concept of competition and the differentiation in the programs offered by universities as well as the replacement of the university controlled by tenured faculty with concepts of public management instead.

Ismer, Roland

## Klimaschutz als Rechtsproblem

Steuerung durch Preisinstrumente vor dem Hintergrund einer parallelen Evolution von Klimaschutzregimes verschiedener Staaten

Volume 225  
2014. XXX, 629 pages.  
ISBN 9783161531668  
cloth 159,00 €  
ISBN 9783161531675  
eBook PDF 159,00 €

Climate change requires financial incentives for reducing greenhouse gas emissions. The current discussion focuses on the instruments used for this, the EU Emissions Trading Scheme, electricity taxation as support mechanisms for electricity from renewable energy sources and from combined heat and power generation. Taking a legal perspective, Roland Ismer shows the scope for improvement in a domestic and an international context.

Palm, Ulrich

## Person im Ertragsteuerrecht

Volume 224  
2013. XXIV, 684 pages.  
ISBN 9783161520372  
cloth 159,00 €  
ISBN 9783161523083  
eBook PDF 159,00 €

The legal person is a concept which has been subject to theoretical debate for centuries. According to the German Federal Constitutional Court, this term justifies the German dualism of opacity and transparent taxation, although its legal content is still being questioned today. Ulrich Palm analyzes the legal subject and deconstructs the legal person. He also examines the status of human beings as persons within the law, basing this on developments in the history of ideas. Using this, he develops an answer to the question of who is qualified as a subject within the meaning of the constitutional ability-to-pay principle. He concludes his critique with an appeal to free the law from the topos of the legal person and to abandon the dualism of opacity and transparent taxation.

Germelmann, Claas Friedrich

## Kultur und staatliches Handeln

Grundlagen eines öffentlichen Kulturrechts in Deutschland

Volume 223  
2013. XL, 834 pages.  
ISBN 9783161524097  
cloth 179,00 €  
ISBN 9783161524103  
eBook PDF 179,00 €

Culture plays an important role in the definition and perception of the German state. Nevertheless, both constitutional and administrative law need to define the limits for governmental action in this field. Claas Friedrich Germelmann draws up a comprehensive study of German cultural law which has changed considerably during the past decades.

Hartmann, Bernd J.

## Öffentliches Haftungsrecht

Ökonomisierung – Europäisierung – Dogmatisierung

Volume 222  
2013. XIX, 484 pages.

ISBN 9783161525254  
cloth 144,00 €

ISBN 9783161525261  
eBook PDF

State liability law is a notorious branch of law, chaotic and fragmented, a »patchwork rug« and a »shambles« at the same time. This treatise proposes a new legal doctrine which attempts to systematize public liability law in an economically substantiated way, inspired by EU law, and based on the demand for unification.

Glaser, Andreas

## Die Entwicklung des Europäischen Verwaltungsrechts aus der Perspektive der Handlungsformenlehre

Volume 221  
2013. XXXI, 700 pages.

ISBN 9783161522604  
cloth 174,00 €

ISBN 9783161524851  
eBook PDF 174,00 €

The development of European Administrative Law is reflected in the changes of the administrative instruments both in the Member States and on the EU level. In this respect, the European composite administration is a pivotal topic of current legal issues and future lawmaking plans.

Lenski, Sophie-Charlotte

## Öffentliches Kulturrecht

### Materielle und immaterielle Kulturwerke zwischen Schutz, Förderung und Wertschöpfung

Volume 220  
2013. XXVII, 548 pages.

ISBN 9783161520440  
cloth 134,00 €

ISBN 9783161523076  
eBook PDF 134,00 €

How does a cultural life which is shaped decisively by public cultural institutions behave towards the paradigm of artistic and cultural freedom which is embedded in the Basic Law? Sophie-Charlotte Lenski reconstructs a holistic law of cultural administration which focuses on the sign function of cultural heritage as a central distinguishing feature.

Fetzer, Thomas

## Staat und Wettbewerb in dynamischen Märkten

### Eine juristisch-ökonomische Untersuchung unter besonderer Berücksichtigung der sektorspezifischen Telekommunikationsregulierung in Deutschland und den USA

Volume 219  
2013. XX, 465 pages.

ISBN 9783161503764  
cloth 139,00 €

ISBN 9783161523502  
eBook PDF 139,00 €

This book outlines parameters for the regulation of markets based on an historical, economic and legal analysis of the sector-specific regulation of the telecommunications sector in Europe and the U.S. These parameters are also used to build a general framework for the regulation of dynamic markets, especially markets which are highly technology-driven.

Drüen, Klaus-Dieter

## Die Indienstnahme Privater für den Vollzug von Steuergesetzen

Volume 218  
2012. XX, 450 pages.

ISBN 9783161503405  
cloth 129,00 €

ISBN 9783161524202  
eBook PDF 129,00 €

The government often uses private persons and infrastructures for public purposes. Using the enforcement of tax laws as an example, the author of this work studies the requirements under which this is compliant with constitutional law.

Kielmansegg, Sebastian Graf von

## Grundrechte im Näheverhältnis

Eine Untersuchung zur Dogmatik des Sonderstatusverhältnisses

Volume 217  
2012. XXIX, 606 pages.

ISBN 9783161522475  
cloth 159,00 €

ISBN 9783161523069  
eBook PDF 159,00 €

Conflicts within public institutions have always been a difficult terrain for fundamental rights doctrine. How, and to what extent, is the concept of liberty affected by the fact that the person in question is a state servant or a user or inmate of a public institution? The balance between individual liberty and institutional integration eludes doctrinal routine and is one of the underestimated challenges of constitutional law.

Schiedermaier, Stephanie

## Der Schutz des Privaten als internationales Grundrecht

Privacy is endangered in many, increasingly international ways, and the only suitable answer to this is to find international solutions. Stephanie Schiedermaier studies the legal basis for the protection of privacy in international law and provides the first systematic analysis of international legal decisions for the protection of privacy.

Volume 216  
2012. XIII, 460 pages.

ISBN 9783161519369  
cloth 119,00 €

ISBN 9783161521645  
eBook PDF 119,00 €

Hanschel, Dirk

## Konfliktlösung im Bundesstaat

Die Lösung föderaler Kompetenz-, Finanz- und Territorialkonflikte in Deutschland, den USA und der Schweiz

Volume 215  
2012. XXIII, 723 pages.

ISBN 9783161507588  
cloth 174,00 €

ISBN 9783161521935  
eBook PDF 174,00 €

Based on the question of how Germany as a federal state solves its inherent conflicts in comparison to the United States and Switzerland, Dirk Hanschel examines the allocation of legal power as well as financial and territorial authority, hence following the rationale of recent reform approaches.

Jungheim, Stephanie

## Medienordnung und Wettbewerbsrecht im Zeitalter der Digitalisierung und Globalisierung



Volume 214  
2012. XXI, 761 pages.

ISBN 9783161509285  
cloth 184,00 €

ISBN 9783161520174  
eBook PDF 184,00 €

How is it possible to develop German media statutes which keep pace with technological changes and globalization and ensure media diversity? Stephanie Jungheim approaches this question from the perspective of constitutional law, creating leeway for legislative concepts and showing the need for change if this is applied to existing media statutes.

**Krausnick, Daniel**

## Staat und Hochschule im Gewährleistungsstaat

For some time now, the relationship between the state and the universities has been modelled on the enabling and guarantor state. This has led to considerable changes in higher education policies and in the law which applies to universities. Daniel Krausnick shows the constitutional boundaries of this development.

Volume 213  
2012. XX, 548 pages.

ISBN 9783161507380  
cloth 144,00 €

ISBN 9783161519413  
eBook PDF 144,00 €

**Dann, Philipp**

## Entwicklungsverwaltungsrecht

Theorie und Dogmatik des Rechts der Entwicklungszusammenarbeit, untersucht am Beispiel der Weltbank, der EU und der Bundesrepublik Deutschland

Volume 212  
2012. XIX, 450 pages.

ISBN 9783161507175  
cloth 119,00 €

ISBN 9783161519406  
eBook PDF 119,00 €

Philipp Dann defines the field of the law of development cooperation, analyzes its origins and specifies its principles as well as its instruments. In the context of the discussion on global governance and international administrative law, he provides a clear outline of a new branch of law.

**Breuer, Marten**

## Staatshaftung für judikatives Unrecht

Eine Untersuchung zum deutschen Recht, zum Europa- und Völkerrecht

Volume 211  
2011. XXVIII, 726 pages.

ISBN 9783161505355  
cloth 159,00 €

ISBN 9783161517624  
eBook PDF 159,00 €

The issue of state liability for judicial wrongs has attracted much attention due to the ECJ's judgment in the Köbler case. The need for a dogmatic explanatory model is not restricted to European law but concerns national (constitutional) law and public international law in equal measure.

**Dietz, Andreas**

## Das Primat der Politik in kaiserlicher Armee, Reichswehr, Wehrmacht und Bundeswehr

Rechtliche Sicherungen der Entscheidungsgewalt über Krieg und Frieden zwischen Politik und Militär

Volume 210  
2011. XXVII, 780 pages.

ISBN 9783161508653  
cloth 159,00 €

ISBN 9783161518546  
eBook PDF 159,00 €

In accordance with the primacy of politics, the armed forces are subordinate to the civil government and legitimated by parliament on the basis of a national security concept. Deficiencies in these safeguards can cause fatal involvements in wars such as the German Empire's in World War One, the Third Reich's in World War Two and even the out-of-area operations of the German armed forces. With a summary in English.

Windoffer, Alexander

## Verfahren der Folgenabschätzung als Instrument zur rechtlichen Sicherung von Nachhaltigkeit

Volume 209  
2011. XXI, 739 pages.

ISBN 9783161508455  
cloth 159,00 €

ISBN 9783161517617  
eBook PDF 159,00 €

Based on the requirements of constitutional law and administrative sciences as well as an analysis of the current status of applicable law, Alexander Windoffer shows the regulatory elements of a general code of procedure for the governance of legislative and administrative impact assessment whose purpose is the concept of sustainable development.

Meyer, Stephan

## Juristische Geltung als Verbindlichkeit

Volume 208  
2011. XV, 380 pages.

ISBN 9783161507311  
cloth 114,00 €

ISBN 9783161512896  
eBook PDF 114,00 €

Stephan Meyer demonstrates the indispensability of the objectively obligating character of law for the predicate of legal validity to fulfil its pragmatic function. He analyzes concepts of obligation in Anglo-American and German political philosophy and jurisprudence and presents a new approach to the issue of legal obligation.

Bast, Jürgen

## Aufenthaltsrecht und Migrationssteuerung

Volume 207  
2011. XIV, 340 pages.

ISBN 9783161507267  
cloth 114,00 €

ISBN 9783161512889  
eBook PDF

Jürgen Bast provides a fresh reading of current immigration law in Germany. His study on the legal framework for the control of migration for employment, on family grounds, or for protection purposes, departs from traditional patterns of police law in favour of a more modern understanding of regulating migration processes by means of law.

Desens, Marc

## Bindung der Finanzverwaltung an die Rechtsprechung

### Bedingungen und Grenzen für Nichtanwendungserlasse

Volume 206  
2011. XXVI, 563 pages.

ISBN 9783161505607  
cloth 149,00 €

ISBN 9783161512872  
eBook PDF 149,00 €

By means of non-application decrees, the administration rules that judicial decisions should not be applicable. This has an impact on one of the key issues in jurisprudence, the effect of judicial precedents on the relationship between the state and its citizens as well as between the administration and judicial decisions. Marc Desens analyzes this phenomenon and shows the prerequisites and limits.

Thiel, Markus

## Die »Entgrenzung« der Gefahrenabwehr

### Grundfragen von Freiheit und Sicherheit im Zeitalter der Globalisierung

Volume 205  
2011. XIV, 568 pages.

ISBN 9783161505768  
cloth 144,00 €

ISBN 9783161512865  
eBook PDF 144,00 €

Does the current reorganization of the legal »security architecture« transgress the boundaries established by the constitution? With reference to recent decisions by the German Federal Constitutional Court, Markus Thiel questions whether or not the increasing »de-limitation« of police activities or the activities of the agencies for the protection of the constitution, in particular the expansion of their powers, is in accordance with the Basic Law.

Brosius-Gersdorf, Frauke

## Demografischer Wandel und Familienförderung

Volume 204  
2011. XXIX, 806 pages.

ISBN 9783161503917  
cloth 174,00 €

ISBN 9783161512858  
eBook PDF 174,00 €

Is the government allowed to offer incentives to increase the birth rate, and which tax goals and instruments must be used to do so? Frauke Brosius-Gersdorf shows that only a family policy which is equality oriented can provide effective incentives for having children and develops proposals for a new system of family support.

Aulehner, Josef

## Grundrechte und Gesetzgebung

Volume 203  
2011. XXVI, 523 pages.

ISBN 9783161512841  
eBook PDF 139,00 €

Josef Aulehner defines the one-dimensional and bipolar relationship between the state and a holder of fundamental rights, which up to now had been at the center of all the discussions, as an exceptional case which has been simplified too much and sees it as being only of marginal interest.

von Lewinski, Kai

## Öffentlichrechtliche Insolvenz und Staatsbankrott

### Rechtliche Bewältigung finanzieller Krisen der öffentlichen Hand

Volume 202  
2011. XLIII, 611 pages.

ISBN 9783161512834  
eBook PDF 159,00 €

Institutions, corporations and even the state can become insolvent. But what rules apply in this case, which for a long time was unthinkable? Kai von Lewinski gives an account of the legal consequences of financial crises in the public sector in their manifestations from the first budgetary deficit up to state bankruptcy.

Menzel, Jörg

## Internationales Öffentliches Recht

### Verfassungs- und Verwaltungsgrenzrecht in Zeiten offener Staatlichkeit

Volume 201  
2011. XIV, 974 pages.

