

DE GRUYTER

Kent D. Lerch (Ed.)

DIE SPRACHE DES RECHTS

BAND 2: RECHT VERHANDELN

Recht Verhandeln Argumentieren Begründen Und Entscheiden Im Diskurs Des Rechts

Carsten Bäcker, Stefan Baufeld



Recht Verhandeln Argumentieren Begründen Und Entscheiden Im Diskurs Des Rechts:

Formal Linguistics and Law Günther Grewendorf, Monika Rathert, 2009-12-15 This volume explores new interfaces between linguistics and jurisprudence Its theoretical and methodological importance lies in showing that many questions asked within the field of language and law receive satisfactory answers from formal linguistics The book starts with a paper by the two editors in which they explain why the volume as a whole and with its individual papers is an innovation in the field of language and law In addition an overview about the most important research projects on language and law is given The first chapter of the book is on understanding the law Jurists and laypersons always ask for the precise meaning of a certain piece of the law In linguistics the discipline investigating meaning is semantics thus it is to be expected that semantics can contribute to a correct understanding of the law Chapter 1 also investigates the alleged incomprehensibility of legal language with the help of psycholinguistics Chapter 2 is on identifying the criminal To find the author of a blackmailer's letter text corpus linguistics is instrumental If the blackmailer uses the telephone instead of the letter speaker identification and phonetics are necessary The BKA stores all blackmailing letters in a database but databases are only one possibility of organizing legal systems another possibility is the application of tools from computational linguistics and artificial intelligence These tools can be useful to handle terminology to retrieve information or to model legal theorizing in a formal system Chapter 3 demonstrates a variety of examples of organizing legal systems The topic of chapter 4 is multilingualism and the law The European legislation is a product of legal and linguistic diversity as the member states do not only differ in languages but also in their legal systems One paper shows how Switzerland handles its multilingualism in legal drafting The input of translation studies is of course vital in this field of research An index for both subjects and persons complements the volume

Popularisierung als Methode der Wissensvermittlung in der Rechtslinguistik / Popularisation as a Method of Knowledge Mediation in Legal Linguistics Karin Luttermann, Jan Engberg, 2023 The focus of Legal Linguistics Rechtslinguistik has shifted from lexical syntactic and terminological issues to expert lay communication This volume focuses on popularisation as a method of knowledge mediation in the law It deals with different forms of communication e.g. explanatory videos brochures websites addressees e.g. children adolescents adults topics e.g. empathy emotions trust settings e.g. courts law firms EU institutions and finally specific areas of law e.g. inheritance law criminal law environmental law The contributions written in German and English discuss theoretical issues and apply them practically to the corpus The book is stimulating for anyone wanting to delve more deeply into the topic of popularisation

The Language of Canon Law Judith Hahn, 2023 In this book Judith Hahn explores the legal order of the Roman Catholic Church to better understand how the Roman Catholic Church communicates as a legal institution She argues that the language of canon law reveals the political ideology of the church hierarchy and she takes up the tools of language and law scholarship to examine and challenge that language Hahn examines the grammar and terminology of canon law and how canon law

language makes use of linguistic tricks and techniques to create its typical sound and discusses the comprehension difficulties that arise out of ambiguities in the law out of transfer problems between legal and common language and out of canon law's confusing mix of legal doctrinal and moral norms Constitutionally Conforming Interpretation – Comparative Perspectives Matthias Klatt, 2023-11-02 This is the first part of a 2 volume set that presents an in depth investigation into the canon of constitutionally conforming interpretation These volumes address the fundamental issues the canon raises in the national supranational and international contexts In volume 1 experts from 19 jurisdictions including Brazil Canada India the UK and the USA present reports which give concise overviews of the approaches and debates on constitutionally conforming interpretation These reports cover the structural background the conditions of application as well as issues of competence Further aspects discussed are its perceived normativity and popularity in everyday legal practice Together with volume 2 which explores the canon's use and theoretical impact beyond the national context in a comparative and critical manner this book fills an important gap in legal scholarship and sets the stage for cross national discourse *Interdisziplinäre Rechtsforschung* Christian Boulanger, Julika Rosenstock, Tobias Singelstein, 2018-12-18 Der Band bietet eine Einführung in die Rechtssoziologie und die interdisziplinäre Rechtsforschung die sich im Anschluss an die Socio legal Studies und die