ISBN 9783161512827  
eBook PDF 189,00 €

»International Public Law«, as presented by Jörg Menzel, is not a treatise on international law but a study on national law with a transnational perspective. Jörg Menzel suggests that such a topic has been neglected for too long and its recent revival is to be appreciated. This book is the first comprehensive study of the topic in the German language. It addresses international and European law as well as the constitutional and administrative law framework regarding transnational legal questions and transnational administrative activities. The concept of this thesis is based on the idea of an 'open state', which regards other states routinely as cooperation partners but is also open to the needs of individuals and the common goods around the globe.

Funke, Andreas

## Umsetzungsrecht

### Zum Verhältnis von internationaler Sekundärrechtsetzung und deutscher Gesetzgebungsgewalt

Volume 200  
2010. XXVI, 466 pages.

ISBN 9783161505362  
cloth 129,00 €

ISBN 9783161512810  
eBook PDF 129,00 €

International organizations such as the United Nations or the European Union are increasingly providing national lawmaking with concrete regulations. Andreas Funke shows the basis for this development in international law and constitutional law. Is a new type of national law being created under the name of *Umsetzungsrecht* (implementary law)?

Will, Martin

## Selbstverwaltung der Wirtschaft

### Recht und Geschichte der Selbstverwaltung in den Industrie- und Handelskammern, Handwerksinnungen, Kreishandwerkerschaften, Handwerkskammern und Landwirtschaftskammern

Volume 199  
2010. XLII, 977 pages.

ISBN 9783161507052  
cloth 204,00 €

ISBN 9783161512803  
eBook PDF 204,00 €

Martin Will analyzes the law of economic self-government for the first time in relation to its historical development and its current status consistently from the perspective of participation. In doing so, he focuses on the democratic potential of economic self-government.

Vöneky, Silja

## Recht, Moral und Ethik

### Grundlagen und Grenzen demokratischer Legitimation für Ethikgremien

Volume 198  
2010. XX, 699 pages.

ISBN 9783161504853  
cloth 159,00 €

ISBN 9783161512797  
eBook PDF 159,00 €

Silja Vöneky studies how norms can be established and enforced in a democracy if these norms affect areas which raise ethical and moral questions. She shows the demands made by the constitutional order of the Federal Republic of Germany on the existence of democratic legitimation and explains when and under which certain narrow conditions ethics committees are justified and required.

Groh, Kathrin

## Demokratische Staatsrechtslehrer in der Weimarer Republik

### Von der konstitutionellen Staatslehre zur Theorie des modernen demokratischen Verfassungsstaats

Volume 197  
2010. XVIII, 648 pages.

ISBN 9783161502224  
cloth 149,00 €

ISBN 9783161512780  
eBook PDF 149,00 €

It is only recently that researchers have started to focus their attention on the theories of democracy developed by teachers of public law in the Weimar Republic. In this work, Kathrin Groh analyzes the writings of the five major figures in this era: Hugo Preuß, Gerhard Anschütz, Richard Thoma, Hans Kelsen and Hermann Heller. She studies the concepts of the state and the constitution used by the teachers of public law, who had been socialized in the German Empire, to react to the challenges of the Weimar Republic and the remedies they found to solve the Republic's crises in the spirit of the constitution. In spite of their differences, their answers to the main challenges of the Republic, such as state ideology, leadership, political parties, pluralism, the governmental system and fundamental rights were determined by their thinking in terms of the rule of law.

Wollenschläger, Ferdinand

## Verteilungsverfahren

Die staatliche Verteilung knapper Güter: Verfassungs- und unionsrechtlicher Rahmen, Verfahren im Fachrecht, bereichsspezifische verwaltungsrechtliche Typen- und Systembildung

Volume 196  
2010. XXX, 759 pages.

ISBN 9783161504846  
cloth 144,00 €

ISBN 9783161512773  
eBook PDF 144,00 €

In various areas the administration is responsible for the distribution of scarce goods. Ferdinand Wollenschläger analyses the administrative procedures fulfilling this task, which in spite of the heterogeneity of the subject matters may be understood as a distinct type of administrative procedure: as distribution procedure.

Shirvani, Foroud

## Das Parteienrecht und der Strukturwandel im Parteiensystem

Staats- und europarechtliche Untersuchungen zu den strukturellen Veränderungen im bundesdeutschen und europäischen Parteiensystem

Volume 195  
2010. XVI, 574 pages.

ISBN 9783161503924  
cloth 149,00 €

ISBN 9783161512766  
eBook PDF 149,00 €

The German constitutional system has been strongly influenced by the political parties since the enactment of the constitution. Additionally, on the European level, a party system was created during the last decades. Both party systems have undergone structural changes in order to meet the changing social, political, economic and medial conditions. Foroud Shirvani points out the legal implications of these developments and analyzes the function of law in the structural changes of a party system.

Kment, Martin

## Grenzüberschreitendes Verwaltungshandeln

Transnationale Elemente deutschen Verwaltungsrechts

Volume 194  
2010. LVI, 913 pages.

ISBN 9783161503207  
cloth 189,00 €

ISBN 9783161512759  
eBook PDF 189,00 €

Whenever the state operates across national boundaries on an administrative level, there are various legal issues which arise in international law, constitutional law and administrative law. Martin Kment deals with these issues in detail and in doing so presents the specific characteristics of all administrative activities – from the administrative act to the planning.

Knauff, Matthias

## Der Regelungsverbund: Recht und Soft Law im Mehrebenensystem

Volume 193  
2010. XX, 622 pages.

ISBN 9783161504266  
cloth 149,00 €

ISBN 9783161512742  
eBook PDF 149,00 €

Soft law has developed into an important extra-legal form of regulation on a national, European and international level. For the first time, Matthias Knauff undertakes a comprehensive systematization and assessment of soft law and looks into its potential uses.

Grote, Rainer

## Der Verfassungsorganstreit

### Entwicklung, Grundlagen, Erscheinungsformen

Volume 192  
2010. XXI, 469 pages.

ISBN 9783161483592  
cloth 129,00 €

ISBN 9783161512735  
eBook PDF 129,00 €

Rainer Grote begins by outlining the development and the function of the theories pertaining to public bodies, theories which are reflected in constitutional positivism and which are used to interpret the basic structures of governmental organization. He then gives a comprehensive analysis of the main applications of constitutional and administrative disputes between public bodies in the law currently in force. Based on this, he attempts to clarify the content, function and enforcement procedures of subjectivized legal positions within the organization. The author questions if and to what extent concrete powers within a government organization can be allocated to material principles of organization, such as for example the principles of democracy and of the separation of powers. He shows the conclusions that can be drawn from this in relation to the development of the procedural principles of the dispute between public bodies.

Droege, Michael

## Gemeinnützigkeit im offenen Steuerstaat

Volume 191  
2010. XVI, 616 pages.

ISBN 9783161501654  
cloth 149,00 €

ISBN 9783161512728  
eBook PDF 149,00 €

With the right to nonprofit status, tax law offers an incentive to private persons working as volunteers in the public interest. It is however riddled with inconsistencies and not well prepared for the integration of the German tax state into the Single European Market. Against this backdrop, Michael Droege deals with the basic theoretical principles and the legal dogmatics of nonprofit law. Going beyond the field of tax law, he lays the foundations for a public law in between the state and the market on the terms of the Europeanization of the law. Lawmaking, legal dogmatics and the application of the law will have to adjust to the framework of a pluralistic Europeanized public welfare.

Spranger, Tade M.

## Recht und Bioethik

### Verweisungszusammenhänge bei der Normierung der Lebenswissenschaften

Volume 190  
2010. XVI, 445 pages.

ISBN 9783161503283  
cloth 144,00 €

ISBN 9783161512711  
eBook PDF 144,00 €

Although comprehensive codification processes pertaining to the life sciences have only been in existence for about twenty years, a tight network of regulations has already been created. The fact that the matters to be regulated have to be discussed both from a legal and a bioethical point of view can often be seen in the results of the regulation processes. Thus the law is confronted with particular challenges in trying to regulate the potential applications of biomedicine and biotechnology. Using numerous national, European and international examples, the author scrutinizes the role which is or may be assigned to bioethical principles and considerations in legislation and case law.

Jaeckel, Liv

## Gefahrenabwehrrecht und Risikodogmatik

### Moderne Technologien im Spiegel des Verwaltungsrechts



Mohr Siebeck

Volume 189  
2010. XIV, 379 pages.

ISBN 9783161512704  
eBook PDF 114,00 €

Scientific advances and the methods of implementing new technologies in the 20th and 21st centuries have presented new challenges to the law. How can administrative law cope with the opportunities and the risks which these new procedures, applications and products involve? Liv Jaeckel suggests a system which embeds the particularities of modern risk law within a common fundamental idea and which presents structural guidelines for the evaluation of particular case decisions. In doing so, she links this to an evaluation of the knowledge of each of the government levels in charge and to their capacity to act. In this way, she provides an overall picture which regardless of complex details can be traced back again and again to a uniform basic pattern: the comparison between the objective concept of danger and the (normative) subjective concept of risk.

Thym, Daniel

## Migrationsverwaltungsrecht

Volume 188  
2010. XIII, 451 pages.

ISBN 9783161501043  
cloth 144,00 €

ISBN 9783161512698  
eBook PDF 144,00 €

Migration law governs the entry and integration of third-country nationals by legal means. Scrutinizing its rules, Daniel Thym adopts the perspective of the public administration and develops guiding principles for the contribution of »administrative migration law« to the management of migration flows at the national, European and international level.

Herrmann, Christoph

## Währungshoheit, Währungsverfassung und subjektive Rechte

Volume 187  
2010. XXX, 473 pages.

ISBN 9783161500084  
cloth 139,00 €

ISBN 9783161512681  
eBook PDF 139,00 €

»Money is coined liberty,« and is essential for the reality of human beings in modern work-sharing economies. Despite the obvious relevance of money for individual freedom, almost all national or supranational legal orders make use of coercive measures in order to grant the monopoly on money to the state or the European Community. At the same time, the individual freedom to use money is legally restricted, whereas there is no guarantee of its value based on individual property rights. Against the backdrop of the interdisciplinary foundations of the monetary system, Christoph Herrmann attempts to analyze and reconstruct the existing monetary constitution from the perspective of individual rights.

Wallrabenstein, Astrid

## Versicherung im Sozialstaat

Volume 186  
2009. XXI, 481 pages.

ISBN 9783161497254  
cloth 129,00 €

ISBN 9783161512674  
eBook PDF 129,00 €

Social security and private contingency risks insurance are essential elements of the welfare state. The concept of insurance and the idea of equivalence in insurance relationships have been a topic of discussion since the emergence of modern insurance and social security systems. Astrid Wallrabenstein studies these discussions, and looking at these from the current perspective of administrative and constitutional law she shows what questions have arisen and have still not been answered. These questions are related to the organization and supervision of insurance. They can be approached as a question of the state's obligation to guarantee that certain results are achieved through regulation. As an example of this, the author looks at the organization of the health insurance system in Germany. It is however also necessary to justify redistribution of wealth within such »social insurances.« This justification is possible if there is an individualistic approach to human rights, an approach which requires justification for any redistribution of wealth, but also allows for justification by the public interest which is pursued by regulated insurance.

Winkler, Markus

## Verwaltungsträger im Kompetenzverbund

### Die gemeinsame Erfüllung einheitlicher Verwaltungsaufgaben durch verschiedene juristische Personen des öffentlichen Rechts

Volume 185  
2009. XIII, 396 pages.

ISBN 9783161501050  
cloth 119,00 €

ISBN 9783161512667  
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The jurisdiction for performing administrative tasks in Germany has been allocated to a multitude of legal entities. These tasks, which are initially separated and allocated, are often performed together. However, the allocation of competences and the cooperation among those performing them do cause problems. In practice, they result in impediments to decision-making and involve additional work because of the necessity of coordinating among the legal entities. From a legal perspective, they endanger the functions of the system of competences aiming at democracy and the rule of law. Markus Winkler has developed a new approach to solving the problems of a continuous cooperation of administrative bodies. It is the special legal relationships in the network of competences which are the key to the solution. This includes obligations of the entities concerned, in particular an obligation to cooperate diligently with each other, as well as obligations to the subjects of democratic legitimization and the addressees of administrative tasks.



Kirchhof, Gregor

## Die Allgemeinheit des Gesetzes

### Über einen notwendigen Garanten der Freiheit, der Gleichheit und der Demokratie

Volume 184  
2009. XXI, 715 pages.

ISBN 9783161501494  
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ISBN 9783161512650  
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The concept of the law is one of generality. However, this concept has been forgotten. There is no adherence to specific claims to generality in the German Basic Law and in European law. The promise of freedom has always been a part of general law. This promise is addressed to the community based on the rule of law and supplements the constitutional protection in individual cases. Today, technological progress, social expectations and close intergovernmental cooperation pose a challenge to lawmaking and legal coordination. The lawmaker often reacts to this with an abundance of regulations and with the supposed legal security given by a special law. Gregor Kirchhof shows how the generality of the law could become an important guarantor for parliamentary democracy and human rights.

Windthorst, Kay

## Der verwaltungsgerichtliche einstweilige Rechtsschutz

### Zugleich eine Untersuchung des Erkenntnis- und Steuerungspotenzials der Rechtsdogmatik

Volume 183  
2009. XLVII, 794 pages.

ISBN 9783161498282  
cloth 159,00 €

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The irregular rulings of administrative courts on provisional legal protection, which are due to insufficient legal guidelines, are detrimental to the stability of the law. Kay Windthorst's goal is to eliminate this lack of control with a concept for judicial decision-making based on the potential of legal dogmatics for this process and its control. In this way, he is able to determine the influence of judicial guidelines and other legal and actual factors on the judicial decision-making procedure and its result. In doing so, he is also able to find a solution for points of contention pertaining to expedited provisional legal protection and to establish a consistent homogenous decision-making concept. As a result of this, the outcome of these provisional legal protection proceedings will be more predictable and the law will become more stable.

Gärditz, Klaus Ferdinand

## Hochschulorganisation und verwaltungsrechtliche Systembildung

Volume 182  
2009. XXIII, 727 pages.

ISBN 9783161512636  
eBook PDF 149,00 €

German administrative law regarding higher education has been changed profoundly by the university reform. The main topics on the political reform agenda are commodification, hierarchical restructuring, denationalization and administrative professionalization. The foundations of the traditional university organization (based in particular on democracy, equality of the academic staff, and academic self-government) have been deeply shaken as a result of this. In addition, even the general principles of administrative law have proven to be unable to explain these new attempts at administrative reform. In this work, Klaus Ferdinand Gärditz assesses the current situation of university organization in relation to administrative law, academic freedom and academic self-government. In doing so, he deals with the current debate on the administrative law reform and in particular administrative organization.

Stein, Katrin

## Die Verantwortlichkeit politischer Akteure

Volume 181  
2009. XLII, 732 pages.

ISBN 9783161498671  
cloth 159,00 €

ISBN 9783161512629  
eBook PDF 159,00 €

The search for the »person responsible« for a political blunder is often in vain. Katrin Stein deals with the public's dissatisfaction resulting from this and defines the responsibility of politicians as a legal phenomenon. Since the personal responsibility of the decision-makers automatically limits their power and concepts of responsibility thus depend substantially on how political power is legitimized and defined, the author's study focuses on the basis for the idea of responsibility to be found in the theory of the state and the history of thought. Against this backdrop, the author analyzes the regulations which express the responsibility of politicians in constitutional law, criminal law and liability law. In doing so, she places particular emphasis on their practical application.

Siegel, Thorsten

## Entscheidungsfindung im Verwaltungsverbund

### Horizontale Entscheidungsvernetzung und vertikale Entscheidungsstufung im nationalen und europäischen Verwaltungsverbund

Volume 180  
2009. XXVII, 482 pages.

ISBN 9783161498916  
cloth 129,00 €

ISBN 9783161512612  
eBook PDF 129,00 €

In a world which is increasing in its complexity, knowledge, dedication, operational resources and the capacity to solve problems are shared by various persons with a wide variety of interests. Since multilevel administrative networks quintessentially involve many persons with diverse functions, this complicates administrative decision-making considerably. Thorsten Siegel deals with this highly topical issue and its relationship to public law and administrative science. At the center of this is the creation of a legal system of the various forms of decision-making in multilevel administrative networks. The author evaluates each of these in relation to its effects. He concludes by outlining how a system of decision-making in multilevel administrative networks can be created.

Schlacke, Sabine

## Überindividueller Rechtsschutz

Phänomenologie und Systematik überindividueller Klagebefugnisse im Verwaltungs- und Gemeinschaftsrecht, insbesondere am Beispiel des Umweltrechts

Volume 179  
2008. XXXV, 578 pages.

ISBN 9783161494574  
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eBook PDF 144,00 €

Legal remedies which can be used regardless of the violation of a right undermine the German system of legal redress for individuals, in which the only party authorized to take legal action is the one who claims a violation of his own rights. European Community law is largely responsible for these supraindividual rights of action, since it has obligated the members of the European Union to initiate supraindividual legal remedies in environmental, social and consumer protection law. In addition to environmental law as a point of reference, Sabine Schlacke studies all the supraindividual rights of action in public law as well as comparable regulations in civil law. She shows that supraindividual rights of action are not significant in regard to one specific area but that they are of fundamental significance for the German and the European legal systems.

Graser, Alexander

## Gemeinschaften ohne Grenzen?

Zur Dekonzentration der rechtlichen Zugehörigkeiten zu politischen Gemeinschaften

Volume 178  
2009. XVIII, 387 pages.

ISBN 9783161494536  
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ISBN 9783161512599  
eBook PDF 129,00 €

The legal contents of citizenship are undergoing significant changes which might in turn have a disintegrative effect on society and reduce the potential of the law to legitimize power. This is the claim of the book. It is presented in three steps. The first one deals with the concepts of (multilevel) citizenship, (political) community, and integration, thus synthesizing the social theory background of the study. The second part is a legal analysis of the rights and duties which are associated with citizenship on the national and other political levels. It detects a tendency towards »de-concentration«: National citizenship previously contained most of these rights and duties, but is gradually losing its contents. At the same time, there is no »re-concentration« of these contents in the membership status of any other political community. The final part of the book illustrates how this development might lead to a disintegration of society and a delegitimization of (public) power.

Franzius, Claudio

## Gewährleistung im Recht

Grundlagen eines europäischen Regelungsmodells öffentlicher Dienstleistungen

Volume 177  
2009. XIV, 767 pages.

ISBN 9783161512582  
eBook PDF 149,00 €

It is becoming increasingly difficult to integrate the challenges posed by the law into the dichotomy of state and market. This also applies to the services for the public under the new model for the state as a provider of a subsistence. Claudio Franzus looks into a regulatory model for public services. In order to do so, it is necessary to reconstruct the European legal system as an association of guarantees and regulations. The decisive category for legitimation is the trust in a structural law for guarantees which includes regulation and calls for bids as new forms in administrative law. Public ensuring law accentuates the organization, funding and quality assurance of the performance of services by private persons.

Martini, Mario

## Der Markt als Instrument hoheitlicher Verteilungslenkung

Möglichkeiten und Grenzen einer marktgesteuerten staatlichen Verwaltung des Mangels



Volume 176  
2008. XX, 912 pages.

ISBN 9783161493324  
cloth 204,00 €

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eBook PDF 204,00 €

In the undertow of the law-and-markets movement and diagnosed control deficits in classic sovereign distribution mechanisms, the idea of using the allocation function of prices as an instrument of distribution of scarce resources administered by the government is starting to open the gates of public law. Mario Martini examines the chances for economic distribution and the constitutional constraints of a market-controlled administration of shortages in public law.

Heinig, Hans Michael

## Der Sozialstaat im Dienst der Freiheit

Zur Formel vom »sozialen« Staat in Art. 20 Abs. 1 GG

Volume 175  
2008. XXVII, 668 pages.

ISBN 9783161496530  
cloth 149,00 €

ISBN 9783161512568  
eBook PDF 149,00 €

As far as constitutional law is concerned, the welfare state is a vague phenomenon and is generally ignored in the current theory of constitutional law. There are however good reasons for maintaining that the welfare state as described in the German Basic Law is primarily supposed to be conducive to ensuring the minimum prerequisites for a self-determined life. Hans Michael Heinig shows that the establishment of equality, solidarity, social justice and security take secondary importance as constitutional goals. If the main function of the social welfare state is to serve freedom, its theoretical and dogmatic shape becomes clear, since this function is, according to the constitution, the reason for and the limits to the welfare state. Those questions regarding fundamental social rights or constitutional claims to the minimum requirements in order to meet essential needs will be answered just as well as those questions pertaining to the limits to redistribution in the welfare state.

Englisch, Joachim

## Wettbewerbsgleichheit im grenzüberschreitenden Handel

mit Schlussfolgerungen für indirekte Steuern

Volume 174  
2008. XXIII, 892 pages.

ISBN 9783161494154  
cloth 189,00 €

ISBN 9783161512551  
eBook PDF 189,00 €

German lawmakers must guarantee equality of competition for the benefit of cross-border trade in goods and services as stipulated by EC law as well as by the law of the WTO. Joachim Englisch analyzes the pertinent bans of discriminatory practices in the supranational legal systems and contrasts them with the demands of the German Basic Law (Grundgesetz). He begins by examining the dogmatic structures of those constitutional concepts which provide equality before the law, and demonstrates how they fit into a theory of legal principles. He then deals with the mutual entanglements in the multilevel system and the remaining latitude for implementing national policies pursuing conflicting objectives. Finally, the author draws conclusions for the application of his findings to the field of indirect taxes. This book won the Albert-Hensel-Award 2007.

Wißmann, Hinnerk

## Generalklauseln

Verwaltungsbefugnisse zwischen Gesetzmäßigkeit und offenen Normen

Volume 173  
2008. XVIII, 363 pages.

ISBN 9783161495557  
cloth 134,00 €

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eBook PDF 134,00 €

The principle of 'lawfulness' laid down in the constitution requires public administration to be regulated by parliamentary laws and to be monitored by the courts. Hinnerk Wißmann shows that fundamental rights in particular form a convincing basis from the perspective of the constitutional system and legal history for a corresponding comprehensive, formally rational distribution of state functions. In this case, the administration's 'independence' is the functional and the legal abutment of this basic order. Its managerial function can frequently not even be reconstructed in a model as an 'application' of laws. This means that the lawfulness of the administration must be developed further into a differentiating controlling and monitoring association. In doing so, it will be impossible to do without blanket clauses as a special type of regulation.

Hecker, Jan

## Marktoptimierende Wirtschaftsaufsicht

Öffentlich-rechtliche Probleme staatlicher Wirtschaftsinterventionen zur Steigerung der Funktionsfähigkeit des Marktes



Volume 172  
2007. XVII, 303 pages.

ISBN 9783161489808  
cloth 114,00 €

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Modern interventionism partially restricts the free interaction of market forces in the interest of non-economic goals. However, government supervisory authorities also work to increase the effectiveness of the market. Jan Hecker deals with this type of government economic interventions, using the term *market-optimizing economic supervision*. He analyzes the regulatory framework in public law under which the government tries to increase the efficiency of the market system. In this context, he refers to cartel law, the telecommunications law and the Securities Trading Act. The author outlines a dogmatic framework for market-optimizing economic supervision and studies its connections to the theory of market failure. He focuses in particular on the extent to which constitutional law demands a supervisory legislation which meets the plausibility requirements of economic theory.

Cancik, Pascale

## Verwaltung und Öffentlichkeit in Preußen

### Kommunikation durch Publikation und Beteiligungsverfahren im Recht der Reformzeit

Volume 171  
2007. XVII, 507 pages.

ISBN 9783161492952  
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eBook PDF 139,00 €

Modern bureaucratic administration is in many ways a product of the officialization, centralization and juridification of administrative communication. In the early 19th century, the publication of government actions by the administration changed considerably. Concrete administrative procedures were developed regulating the communications between the administration and the citizens in a specific manner. Using Prussia as an example, Pascale Cancik investigates the role of law for these developments in the early 19th century. Techniques, media and procedures, which are still in use today, have been developed with the aid of early administrative law and the law of administrative proceedings. Contrary to what is sometimes said, these developments are not linked exclusively to the constitutional ideas of publicity or democracy.

Pöcker, Markus

## Stasis und Wandel der Rechtsdogmatik

### Von der rationalistischen Rechtsvorstellung zu einer rechtstheoretisch angeleiteten Dogmatik des Öffentlichen Rechts

Volume 170  
2007. XII, 280 pages.

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cloth 114,00 €

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Legal dogmatics and legal theory must be seen as two separate discourses of law-related communication today. However they are in general cut off from one another. This prevents the necessary evolution of the theoretical foundations of today's legal dogmatics, which is still based essentially on 19th century philosophical and theoretical assumptions, thus making it almost impossible to find an adequate legal solution to the problems of today's differentiated society. According to Markus Pöcker, the reason for the current isolation of dogmatics is the rigidity of its communication structure, which is based on its theoretical foundations. He shows that an opening up of dogmatics to theory in the sense of a discourse which connects both elements can only occur if this communication routine is changed, meaning that the change has to come from within.

Schenke, Ralf P.

## Die Rechtsfindung im Steuerrecht

### Konstitutionalisierung, Europäisierung und Methodengesetzgebung

Volume 169  
2007. XXVII, 574 pages.

ISBN 9783161512506  
eBook PDF 149,00 €

Tax law established itself as an independent discipline relatively late and has been determined by sharp contrasts in legal methodology since its beginnings. Ralf Peter Schenke reconstructs this debate by analyzing the central positions and arguments of methodological controversy in this field of law and then putting them into the context of current developments in legal methodology. Particularly, his study focuses on the significance of the constitution for legal methodology. He demonstrates that 'constitutionalization' appears to be rather limited as to its potential for solving methodological queries since there are no clear criteria for balancing a number of divergent principles inherent to methodological constitutional law. In addition, constitutionalized methodology is being challenged by the Europeanization of the legal system. In the author's view, the constitution is merely a framework for legal methodology.

Schmidt am Busch, Birgit

## Die Gesundheitssicherung im Mehrebenensystem

Volume 168  
2007. XXIV, 463 pages.

ISBN 9783161493089  
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ISBN 9783161512490  
eBook PDF 129,00 €

A »multilevel government« has taken the place of a nation state, which means that new questions pertaining to legal policy challenges and issues of legal dogmatics have arisen. One of the key questions in a multilevel system is the allocation of duties among the various levels. Birgit Schmidt am Busch studies whether not it is possible to find criteria which enable a systematic allocation of duties to each of the government levels. In order to illustrate this, she refers to the complex and highly topical subject of protecting health. In dealing with the four basic tasks of protecting health – prevention, cure, rehab, care for the terminally ill – she gives a detailed description of the structure and function of the European multilevel system. In doing so, she focuses on the so-called third sector, i.e. those institutions which are in between the state and the market.

Schorkopf, Frank

## Grundgesetz und Überstaatlichkeit

### Konflikt und Harmonie in den auswärtigen Beziehungen Deutschlands

Volume 167  
2007. X, 355 pages.

ISBN 9783161494802  
cloth 129,00 €

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eBook PDF 129,00 €

Basically, sovereign actions now only seem possible in an international jumble of objective constraints, political considerations and legal necessities. In view of this development, national constitutional law has at times become more an obstacle for politics than a standard for action. In considering this problem and the inconsistencies in the internationalization of intergovernmental relations, Frank Schorkopf's goal is to make the German constitutional state and its law comprehensible for the reader. He focuses on an understanding of the modern constitutional state in the relationship between universality and particularity. The key to an organization which enables the freedom of political sovereignty can be found in the development of a supranational balance of powers which is characterized by the state's wish for harmony as well as its willingness to become involved in conflicts.

»The publication of this work was sponsored by the Marga and the Kurt Möllgaard Foundation".

Schröder, Rainer

## Verwaltungsrechtsdogmatik im Wandel

Volume 166  
2007. XVII, 379 pages.

ISBN 9783161512476  
eBook PDF 129,00 €

The question of the extent to which the science of administrative law is able to absorb changes in society without losing its own scientific identity is more relevant than ever. Rainer Schröder deals with this question in the three chapters of his book. In the first part, he studies the origins of the science of administrative law in the second half of the 19th century and its early development up to its standstill in the Third Reich. In the second part, he examines its development under the German Basic Law. In the third and final chapters, he takes up the latest call for fundamental reforms and integrates them into an approach whose purpose is to maintain classic scientific distinctions.

Müller-Terpitz, Ralf

## Der Schutz des pränatalen Lebens

### Eine verfassungs-, völker- und gemeinschaftsrechtliche Statusbetrachtung an der Schwelle zum biomedizinischen Zeitalter

Volume 165  
2007. XXV, 637 pages.

ISBN 9783161489143  
cloth 159,00 €

ISBN 9783161512469  
eBook PDF 159,00 €

Ralf Müller-Terpitz studies the legal status of prenatal life in national and international law. He analyzes the debate concerning this in other disciplines (science, ethics, theology) and their relevance for the legal debate. With regard to the constitutional law, the author comes to the conclusion that the embryo enjoys the basic right to protection of life and dignity starting with fertilization or a comparably early beginning of existence, and that this protection may not be »graduated« by referring to its still very early biological stage of development. Prenatal life is recognized as an object worthy of legal protection in international and Community law, but in these legal systems it is only granted a reduced »appropriate« protection from certain kinds of utilization.

Haack, Stefan

## Verlust der Staatlichkeit

Volume 164  
2007. XXXII, 528 pages.

ISBN 9783161493980  
cloth 159,00 €

ISBN 9783161512452  
eBook PDF 159,00 €

Stefan Haack deals with the nature of statehood, using his own approach from the perspective of political science, by regarding »statehood« as a form of a fundamental political commitment of a community and developing criteria for its identification in the interaction of various political levels. In order to do so, he reduces basic concepts of constitutional theory such as »state«, »constitution« and democracy« to their essence and defines »sovereignty« as the ability of a community to give itself a constitutional order. Using valid European Community law and the Treaty establishing a Constitution for Europe, the author then analyzes the present status of statehood and its future development in Europe and combines this with the question of a possible change in the form of government. He then gives a detailed discussion of the constitutional consequences which are a result of this.

Bungenberg, Marc

## Vergaberecht im Wettbewerb der Systeme

### Eine rechtsebenenübergreifende Analyse des Vergaberechts

Volume 163  
2007. XV, 376 pages.

ISBN 9783161493096  
cloth 129,00 €

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eBook PDF 129,00 €

Due to the competition of systems, increasing privatization trends and the introduction of market economy parameters in coping with public duties, the importance of public procurement law has increased. In view of the principles of openness and primacy of the economic constitution, Europeanization and Internationalization cannot be neglected when determining the basic principles of government procurement. Working on various levels of the law, Marc Bungenberg deals with the specific legal and economic components which implement the central theme of »efficiency in public procurement« in practice. Last but not least he discusses the necessity of a multilateral procurement agreement.

Dammann, Jens

## Materielles Recht und Beweisrecht im System der Grundfreiheiten

Volume 162  
2007. XXI, 572 pages.

ISBN 9783161493409  
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The fundamental freedoms guaranteed by the Treaty establishing the European Community limit the regulatory autonomy of the member states. These limits are determined not only by the substantive rules contained in the fundamental freedoms, but also by evidentiary rules such as rules regarding the burden and standard of proof. Moreover, these two areas of the law do not function independently of each other. Rather, the impact of the fundamental freedoms is determined by the combined effect of substantive and evidentiary rules. Jens Dammann suggests an interpretation of the fundamental freedoms that does justice to this insight.

Fassbender, Bardo

## Der offene Bundesstaat

### Studien zur auswärtigen Gewalt und zur Völkerrechtssubjektivität bundesstaatlicher Teilstaaten in Europa

Volume 161  
2007. XVII, 495 pages.

ISBN 9783161492181  
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ISBN 9783161512421  
eBook PDF 139,00 €

Bardo Fassbender analyzes in detail the foreign relations powers and the international legal personality of the German *Länder*, or individual states, which is integral to the federal system established in Germany in 1949. He also examines the international legal status of sub-national state entities in Austria, Switzerland, Belgium, Italy and, in contrast, the United States. In his view, the international legal personality of such entities is a characteristic feature of a specifically European type of federal state. The comparatively strong position in international law which the German constitution of 1949 accorded to the *Länder* can only be understood against the background of German constitutional history of the 19th and 20th century. The Basic Law is standing in a tradition characteristic of German federalism, beginning with the constitution of the German Empire of 1871 and continued by the »Weimar Constitution« of 1919. The line of continuity can even be traced back to the Holy Roman Empire and to the German revolution of 1848 with its (eventually unsuccessful) project of a federal constitution drafted by the parliament in Frankfurt.

Survey of contents

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Röben, Volker

## Außenverfassungsrecht

### Eine Untersuchung zur auswärtigen Gewalt des offenen Staates

Volume 160  
2007. XXIX, 570 pages.

ISBN 9783161493751  
cloth 149,00 €

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eBook PDF 149,00 €

Globalization and Europeanization have put pressure on the legal system to make adaptations. Many institutions of constitutional law and non-constitutional law have to be re-assessed. In doing so, it is necessary to establish which attitude the open state should take to supranational law-making. Volker Röben shows that constitutional law is directed outwards, which means that democracy, the separation of powers and the protection of fundamental rights all include activities in relation to foreign countries.

Lang, Heinrich

## Gesetzgebung in eigener Sache

### Eine rechtstheoretische und rechtssystematische Untersuchung zum Spannungsverhältnis von Distanzgebot und Eigennutz

Volume 159  
2007. XIX, 570 pages.

ISBN 9783161491948  
cloth 159,00 €

ISBN 9783161512407  
eBook PDF 159,00 €

Heinrich Lang studies the grounds for and the boundaries of legislation based on self-interest. It is the author's main contention that a government which is bound by the constitution is dependent on a distance between lawmakers and the subject of the law in order for it to be legitimate, and that this distance is not kept when decisions are made on one's own behalf. Using the present law for the remuneration of members of parliament as an example, the author begins by showing the weakness in those self-beneficial decision-making structures. In the section dealing with legal theory, he demonstrates that the structural deficits of decisions made on one's own behalf in a parliamentary democracy are not the result of a self-service mentality on the part of the members of parliament but rather the result of a self-service constellation. The author also shows how it is possible to re-establish the distance in the constitutional state and to keep the political parties financing law from becoming a subject of dispute.

Hofmann, Ekkehard

## Abwägung im Recht

### Chancen und Grenzen numerischer Verfahren im Öffentlichen Recht

Volume 158  
2007. XXIII, 601 pages.

ISBN 9783161492389  
cloth 179,00 €

ISBN 9783161512391  
eBook PDF 179,00 €

The normative theory of government discretion in relation to both lawmaking and administrative adjudication, which is one of the central elements of planning law, has yielded a wealth of valuable insights based on an analysis of a long and extensive case law history. However, up to now little attention has been paid to the fact that the doctrine of reasonable commensuration (*Abwägungsgebot*), which is derived from the principle of proportionality, makes certain methodological demands, particularly pertaining to predictions and value judgments, demands that cannot be sufficiently dealt with by using only natural language. In view of the gulf between these requirements and their implementation, Ekkehard Hofmann studies the potential usefulness of the numerical methods, developed in economic decision theory for carrying out the overall assessment that is necessary for making balanced decisions and communicating their rationale.

Leisner, Walter Georg

## Existenzsicherung im Öffentlichen Recht

### Minimum – Grundlagen – Förderung

Volume 157  
2007. XXXIII, 530 pages.

ISBN 9783161492891  
cloth 159,00 €

ISBN 9783161512384  
eBook PDF 159,00 €

Walter Georg Leisner describes the current problems surrounding the safeguarding of human existence. He examines the scope of protection of human dignity from the perspective of central fundamental rights such as the right to life or the freedom to choose an occupation. It is the government tax authorities in particular who have been bound by the Federal Constitutional Court to respect the subsistence level. The safeguarding of existence is provided for mainly in public law and in the basic constitutional principles. The author studies the establishment of the subsistence level, the basis of livelihood and assistance in statutory law, in social and fiscal law, in the law concerning aliens and public subsidies as well as in civil law on protected earnings rates and oppressive contracts. He develops a standard system of dogmatics for safeguarding the elementary needs of life.

Rensmann, Thilo

## Wertordnung und Verfassung

### Das Grundgesetz im Kontext grenzüberschreitender Konstitutionalisierung

Volume 156  
2007. XIX, 463 pages.

ISBN 9783161491061  
cloth 129,00 €

ISBN 9783161512377  
eBook PDF 129,00 €

Since the Second World War the classical liberal model of constitutionalism has been increasingly challenged by a competing conception which perceives the constitution and the bill of rights as a »normative order of values« . This new approach to constitutionalism probably found its first expression in the early jurisprudence of the German Federal Constitutional Court. Thilo Rensmann retraces the development of this new paradigm of modern constitutionalism from the seminal »Luth« decision to the current challenges posed by transnational constitutionalism.

Winterhoff, Christian

## Verfassung – Verfassunggebung – Verfassungsänderung

### Zur Theorie der Verfassung und der Verfassungsrechtserzeugung

Volume 155  
2007. XXX, 506 pages.

ISBN 9783161491412  
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Creating and amending the constitution have been the subjects of numerous scholarly studies. To date, however, there has been no clear boundary between the two of them. Can a new constitution be created by amending the constitution? Is vice versa the amendment of individual provisions of the constitution possible by an act of the constituent power? Christian Winterhoff begins by studying the constitution, the common point of reference for the creation and the amendment of the constitution. He then develops a theory which states the prerequisites for enabling a differentiation between creating and amending the constitution as well as the applicable criteria for establishing the boundaries. The conclusions he reaches are helpful not only for gaining insight into constitutional theory; they are also significant for the solution of issues pertaining to constitutional law, for example in regard to the existence and content of unwritten boundaries of constitutional amendments.

Talmon, Stefan

## Kollektive Nichtanerkennung illegaler Staaten

### Grundlagen und Rechtsfolgen einer international koordinierten Sanktion, dargestellt am Beispiel der Türkischen Republik Nord-Zypern

Volume 154  
2006. XXXIX, 1052 pages.

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The question of the legal effect of the recognition of new entities that call themselves 'states' has been characterized for over a century by the intense debate between the constitutive and the declaratory schools of thought. An examination of the American, British and German state practice in the case of the internationally non-recognized Turkish Republic of Northern Cyprus however shows that none of the two theories can satisfactorily explain the non-recognition as a state of an entity that meets all the international legal criteria for statehood but that has been created in violation of a fundamental norm of international law. Non-recognition of an existing state can neither have status-preventing nor status-confirming effect, it can only have status-denying, i.e. negatory, effect. Collective non-recognition has been employed by the international community since the 1930s as a sanction against serious breaches of fundamental norms of international law affecting the international community as a whole. Initially coordinated by the League of Nations it is now administered by the United Nations. Non-recognition as a state means that other states do not just withhold all optional or discretionary relations and the resulting rights and privileges from an 'illegal state' but that they deny it all the rights, powers and privileges inherent in statehood.

Hochhuth, Martin

## Die Meinungsfreiheit im System des Grundgesetzes

Volume 153  
2007. XXIV, 401 pages.

ISBN 9783161490736  
cloth 134,00 €

ISBN 9783161512353  
eBook PDF 134,00 €

The German Basic Law of 1949 is, together with other post-dictatorial constitutions, a new step in world constitutional history. Unlike its predecessors from the epochs of the American and the French Revolution up to the Weimar Republic, it must be regarded as a system. This means that the function of the judge changes. His personal views become less important, and arguments such as the 'political question doctrine' and 'judicial self-restraint' become impossible. The constitution itself has laid down the values that are to be strengthened and enforced by the state and its courts. Thus legal positivism has lost its formality and must become a positivism of values. Martin Hochhuth has developed a new concept of constitutional interpretation, which he tests using the most problematic freedom of speech cases from »Luth« to »Stolpe« and »Benetton« .



Anderheiden, Michael

## Gemeinwohl in Republik und Union

Volume 152  
unrevised e-book edition 2019;  
Original edition 2006 2006.  
XXVIII, 736 pages.

ISBN 9783161580420  
eBook PDF 154,00 €

The common good is a central term in German constitutional law, and it also has a huge impact on European and public international law. In this monograph, Michael Anderheiden develops a unified concept of common good for today's legal world, based on an individualistic and materialistic approach, traces its normative sources in the German Basic Law and European primary law, in particular in the basic liberties and the objectives of the EU Treaty, and gives convincing answers to numerous legal problems.

Alleweldt, Ralf

## Bundesverfassungsgericht und Fachgerichtsbarkeit

Volume 151  
2006. XVII, 375 pages.

ISBN 9783161490002  
cloth 129,00 €

ISBN 9783161580710  
eBook PDF 129,00 €

In the constitutional complaint procedure, the German Federal Constitutional Court has the competence to review all court judgments and decisions as to whether they violate fundamental human rights. It is, however, not clear how intensive this review should be. Many scholars argue that it has inherent limitations. Ralf Alleweldt questions this assumption and develops, on the basis of a thorough analysis of the case-law and by way of constitutional interpretation, a systematic model for the constitutional review of court decisions.

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ERGEBNIS

LITERATURVERZEICHNIS

Walter, Christian

## Religionsverfassungsrecht

in vergleichender und internationaler Perspektive

Volume 150  
2006. XXXI, 664 pages.

ISBN 9783161489907  
cloth 179,00 €

ISBN 9783161580116  
eBook PDF 179,00 €

Christian Walter deals with the law pertaining to church and state relations from the perspective of fundamental rights. He looks at the different transformation processes which the systems of separation between church and state in France and the USA are undergoing and compares these to the changes in the German model of cooperation. He shows that in spite of remaining differences on a theoretical level, the approaches are quite similar in their practical legal application. The author begins by comparing the history of the three legal systems, using the central themes of secularization and individualization. With the use of selected examples he shows how the institutional law pertaining to church and state relations is transformed by the application of fundamental rights. The author then studies how this process is reinforced through European and international human rights guarantees. In a final part the author presents the dogmatic consequences of his concept for the German law pertaining to church and state relations.

Stumpf, Christoph A.

## Alternative Streitbeilegung im Verwaltungsrecht

### Schiedsgerichtsverfahren – Schiedsgutachten – Mediation – Schlichtung

Volume 149  
2006. XXIII, 349 pages.

ISBN 9783161489815  
cloth 114,00 €

ISBN 9783161580567  
eBook PDF 114,00 €

While administrative jurisdiction still provides the conventional way to resolve administrative disputes between bodies of public law and private individuals in Germany, the use of methods of alternative dispute resolution has meanwhile gained increasing acceptance. Christoph A. Stumpf examines the regulatory principles governing the application of such methods in constitutional law and in administrative law, focusing on arbitration in a 'proper' as well as a 'wider' sense, arbitrator's expert opinions, mediation, and conciliation. He discusses the constitutional legitimacy of these methods on a national level as well as their impact on an international level; furthermore, he illustrates the practical implementation of respective proceedings. In this context, he also highlights the advantages of the individual methods, in particular their practicability and effectiveness.

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*Abschnitt 4: Resumé*

7. KAPITEL: Resumé

von Arnauld, Andreas

## Rechtssicherheit

### Perspektivische Annäherungen an eine 'idée directrice' des Rechts

Volume 148  
unrevised e-book edition 2019;  
Original edition 2006 2006.  
XXVI, 801 pages.

ISBN 9783161580413  
eBook PDF 159,00 €

In addition to justice, legal certainty is one of the main objectives of the law. We cannot imagine the legal discourse of an institutionalized legal order, particularly the German legal order, without it. Andreas von Arnauld explains and reconstructs an *idée directrice* of the law, which precisely because of its omnipresence in the legal discourse is in danger of being consigned to oblivion. The author examines teleology, normative structures and manifestations of legal certainty from different perspectives, i.e. genealogical, topological and comparative, in order to give a differentiated picture of this general principle of law. The comparison with other European legal systems contributes to a correction of the one-sidedness in the national perspective.

Tschentscher, Axel

## Demokratische Legitimation der dritten Gewalt

Volume 147  
unrevised e-book edition 2019;  
Original edition 2006 2006.  
XXIII, 410 pages.

ISBN 9783161580017  
eBook PDF 134,00 €

The judiciary is independent in its decision-making. Axel Tschentscher shows how democratic legitimation as defined by the prevailing formal model of democracy leads to inconsistent results. He outlines an alternative control model as the framework of democracy according to the German Basic Law. This model relies on potential control over the law as the primary criterion for democratic legitimacy. As long as substantive control is present, the requisite level of legitimation according to the Basic Law can be attained even without the elements of personal and organizational chains of command. The extent to which the lawmaker takes responsibility for the results of judicial decision-making would be underestimated if he were required to actually exercise specific guidance in every field rather than merely retain potential control over the outcome. Regarding judicial selection, the control model provides the *Länder* with a wide range of procedures meeting the requirements of the German Basic Law; not even elements of cooptation are excluded *per se*.

Baer, Susanne

## »Der Bürger« im Verwaltungsrecht

### Subjektkonstruktion durch Leitbilder vom Staat

Volume 146  
unrevised e-book edition 2019;  
Original edition 2006 2006.  
X, 304 pages.

ISBN 9783161580406  
eBook PDF 109,00 €

How does the law create citizenship, and what vision of citizenship can be found in current jurisprudence? Susanne Baer combines a constructivist approach with a solid doctrinal analysis to illustrate the divergent and contradictory images of the citizen which can be observed in administrative law. She then compares images of the state with images of the citizen in a discussion of current trends in administrative reform and offers a guideline for the law and for administrative practice.

Schönberger, Christoph

## Unionsbürger

### Europas föderales Bürgerrecht in vergleichender Sicht



Volume 145  
2005. XXVI, 597 pages.

ISBN 9783161488375  
cloth 179,00 €

ISBN 9783161579981  
eBook PDF 179,00 €

Christoph Schönberger analyzes European citizenship as federal citizenship. He compares the situation in the European Union with the development and structure of federal citizenship in the United States, Switzerland and Germany. In doing so, he develops a general pattern of analysis for nested citizenships in federal systems. The nested citizenship of the European Union shows interesting parallels with citizenship in the United States before the Civil War, German citizenship before 1934 and the still valid Swiss citizenship law since 1848/1874. The study avoids a negative comparison of Union citizenship with the nationality of today's national states; by the same token, it shows that theories of 'post-national membership' do not offer convincing descriptions of the meaning and content of European citizenship.

Borowski, Martin

## Die Glaubens- und Gewissensfreiheit des Grundgesetzes

Volume 144  
unrevised e-book edition 2019;  
Original edition 2006 2006.  
XXXIV, 837 pages.

ISBN 9783161580390  
eBook PDF 159,00 €

The basic right to freedom of religion and conscience is found at the center of a great number of fundamental conflicts, such as, for example, whether a crucifix in the schools, the religious headscarf worn by Moslem teachers or ritual butchering ought to be allowed. Structural peculiarities in freedom of religion and conscience and their relation to the articles in the German Basic Law on the law of church and state are a special challenge to the legal scholar. Martin Borowski reconstructs this complex, which has been greatly influenced by tradition, against the backdrop of the findings of the modern views on fundamental rights. This includes an exact analysis of the relationship between fundamental constitutional rights and the authorization given by the law of church and state, the collective and the individual aspects of freedom of religion, a detailed study of the definition of 'religion' and of the boundaries of freedom of religion and conscience.

Wittreck, Fabian

## Die Verwaltung der Dritten Gewalt

Volume 143  
2006. XLI, 883 pages.

ISBN 9783161487835  
cloth 189,00 €

ISBN 9783161579998  
eBook PDF 189,00 €

The German model of court administration by the Ministries of Justice seems severely outdated. Fabian Wittreck demonstrates that the active role of the executive in recruitment and supervision of the judges is crucial for the accountability and democratic legitimacy of the judiciary. The idea of judicial self-government would lead to courts only weakly bound by the law but strongly politicized. This claim is based on the first comprehensive analysis of the German system of court administration from the point of view of constitutional law, given by the author, along with the description of other models of administration of the judiciary, namely the member states of the European Union and the United States.

Baumeister, Peter

## Der Beseitigungsanspruch als Fehlerfolge des rechtswidrigen Verwaltungsakts

Volume 142  
2006. XX, 482 pages.

ISBN 9783161485602  
cloth 139,00 €

ISBN 9783161579752  
eBook PDF 139,00 €

German administrative law has a large number of rules which ensure that, in spite of their illegality, administrative acts do not need to be rescinded. Since these rules were created, there have also been a large number of objections from a constitutional standpoint. In this work, Peter Baumeister attempts to cover the entire subject. He does this from the standpoint of entitlement, which is violated by the administrative act. As a reaction, this violation of the law results in the right to the abatement of a nuisance, the basis of which, according to the author, can always be found in fundamental rights as the entitlement of each person to defend himself. Against this backdrop, and after defining the preconditions of illegality and violation of the law, the author takes a critical look at the individual legal restrictions to and exclusions of the right to the abatement of a nuisance, taking the guidelines of European Community law into consideration.

Möllers, Christoph

## Gewaltengliederung

### Legitimation und Dogmatik im nationalen und internationalen Rechtsvergleich

Volume 141  
2005. XXII, 515 pages.

ISBN 9783161486708  
cloth 144,00 €

ISBN 9783161579950  
eBook PDF 144,00 €

In this work, Christoph Möllers takes the traditional notion of separated powers and tries to modernize it by developing a legitimacy-based model for the legislative, executive and judicial functions. This model is based on the idea of autonomy as the central element for every legal order that claims legitimacy. The institutional implications of the distinction between individual and collective self-determination enable the author to develop certain criteria for the organization of legitimate lawmaking procedures. In this model, the concept of separated powers provides a solution for the perpetual conflict between individual and collective self-determination, both equally accepted by constitutional systems. These criteria can be applied comparatively to traditional problems of separated powers – delegation, constitutional jurisdiction – as well as to problems of multi-level legal systems.

Odendahl, Kerstin

## Kulturgüterschutz

### Entwicklung, Struktur und Dogmatik eines ebenenübergreifenden Normensystems

Volume 140  
2005. XLVII, 724 pages.

ISBN 9783161486432  
cloth 189,00 €

ISBN 9783161579844  
eBook PDF 189,00 €

As irretrievable evidence of intellectual and historical development, cultural property is of vital importance to every society. In spite of this, the protection of cultural property as an independent field of law is comparatively new. Kerstin Odendahl begins her work by outlining the historical development of the protection of cultural property on a national level and in international and European law, using this as a basis for describing the present system of standards. Drawing on this, she then examines whether or not the protection of cultural property has dogmatic elements which are common to all the levels. The author concludes her work by showing inconsistencies in evaluation and violations of the system and suggests solutions which are consistent with the system. As a new scientific approach, »comprehensive dogmatics«, developed as an example for the protection of cultural property, is suitable for application in other fields of law as well.

Welti, Felix

## Behinderung und Rehabilitation im sozialen Rechtsstaat

### Freiheit, Gleichheit und Teilhabe behinderter Menschen

Volume 139  
2005. XXVIII, 841 pages.

ISBN 9783161487255  
cloth 189,00 €

ISBN 9783161580031  
eBook PDF 189,00 €

Felix Welti examines disability and rehabilitation as legal terms. In his study, he deals with the results of medical and sociological research and the discussion about the International Classification of Functioning, Disability and Health within the World Health Organization, describing the responsibility of the German social state – the constitutional term for welfare state – in its historical, juridical and institutional forms. He does a general systematic analysis of the dignity, equality, self-determination and participation of the disabled under German and European law, using many examples from social security, labor law, guardianship and other legal and social problems.

For this book, Felix Welti received the 'Zarnekow-Förderpreis für Rehabilitationsforschung' in 2006.

von Coelln, Christian

## Zur Medienöffentlichkeit der Dritten Gewalt

### Rechtliche Aspekte des Zugangs der Medien zur Rechtsprechung im Verfassungsstaat des Grundgesetzes

Volume 138  
2005. XXX, 576 pages.

ISBN 9783161486616  
cloth 174,00 €

ISBN 9783161580024  
eBook PDF 174,00 €

Christian von Coelln explains the constitutional mixture of fundamental rights (freedom of the press, right to privacy) and the principles of state structures (democracy, rule of law) arisen by the media's access to jurisdiction. He describes the accessibility of courts for the media as a constitutional principle which applies to all the media and the activity of the courts as a whole. In addition to the presence of journalists at trials, he also deals with the permissibility of taking pictures or broadcasting from in and around the courtroom, focusing in particular on the position of the media granted by the constitution's basic rights. In the author's opinion, the statutory ban on courtroom-television is unconstitutional. He concludes his work with a summary of the publication of court rulings and the public relations work done by the courts.

Schmidt, Thorsten Ingo

## Kommunale Kooperation

### Der Zweckverband als Nukleus des öffentlich-rechtlichen Gesellschaftsrechts

Volume 137  
unrevised e-book edition 2019;  
Original edition 2005 2005.  
XXXV, 695 pages.

ISBN 9783161580383  
eBook PDF 144,00 €

German public law, which used to be characterized solely by categories of subordination, is, in the process of Europeanization, developing into a universal law of public corporations. The changes concern not only the relations between citizens and the state but also the connections to organs of sovereign power. The relations between them cannot adequately be understood according to the traditional categories of administrative organization law, which is hierarchically structured. The law must be expanded into a modern law which includes public corporations.

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Grundlagen kommunaler Kooperation  
Bildung des Zweckverbandes und Hinzutreten weiterer Mitglieder  
Mitglieder, Angehörige und Verbandsgerechtigkeit  
Ausscheiden von Mitgliedern, Veränderungen des Zweckverbandes und besondere Organisationsformen



Mohr Siebeck

Jus Publicum.  
Beiträge zum öffentlichen Recht  
Last updated: 20/04/2024

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Interne Organisation des Zweckverbandes, Handlungsformen, Haftung und Vollstreckung  
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Kontrolle des Zweckverbandes und prozessuale Stellung  
Grenzüberschreitende Zusammenarbeit  
Ergebnisse und Anhänge

Haltern, Ulrich

## Europarecht und das Politische

Volume 136  
unrevised e-book edition 2019;  
Original edition 2005 2005.  
XIV, 636 pages.

ISBN 9783161580000  
eBook PDF 144,00 €

European citizens remain largely indifferent towards the Union. Legal scholars are wrong to funnel the Union's social legitimacy deficit to empirical sociology, or to ignore it altogether, because questions of identity are intimately linked to the law. Engaging in a cultural study of European law, Ulrich Haltern argues that the crisis in social acceptance can be traced back to the texture of EU law. While national law has a rich fabric of cultural resources to rely on, EU law appears less »ours«. The way these two bodies of law imagine the political is entirely different, as can be shown with respect to the free movement of goods, the judicial system, fundamental rights, and Union citizenship. As it turns out, the European Court is following the Commission's lead and is taking the Union from a political psychology of interest and reason to a dimension of collective will, thus approximating the imagination of the political in the EU and in nation-states.

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2. Kapitel: Das Politische des Rechts und das Recht des Politischen
3. Kapitel: Die Identität Europas. Vernunft und Interesse

*Zweiter Teil:* Europarecht im Übergang?

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Wernsmann, Rainer

## Verhaltenslenkung in einem rationalen Steuersystem

Volume 135  
2005. XXIII, 525 pages.

ISBN 9783161484599  
cloth 159,00 €

ISBN 9783161580048  
eBook PDF 159,00 €

Should tax law also protect the environment, promote good health and reward social behavior? Or should taxes only provide the state with financial resources? Rainer Wernsmann looks into these questions and endeavors to differentiate among the various approaches. He distinguishes between what is desirable from the standpoint of legal policy and what is necessary from the standpoint of constitutional and European law. He begins by looking at the historical and economic principles of influencing behaviour by taxation. Based on this, he establishes constitutional standards for the instrumentalization of tax law for non-fiscal purposes. He shows that taxes imposed for the purpose of influencing behavior do not necessarily have to be suitable, necessary and appropriate for both purposes (fiscal and influential). The author would like to apply the same strict constitutional requirements to special duties »with influential purposes« as those already applied to other special duties.

Musil, Andreas

## Wettbewerb in der staatlichen Verwaltung

Volume 134  
2005. XXIV, 473 pages.

ISBN 9783161487170  
cloth 159,00 €

ISBN 9783161580055  
eBook PDF 159,00 €

Andreas Musil examines how the incentive mechanisms of competition can be effective in government administration as well. He deals in particular with constitutional guidelines for and limits to administrative reforms whose purpose is the economization of the administration. From the perspective of constitutional law, he analyzes the significance of competition and profitability in the Basic Law, and their limits as well. Since the author shows that government administration can only be reformed and economized to a limited extent, he concludes by suggesting the privatization of jobs and functions as possible alternatives.



Lenze, Anne

## Staatsbürgerversicherung und Verfassung

### Rentenreform zwischen Eigentumsschutz, Gleichheitssatz und Europäischer Integration

Volume 133  
2005. XXII, 570 pages.

ISBN 9783161487101  
cloth 159,00 €

ISBN 9783161579820  
eBook PDF 159,00 €

Since the decision made by the German Federal Constitution Court in 1980, every fundamental pension reform in Germany has to be based on the protection of the property of those expecting a pension. Anne Lenze examines the possibility of a citizens' insurance, already in existence in Switzerland, and attempts to establish the lawmaker's maximum leeway for the protection of property. The current debates surrounding fairness between the generations, equality of both sexes and the overcoming of mass unemployment have resulted in a demand for equal treatment. The author examines these demands for equality before the law, demands which are being made on a modern old age pension scheme, in relation to their constitutional relevance. She concludes by giving the social criteria for old age pension schemes, criteria which in accordance with Article 23 Paragraph 1 of the German Basic Law should guide the actions of the Federal Republic of Germany in the development of the European Union.

Ohler, Christoph

## Die Kollisionsordnung des Allgemeinen Verwaltungsrechts

### Strukturen des deutschen Internationalen Verwaltungsrechts

Volume 131  
unrevised e-book edition 2019;  
Original edition 2005 2005.  
XX, 405 pages.

ISBN 9783161581182  
eBook PDF 114,00 €

For a long time, conflict of law issues in public law have been regarded as a particular area of private international or international economic law. Christoph Ohler examines modern developments in the field of supervisory law and police law and puts them in the context of constitutional requirements and international customary law. He identifies a system of rules which demonstrate the proper quality of conflict rules in public law.

Rixen, Stephan

## Sozialrecht als öffentliches Wirtschaftsrecht

### am Beispiel des Leistungserbringerrechts der gesetzlichen Krankenversicherung

Volume 130  
2005. XXXIII, 647 pages.

ISBN 9783161485732  
cloth 159,00 €

ISBN 9783161580642  
eBook PDF 159,00 €

Stephan Rixen examines the highly-regulated »health care market«, a branch which has been greatly influenced by the standards imposed by public law and in which the spheres of freedom given to service performers (doctors, hospitals, pharmacies, pharmaceutical companies, physiotherapists, midwives etc.) have been restricted considerably for »social« reasons. In this work, the author develops new constitutional and administrative law distinctions which strengthen the fundamental rights of health care professionals. He opts for a specific legal and economic approach which defines the implementation of social health care policies as an integral part of economic regulation by public law.

Becker, Florian

## Kooperative und konsensuale Strukturen in der Normsetzung

Volume 129  
unrevised e-book edition 2019;  
Original edition 2005 2005.  
XIX, 828 pages.

ISBN 9783161580369  
eBook PDF 179,00 €

The cooperative state attempts to manage its expanding tasks by integrating private parties into state functions. In this context, private parties also participate in legislative functions. They do so, for example, by taking part in parliamentary hearings as experts and interest groups, but also by concluding legislative contracts with the state. Thus the state does in fact put entire areas which are in need of regulation either partially or completely into the hands of private parties or organizations and in varying degrees reserves the right to take responsibility for the part which remains. In this work, the author systematizes these phenomena and examines their constitutional framework.

Biehler, Gernot

## Auswärtige Gewalt

### Auswirkungen auswärtiger Interessen im innerstaatlichen Recht

Volume 128  
2005. XIV, 351 pages.

ISBN 9783161484476  
cloth 129,00 €

ISBN 9783161579851  
eBook PDF 129,00 €

Foreign policy interests are used repeatedly in order to justify conduct which is not acceptable under the German Basic Law (Grundgesetz). These interests often lead to almost incomprehensible results and are difficult to understand. In all questions pertaining to extraditions, foreign trade, UN sanctions or building laws to be applied when building new embassies, foreign policy interests are taken into consideration in legal practice. When however there is a conflict with individual rights, it is necessary to weigh all the interests, and these are often not taken into consideration by foreign policy interests. Gernot Biehler examines a large quantity of case material from various legal fields, and in doing so succeeds in making foreign policy interests easier to understand.

Böse, Martin

## Wirtschaftsaufsicht und Strafverfolgung

### Die verfahrensübergreifende Verwendung von Informationen und die Grund- und Verfahrensrechte des Einzelnen

Volume 127  
2005. XXXI, 622 pages.

ISBN 9783161485596  
cloth 174,00 €

ISBN 9783161579943  
eBook PDF 144,00 €

The author examines the constitutional and legal framework for the use of personal data which has been obtained for other purposes in the course of administrative proceedings, such as for example the prosecution of criminal offenders, and vice versa with respect to personal data which has been obtained in criminal proceedings. There are different standards for obtaining information in criminal proceedings and in the administrative procedure of economic supervision. If there are no impediments to the flow of information from one procedure to the other, the danger is that the standards for obtaining information and the concept of protection which these embody will be circumvented. Based on a comparison between the structure of criminal proceedings and the administrative procedure, Martin Böse shows how constitutionally guaranteed basic and procedural rights of the individual restrict state intervention to obtain and process personal data. He also examines the existing laws which permit the use of information from both procedures in respect to their compatibility with the constitution.

Cornils, Matthias

## Die Ausgestaltung der Grundrechte

### Untersuchungen zur Grundrechtsbindung des Ausgestaltungsgesetzgebers

Volume 126  
2005. XVI, 720 pages.

ISBN 9783161484698  
cloth 174,00 €

ISBN 9783161579974  
eBook PDF 174,00 €

Matthias Cornils examines the extent to which the rights of liberty in the Basic Law limit the lawmaker without having this limitation seen in principle as a ban on intervention in the sense of the traditional interpretation of fundamental rights as rights of protection against intervention. Based on detailed individual analyses of fundamental rights, broadcasting freedom, contractual freedom, property, marriage, freedom of association and the actual legal protection, the author criticizes the widespread opinion that the content of all or some of the fundamental rights was determined more or less by the lawmaker.

Appel, Ivo

## Staatliche Zukunfts- und Entwicklungsvorsorge

### Zum Wandel der Dogmatik des Öffentlichen Rechts am Beispiel des Konzepts der nachhaltigen Entwicklung im Umweltrecht

Volume 125  
2005. XVIII, 618 pages.

ISBN 9783161478574  
cloth 144,00 €

ISBN 9783161579967  
eBook PDF 139,00 €

Ivo Appel determines the legal status of sustainable development in international law, European law and German law. He specifies the objectives of sustainable development, describes the prerequisites and consequences of adequate decision-making and demonstrates the problems involved in the indispensable instrumentalization process. Pointing out the state responsibility for future generations and the environment, he develops the legal content, the capacity and the limits of the concept of sustainability as a model of legal regulation.



Seiler, Christian

## Der souveräne Verfassungsstaat zwischen demokratischer Rückbindung und überstaatlicher Einbindung

Volume 124  
2005. XXI, 432 pages.

ISBN 9783161483738  
cloth 119,00 €

ISBN 9783161579790  
eBook PDF 119,00 €

Using the Federal Republic of Germany as an example, Christian Seiler examines the repercussions of the integration of international and European law on the constitutional state. He traces the main concepts of state and constitution back to their actual meaning in order to systematize them, to put them in the right order in the evolution of contemporary history and to ensure their continuity in a manner which will preserve their meaning. Seen from the point of view of jurisprudence, almost all those elements which have had a formative influence on the nature of the constitutional state will not be affected by the current developments, or they can be modified and continued. It is democracy which is weakened by a partial transition from a parliamentary legislative procedure to a supranational decision-making process geared towards consensus and compromise, a development for which there is presently no compensation but which can be curbed by the autonomous interpretation of the principle of subsidiarity.

Franz, Thorsten

## Gewinnerzielung durch kommunale Daseinsvorsorge

### Zugleich eine Untersuchung zu den Zwecken und Formen der kommunalen wirtschaftlichen Betätigung

Volume 123  
2005. XXIX, 874 pages.

ISBN 9783161485824  
cloth 194,00 €

ISBN 9783161579929  
eBook PDF 194,00 €

Thorsten Franz examines the possibilities and limitations of making a profit through local services provided for the public. In this area, profit-making is regulated directly and indirectly by a highly complex system of standards from different levels of law-making and it raises a lot of diverse and unsolved legal issues in the different fields of law. The author gives a comprehensive description of the European, constitutional and legal framework for profit-making. In doing so, he attempts to distinguish between the cases of inadmissible profit-making and the threshold between admissible and inadmissible profit-making in justiciable clarity. At the same time he also deals with the forms of disclosed profit-making as well as the various forms of undisclosed profit-making.

Schwartzmann, Rolf

## Private im Wirtschaftsvölkerrecht

Volume 122  
2005. XLIII, 551 pages.

ISBN 9783161484575  
cloth 149,00 €

ISBN 9783161579936  
eBook PDF 149,00 €

Rolf Schwartzmann examines the agreements under international law made within the WTO and shows that many of these create a uniformly applicable and binding legal standard. A lot of provisions grant private persons and companies a legal status. He also demonstrates that these norms are in parts directly applicable and thereby create substantive and procedural law that is binding in the member states. In relation to this issue, the author gives a critical analysis of the existing rules laid down in the WTO agreements as they pertain to the rulings of the WTO courts, the European Court of Justice and literature on this matter. Before doing so, Schwartzmann studies the direct applicability of international agreements in international economic law outside of WTO law and categorizes the direct applicability of agreements under international economic law from a legal perspective on the whole.

Uhle, Arnd

## Freiheitlicher Verfassungsstaat und kulturelle Identität

Volume 121  
unrevised e-book edition 2019;  
Original edition 2004 2004.  
XXI, 590 pages.

ISBN 9783161580352  
eBook PDF 154,00 €

Arnd Uhle examines the relationship between the free constitutional state and cultural identity, a subject on which up to now very little research had been done. From the standpoint of constitutional theory, constitutional law and European law, the author studies the relevance of cultural identity for the origin, form and continued existence of the free constitutional state. He shows that the state, which is bound by the constitution, is obligated to maintain and protect cultural identity. The author concludes this work with a look at European law, making it clear that the constitutional connection to cultural identity as well as its protection under constitutional law are protected by Article 6, Paragraph 3 of the Treaty on European Union, which decrees respect for national identity.

Lindner, Josef Franz

## Theorie der Grundrechtsdogmatik

Volume 120  
unrevised e-book edition 2019;  
Original edition 2005 2005.  
XXI, 611 pages.

ISBN 9783161580345  
eBook PDF 139,00 €

The subject of the dogmatics of fundamental rights in Germany has become so complex that it is almost hypertrophic, a situation which many find lamentable. Against this backdrop, Josef Franz Lindner reconstructs the dogmatic structures of the fundamental rights in order to reduce their complexity. The author does this reconstruction on three different levels, beginning on the meta level with a description of the epistemological and methodological principles of the discussion on the dogmatics of fundamental rights. He uses this methodological basis to develop the material theory of fundamental rights in the Basic Law. On a third level, he shows how the material theory of fundamental rights in the Basic Law can be applied as basic standards in everyday life.

Durner, Wolfgang

## Konflikte räumlicher Planungen

Verfassungs-, verwaltungs- und gemeinschaftsrechtliche Regeln für das Zusammentreffen konkurrierender planerischer Raumansprüche

Volume 119  
2005. XXXII, 615 pages.

ISBN 9783161485084  
cloth 179,00 €

ISBN 9783161579868  
eBook PDF 179,00 €

Over the past two decades, the number of conflicts among land use and related spatial plans has increased steadily in Germany, and public planning law has been called upon to solve an unprecedented number of conflicts among competing planning authorities. In this study, the author develops three basic rules to deal with incompatible spatial planning and proposes a uniform model for the whole complex of problems involved.

Sydow, Gernot

## Verwaltungskooperation in der Europäischen Union

Zur horizontalen und vertikalen Zusammenarbeit der europäischen Verwaltungen am Beispiel des Produktzulassungsrechts

Volume 118  
2004. XIX, 380 pages.

ISBN 9783161485534  
cloth 134,00 €

ISBN 9783161579912  
eBook PDF 134,00 €

During the past years, numerous forms of cooperation among the administrations of the EU member states and the European Commission have developed. The normative basis for this is the European law which regulates administrative cooperation. Gernot Sydow reveals those basic structures in this law which have had a formative influence on the system. In order to do so, he refers to the product approval law. As an instrument for devising a system of administrative law, he outlines four cooperation and enforcement models which are the point of reference for a detailed analysis of selected cooperation procedures. Using an administrative approach, the author explains the institutional, staff and information requirements for a European administrative cooperation. He defines the normative demands made on the authorization of administrative structures of cooperation, focusing in particular on the implementation of fundamental procedural rights in multistage cooperation procedures.

Bumke, Christian

## Relative Rechtswidrigkeit

Systembildung und Binnendifferenzierungen im Öffentlichen Recht

Volume 117  
unrevised e-book edition 2019;  
Original edition 2004 2004.  
XVIII, 309 pages.

ISBN 9783161581175  
eBook PDF 99,00 €

Can a legal act be a »bit« illegal? In attempting to answer this question, Christian Bumke uses specific legal problems to demonstrate the basic instruments, mechanisms and examples of shaping the legal system and in doing so tries to explain the significance of the phenomenon of relative illegality in this procedure. In this respect this book can be seen as a contribution to finding a workable solution to a number of basic problems in public law, such as for example the status of directives and administrative provisions between internal and external law, the illegality of laws and administrative acts, the ties between federal authorities and state law and the relationship between the private and the public law concerning the respective interests of neighbors.

Jochum, Heike

## Verwaltungsverfahrenrecht und Verwaltungsprozeßrecht

### Die normative Konnexität von Verwaltungsverfahren- und Verwaltungsprozeßrecht und die Steuerungsleistung des materiellen Verwaltungsrechts

Volume 116  
2004. XXXVIII, 553 pages.

ISBN 9783161485404  
cloth 159,00 €

ISBN 9783161579899  
eBook PDF 159,00 €

Heike Jochum provides a study which, although written from the perspective of the dogmatics of administrative law, also uses the approaches found in legal systematics and the sociology of law. Based on the discovery that administrative procedure and the trial in administrative court are linked in their functions in many respects, she examines the normative connections between administrative procedural law and administrative trial law. This brings her to the question of the significance of the regulatory power and the regulatory character of administrative law. The author develops a theory of the normative coherence of administrative procedural law and administrative trial law, which she then exemplifies and verifies using numerous areas of reference from special administrative law. She focuses on environmental law, town planning law, social security law, public budgetary law, the law of awarding public contracts, antitrust law, freight haulage law and university legislation.

Kersten, Jens

## Das Klonen von Menschen

### Eine verfassungs-, europa- und völkerrechtliche Kritik

Volume 115  
2004. XL, 679 pages.

ISBN 9783161484643  
cloth 179,00 €

ISBN 9783161579882  
eBook PDF 179,00 €

The birth of »Dolly«, the cloned sheep, marks a change of paradigm in developmental biology. But does »Dolly« also signify a change of paradigm in the law? Jens Kersten discusses the cloning of human beings for reproductive, therapeutic, scientific and diagnostic purposes against the background of national, European and international bans on cloning. He argues in favor of making responsible provisions for the existence of future human beings, whose dignity, integrity and equality is at risk as a result of cloning. On this basis, he concludes that even the cloning of totipotent human cells should be prohibited and suggests regulations for the ban of cloning on a national, European and international level.

Khan, Daniel-Erasmus

## Die deutschen Staatsgrenzen

### Rechtshistorische Grundlagen und offene Rechtsfragen

Volume 114  
2004. XXIV, 744 pages.

ISBN 9783161484032  
cloth 179,00 €

ISBN 9783161579837  
eBook PDF 179,00 €

It is not only historians, social scientists and geographers who are concerned with national boundaries. Since every state has its own territory, defining its limits has always been of great significance in international relations. It is therefore surprising that up to now there has not been an in-depth study of this subject as it pertains to German boundaries. In order to close this research gap, Daniel-Erasmus Khan makes use of legal science and academic disciplines bordering on this in his work. The author analyzes the legal and historical dimensions of the foundations of the Federal Republic of Germany which were partially laid in the Middle Ages and in addition gives a multifaceted picture of the legal systems pertaining to the various German boundaries.

Schmehl, Arndt

## Das Äquivalenzprinzip im Recht der Staatsfinanzierung

Volume 113  
2004. XXII, 289 pages.

ISBN 9783161484711  
cloth 99,00 €

ISBN 9783161579875  
eBook PDF 99,00 €

The question of how and by whom public duties are financed is crucial for the role of the state in society. In view of the far-reaching changes in the state, the question is what kind of state financing is just and constitutional as well as economically efficient. A possible answer to this question would be to link the financial responsibility for certain revenue and certain expenses more closely in accordance with the principle of equivalence. In this volume, Arndt Schmehl takes a look at this proposal from an interdisciplinary and a jurisprudential standpoint.



Schliesky, Utz

## Souveränität und Legitimität von Herrschaftsgewalt

### Die Weiterentwicklung von Begriffen der Staatslehre und des Staatsrechts im europäischen Mehrebenensystem

Volume 112  
2004. XIX, 815 pages.

ISBN 9783161481215  
cloth 174,00 €

ISBN 9783161579905  
eBook PDF 174,00 €

Every state in history has needed sovereignty and legitimacy of administrative power, and the modern state is no exception to this. However these concepts are under pressure from European integration and inner-state cooperation. Utz Schliesky shows the historical development of these concepts which are central to the theory of the state; he proves that their structure is not suited to the multiple levels of the European Union and its members. He outlines a system of common sovereignty and a new concept of plural legitimation so that these concepts may be used for the purpose for which they were created.

Guckelberger, Annette

## Die Verjährung im Öffentlichen Recht

Volume 111  
2004. XIV, 818 pages.

ISBN 9783161483745  
cloth 194,00 €

ISBN 9783161579806  
eBook PDF 194,00 €

Up to now, administrative law, unlike private law, has not contained any general regulations regarding the statute of limitations on public legal positions. Annette Guckelberger examines the historical development and the lack of limitation provisions in public law. She then questions whether the present practice of applying the statute of limitations in private law to situations arising under administrative law is appropriate and asks if, considering the special nature of public law, it would not in fact be preferable for it to have its own independent legal structure.

Kube, Hanno

## Finanzgewalt in der Kompetenzordnung

Volume 110  
2004. XXXIII, 806 pages.

ISBN 9783161483851  
cloth 194,00 €

ISBN 9783161579813  
eBook PDF 194,00 €

The levying of taxes for purposes of controlling the behavior of taxpayers, the increased use of fees and other contributions in order to finance the state and current developments in public budgeting and accounting are predominant features of the fiscal state today. These features present a host of legal problems. For the first time, Hanno Kube deals with these problems by taking account of the interdependent areas of tax law, administrative law as well as budget law. As a result, he is able to define clear normative boundaries to the use of the legal instruments beyond their original purpose, and provides perspectives as to how the fiscal state can be made more efficient within the framework of constitutional, EC and WTO law.

Bultmann, Peter

## Beihilfenrecht und Vergaberecht

### Beihilfen und öffentliche Aufträge als funktional äquivalente Instrumente der Wirtschaftslenkung – ein Leistungsvergleich

Volume 109  
2004. XXII, 397 pages.

ISBN 9783161484377  
cloth 134,00 €

ISBN 9783161579738  
eBook PDF 134,00 €

Peter Friedrich Bultmann does a comparative study of the law of government subsidies and of the awarding of public contracts as instruments of economic control. The objective of his study is to optimize the law pertaining to governmental influence on the economy. The author begins with a legal and a factual analysis of the extent to which subsidies and public contracts can be used as instruments of economic control and the extent to which they are interchangeable in this function. In the second half of the study, he examines whether it is mainly subsidies or public contracts which should be used as a means of influencing the economy. The results of the comparison are then converted into suggestions for amendments to the budgetary law, the stability law and the law of administrative procedure.



Grigoleit, Klaus Joachim

## Bundesverfassungsgericht und deutsche Frage

Eine dogmatische und historische Untersuchung zum judikativen Anteil an der Staatsleitung

Volume 108  
2004. XV, 415 pages.

ISBN 9783161483677  
cloth 134,00 €

ISBN 9783161579745  
eBook PDF 134,00 €

This book deals with judiciary power in the German legal and political system. The author rejects exaggerated ideas of the Federal Constitutional Court as a predominant participant in governmental leadership not only from a legal but also from an historical perspective. The court's decisions covering the »German question« (political situation in the past, separation of East and West Germany, reunification) show that the significance of the »countermajoritarian difficulty« has been overestimated, although there is no political question doctrine in German constitutional law. Judicial restraint is guaranteed by the principles of legitimation as well as by appointments to the bench which are made according to rules which prevent the formation of a court which could function as a kind of counter-government and participate in decisions regarding the future of the country.

Dederer, Hans-Georg

## Korporative Staatsgewalt

Integration privat organisierter Interessen in die Ausübung von Staatsfunktionen. Zugleich eine Rekonstruktion der Legitimationsdogmatik

Volume 107  
2004. XXVIII, 686 pages.

ISBN 9783161483028  
cloth 179,00 €

ISBN 9783161579776  
eBook PDF 159,00 €

Private interest groups (or their representatives) sometimes enjoy, at the initiative of the government, the privilege of controlling (alone or together with the public office holders) the exercise of legislative, executive or judicial powers. Examples are tripartite agreements (between the government, employers' associations and trade unions) on laws which are expected to be enacted later on by parliament without any modification. This phenomenon exists on the European Union level as well, e.g. in the case of the »social dialogue«. In the light of democratic principles, particularly the principle of democratic legitimacy, Hans-Georg Dederer examines the specific requirements for such participation of private interest groups in the exercise of governmental power.

Bröhmer, Jürgen

## Transparenz als Verfassungsprinzip

Grundsatz und Europäische Union

Volume 106  
2004. XX, 423 pages.

ISBN 9783161484209  
cloth 139,00 €

ISBN 9783161579769  
eBook PDF 139,00 €

Jürgen Bröhmer attempts to explain the concept of transparency in German constitutional law and European Union law. In order to do so, he analyses the German Basic Law and the law of the European Union. Transparency is by no means a new concept, and an in-depth analysis shows that the German Basic Law contains many provisions, features and procedures whose main objective lies in the creation of some form of transparency. The comparison to European Union law, in which transparency is foremost understood as access to documents and the legislative process reveals that transparency is regarded as being able to counter-balance an existing or perceived democratic deficit. The author also deals with EU law, focusing on the existing practice and jurisprudence concerning access to documents.

Müller-Franken, Sebastian

## Maßvolles Verwalten

Effiziente Verwaltung im System exekutiver Handlungsmaßstäbe am Beispiel des maßvollen Gesetzesvollzugs im Steuerrecht

Volume 105  
2004. XXXVIII, 581 pages.

ISBN 9783161482809  
cloth 159,00 €

ISBN 9783161579783  
eBook PDF 159,00 €

The financial crisis demands of the state to moderate its financial resources. The democratic constitutional state is liable to other regulations than a business venture, therefore, the principle of efficiency can not be the sole criteria for any of its action. For the executive Sebastian Müller-Franken develops a doctrine of the criteria of the administrative act which integrates the efficiency into a comprehensive system. The author outlines his system of executive criteria for the administrative act following the example of the tax administration and demonstrates how his doctrine can be implemented in the enforcement of tax laws.



Cremer, Wolfram

## Freiheitsgrundrechte

### Funktionen und Strukturen

Volume 104  
unrevised e-book edition 2019;  
Original edition 2003 2003.  
XXI, 570 pages.

ISBN 9783161580994  
eBook PDF 144,00 €

With the aid of an overall concept for the fundamental rights to liberty, Wolfram Cremer counters the frequently lamented »new lack of clarity« in the guarantee of the right to liberty under the Basic Law (German constitution) with a framework for a system. Referring constantly to a methodical apparatus, he develops a coherent and finely structured system for guaranteeing the fundamental rights to liberty. He shows that only the defensive and the protective functions are to be recognized as functions of fundamental rights which are independent and applicable to all basic rights to liberty.

Brüning, Christoph

## Einstweilige Verwaltungsführung

### Verfassungsrechtliche Anforderungen und verwaltungsrechtliche Ausgestaltung

Volume 103  
2003. XXI, 612 pages.

ISBN 9783161481840  
cloth 159,00 €

ISBN 9783161580208  
eBook PDF 159,00 €

The regulations of administrative law assume it is in principle possible to implement substantive law on a lasting basis if the facts are sufficiently clear under the law. However the administration is under pressure to make a preliminary decision if the implementation of a regular administrative procedure would be too late. In this work, Christoph Brüning examines possible solutions to this problem and comes to the conclusion that this could be remedied by an official interim arrangement which is based on weighing the interests of all concerned instead of a complete application of the law. This arrangement would be of a preliminary nature. The author concludes with a proposal for standardizing the structure of this interim arrangement in administrative law.

Hufeld, Ulrich

## Die Vertretung der Behörde

Volume 102  
2003. XII, 427 pages.

ISBN 9783161481314  
cloth 134,00 €

ISBN 9783161580178  
eBook PDF 134,00 €

Ulrich Hufeld sees the actions of those who represent government agencies embedded in general administrative law. He poses the classic *quis iudicabit* question *ad personam* and outlines a democratic administrative right of the individual. This systematic study deals with the internal procedures in agencies, describes the personal representatives of the hierarchic government agencies, who are bound but not completely governed by internal and external law, such as for example in ministries and tax offices, and discusses the issue of temporary replacement by colleagues and examines the 'government official named in the law'.

Stoll, Peter-Tobias

## Sicherheit als Aufgabe von Staat und Gesellschaft

### Verfassungsordnung, Umwelt- und Technikrecht im Umgang mit Unsicherheit und Risiko

Volume 101  
2003. XXXVI, 528 pages.

ISBN 9783161478710  
cloth 149,00 €

ISBN 9783161581168  
eBook PDF 149,00 €

Peter-Tobias Stoll examines constitutional, environmental and technological law, focusing on the laws pertaining to risks and risk management and on the question of how the duty to guarantee security is divided between the state and society. The author takes a look at the areas of internal security, employment protection, investment, atomic energy and biotechnology laws as well as the law of product security and the law pertaining to food and drugs.



Classen, Claus Dieter

## Religionsfreiheit und Staatskirchenrecht in der Grundrechtsordnung

Zur besonderen Bedeutung der religionsverfassungsrechtlichen Garantien im Lichte der allgemeinen Grundrechtsdogmatik

Volume 100  
2003. XI, 195 pages.

ISBN 9783161481291  
cloth 104,00 €

ISBN 9783161580192  
eBook PDF 104,00 €

The religious situation in Germany is changing. This requires a modernization of the law pertaining to the general principles governing fundamental rights in Germany, a modernization which takes the specific characteristics of religion into consideration. For this reason, Claus Dieter Classen proposes a more restrictive interpretation of the individual's religious freedom and of the freedom of religious communities and also suggests a new definition of the term 'religious community'.

Mager, Ute

## Einrichtungsgarantien

Entstehung, Wurzeln, Wandlungen und grundgesetzmäßige Neubestimmung einer dogmatischen Figur des Verfassungsrechts

Volume 99  
2003. XXII, 527 pages.

ISBN 9783161480010  
cloth 159,00 €

ISBN 9783161580161  
eBook PDF 159,00 €

Ute Mager analyses a special category of constitutional guarantees – »Einrichtungsgarantien«, which are known in the German legal theory since the constitution of Weimar (1919). She shows, that under the Basic Law the category has to be freed from the original theoretical context, which is found in the 'Historische Rechtsschule'. The function of »Einrichtungsgarantien« can no longer be seen in the protection of 'institutions' because of their historical value. Today »Einrichtungsgarantien« are to be defined as constitutional guarantees of autonomy. As to private persons this means the protection of the faculty to regulate freely their legal relations. As to public functions it means the protection of the competence to fulfill the function as own affair.

Poscher, Ralf

## Grundrechte als Abwehrrechte

Reflexive Regelung rechtlich geordneter Freiheit

Volume 98  
2003. XI, 449 pages.

ISBN 9783161478673  
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Ralf Poscher presents a reflexive interpretation of fundamental rights. According to his interpretation, one of the principal functions of fundamental rights is the regulation of social conflicts by the state. He develops a complex conception of legal freedom as a way of explaining the social and political dimensions of negative rights in relation to the state.

Kingreen, Thorsten

## Das Sozialstaatsprinzip im Europäischen Verfassungsverbund

Gemeinschaftliche Einflüsse auf das deutsche Recht der gesetzlichen Krankenversicherung

Volume 97  
2003. XIX, 659 pages.

ISBN 9783161479625  
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ISBN 9783161581151  
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Thorsten Kingreen defines the basic structures and the basic content of the principle of the social state based on the rule of law and examines the influence of European Community law on this principle. In doing so, he uses the law of compulsory health insurance as an example, since the European Court of Justice has made an increasing number of rulings related to this lately.



Dörr, Oliver

## Der europäisierte Rechtsschutzauftrag deutscher Gerichte

### Art. 19 Abs. 4 GG unter dem Einfluß des europäischen Unionsrechts

Volume 96  
2003. XVIII, 298 pages.

ISBN 9783161480089  
cloth 114,00 €

ISBN 9783161580444  
eBook PDF 114,00 €

Oliver Dörr examines the increasing Europeanization of the German legal and constitutional system, which also includes the fundamental procedural right laid down in the basic law: the guarantee of legal protection pursuant to article 19 paragraph 4. As a result of its Europeanization, the individual is under German constitutional law entitled to enforce those subjective rights granted under European Community law (for example freedom of movement and of residence, non-discrimination) in German courts. Moreover, the rules of the constitution also entitle the individual to defend himself before German courts against Community law. Oliver Dörr shows the extent to which German courts can (still) have jurisdiction in this respect.

Remmert, Barbara

## Private Dienstleistungen in staatlichen Verwaltungsverfahren

### Eine rechts- und verwaltungswissenschaftliche Untersuchung zur privaten Entscheidungsvorbereitung

Volume 95  
2003. XXX, 616 pages.

ISBN 9783161479878  
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ISBN 9783161580437  
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Functions in state administrative processes are being taken over increasingly by private service providers. Barbara Remmert shows the significance of government personnel for the preservation of constitutional standards, delimits the narrow field of employment for private service providers in government administrative processes and outlines terms for contracts with private service providers who exercise official government functions.

Kischel, Uwe

## Die Begründung

### Zur Erläuterung staatlicher Entscheidungen gegenüber dem Bürger

Volume 94  
2003. XVI, 437 pages.

ISBN 9783161479014  
cloth 134,00 €

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The obligation of all branches of government to provide reasons for their decisions is an expression of the relationship between the citizen and the state in a democratic society governed by the rule of law. Uwe Kischel develops a unified constitutional framework for the if and how of this obligation to say why.

Mann, Thomas

## Die öffentlich-rechtliche Gesellschaft

### Zur Fortentwicklung des Rechtsformenspektrums für öffentliche Unternehmen

Volume 93  
2002. XIX, 423 pages.

ISBN 9783161477966  
cloth 139,00 €

ISBN 9783161580499  
eBook PDF 139,00 €

Based upon German constitutional demands for management in the public sector which for example follow the rule of law, Thomas Mann examines the structure and content of legal directives concerning public enterprises and develops prospective solutions for the central issues pertaining to new public management, one of which is how to maintain public influence in privatized corporations.



Grzeszich, Bernd

## Rechte und Ansprüche

### Eine Rekonstruktion des Staatshaftungsrechts aus den subjektiven öffentlichen Rechten

Volume 92  
2002. XXV, 606 pages.

ISBN 9783161478604  
cloth 159,00 €

ISBN 9783161580468  
eBook PDF 159,00 €

Bernd Grzeszick discusses the problems of state liability in German and European law. As a solution, he provides a general theory of state liability, in which remedies are reconstructed as a reaction to the violation of civil rights. Based on this theory, he develops new basic principles of state liability and illustrates the results pertaining to the different remedies. In doing so, he establishes a system of concurrent principles of state liability in both German and European law.

Kaufmann, Marcel

## Untersuchungsgrundsatz und Verwaltungsgerichtsbarkeit

Volume 91  
2002. XVI, 486 pages.

ISBN 9783161478819  
cloth 149,00 €

ISBN 9783161580482  
eBook PDF 149,00 €

According to German procedural law, the administrative courts take responsibility for investigating the facts of a case. Marcel Kaufmann examines whether this traditional principle complies with the requirements of the German constitution and the function of the judiciary.

Huster, Stefan

## Die ethische Neutralität des Staates

### Eine liberale Interpretation der Verfassung

Volume 90  
2nd unchanged edition with new introduction 2017. LXV, 764 pages.

ISBN 9783161553929  
eBook PDF 139,00 €

Stefan Huster deals with the question of state neutrality and develops a principle of neutrality that is not aimed at the effects, but at the justification for state actions. This includes a detailed presentation of the consequences of this principle for different legal areas.

Hohmann, Harald

## Angemessene Außenhandelsfreiheit im Vergleich

### Die Rechtspraxis der USA, Deutschlands (inklusive der EG) und Japans zum Außenhandel und ihre Konstitutionalisierung

Volume 89  
2002. XXV, 611 pages.

ISBN 9783161478253  
cloth 159,00 €

ISBN 9783161580130  
eBook PDF 159,00 €

To what extent have the USA, the European Community and Japan been successful in ensuring as much freedom in foreign trade as possible without neglecting the public welfare interests recognized by the legal community? In his book, Harald Hohmann analyzes this question by treating national constitutions and WTO law as a benchmark for the decision between justified trade barriers and protectionism. Instead of dealing with this topic in a theoretical manner, the author emphasizes the law in action with the help of interviews; thus the book is of importance for the whole business and legal community.

Weiß, Wolfgang

## Privatisierung und Staatsaufgaben

### Privatisierungsentscheidungen im Lichte einer grundrechtlichen Staatsaufgabenlehre unter dem Grundgesetz

Volume 88  
unrevised e-book edition 2019;  
Original edition 2002 2002.  
XVIII, 497 pages.

ISBN 9783161581144  
eBook PDF 134,00 €

Wolfgang Weiß examines the prerequisites for a doctrine pertaining to the state's duties in the Federal Republic. The central purpose of the state is laid down in Article 1, Paragraph 1 of the Basic Law (Grundgesetz). Thus the duties of the state are derived from the fundamental rights only. This leads to the realization that duties of the Federal Republic of Germany are all matters of public interest which the state must guarantee, and all those matters which do not meet this criterion must be privatized. This concept would mean that the state would have to withdraw from almost all its economic activities. Restricting the state in this manner to its responsibility for giving a guarantee instead of performing certain activities by its own would correspond to the concept of the state in European law.

Möstl, Markus

## Die staatliche Garantie für die öffentliche Sicherheit und Ordnung

### Sicherheitsgewährleistung im Verfassungsstaat, im Bundesstaat und in der Europäischen Union

Volume 87  
unrevised e-book edition 2019;  
Original edition 2002 2002.  
XXIV, 723 pages.

ISBN 9783161581564  
eBook PDF 144,00 €

The state's responsibility for security, law and order is facing new challenges, for example international organized crime. In this work, Markus Möstl examines the scope of the state's constitutional duty to guarantee security and analyzes the current changes in policing methods. He demonstrates that in the process of European integration and in view of the necessity of establishing a European 'area of freedom, security and justice', the traditional responsibility of the nation state is being complemented by elements of supranational maintenance of internal security.

Schroeder, Werner

## Das Gemeinschaftsrechtssystem

### Eine Untersuchung zu den rechtsdogmatischen, rechtstheoretischen und verfassungsrechtlichen Grundlagen des Systemdenkens im Europäischen Gemeinschaftsrecht

Volume 86  
2002. XXIII, 534 pages.

ISBN 9783161477157  
cloth 174,00 €

ISBN 9783161580475  
eBook PDF 174,00 €

Werner Schroeder describes European Community law as a separate legal system. This is necessary because Community law, much more than state legal systems, is under a permanent obligation to justify itself and has to make sure of its foundations and limits constantly. In order to verify the theory of the European Court of Justice that Community law is based on an autonomous system of legal norms, institutions and goals, Werner Schroeder enlists the help of legal theory.

Beaucamp, Guy

## Das Konzept der zukunftsfähigen Entwicklung im Recht

### Untersuchungen zur völkerrechtlichen, europarechtlichen, verfassungsrechtlichen und verwaltungsrechtlichen Relevanz eines neuen politischen Leitbildes

Volume 85  
2002. XXVI, 482 pages.

ISBN 9783161478246  
cloth 149,00 €

ISBN 9783161580598  
eBook PDF 149,00 €

Guy Beaucamp examines the relationship between the concept of sustainable development and the legal system. He questions the extent to which the concept has already been made into law and looks into the possibilities which are available *de lege ferenda* to incorporate this concept into the legal system. He concludes his study with a comparison of the German Federal Regional Planning Law and the New Zealand Resource Management Act, showing how it is possible to put more elements of the concept of sustainable development in the future into a planning law.



Fisahn, Andreas

## Demokratie und Öffentlichkeitsbeteiligung

Volume 84  
2002. XI, 396 pages.

ISBN 9783161477812  
cloth 129,00 €

ISBN 9783161580109  
eBook PDF 129,00 €

Andreas Fisahn traces public participation in making decisions pertaining to planning from its beginnings in enlightened absolutism and the liberal epoch up to the present time. He looks into the question of the legal status of public participation, analyzing in particular not only the individual regulations pertaining to this subject but also the historical context and the prevalent discussion relating to constitutional law.

Leisner, Anna

## Kontinuität als Verfassungsprinzip

### Unter besonderer Berücksichtigung des Steuerrechts

Volume 83  
2002. XXXVII, 728 pages.

ISBN 9783161476952  
cloth 139,00 €

ISBN 9783161580093  
eBook PDF 139,00 €

In this study, the author deals with the dogmatic development and the practical effects of a rule of legal continuity in the sense of a further evolution of the law in gradual transitions without abrupt 'breaks.' Anna Leisner examines the strained relationship between the rule of legal continuity in the Basic Law and the dynamics of a democracy in which the people have sovereign power. She illustrates the results of her study in her descriptions of the division of powers in legal questions pertaining to fiscal law.

Unruh, Peter

## Der Verfassungsbegriff des Grundgesetzes

### Eine verfassungstheoretische Rekonstruktion

Volume 82  
2002. XXVI, 680 pages.

ISBN 9783161476969  
cloth 149,00 €

ISBN 9783161580086  
eBook PDF 149,00 €

It has often been pointed out that constitutional dogmatics can only be based on a self-reflection through the constitutional concept. In this study, Peter Unruh proposes a solution to this problem in constitutional law, about which many complaints have been heard, by describing the constitutional concept of the Basic Law as an evolutionary category whose roots can be traced back to the French and the American Revolutions. The author demonstrates that it is possible to describe the constitutional concept of the Basic Law with the help of a number of conceptual elements. The basis of the concept is the general idea of human autonomy.

Lepsius, Oliver

## Besitz und Sachherrschaft im öffentlichen Recht

Volume 81  
2002. XIX, 580 pages.

ISBN 9783161476884  
cloth 149,00 €

ISBN 9783161580147  
eBook PDF 149,00 €

Oliver Lepsius discusses current problems regarding legal obligations and basic rights in German administrative and constitutional law. He deals in particular with the right of property as a constitutional limitation to environmental law. He also provides a general theory of how possession means a basic liability for objects for which one is legally responsible.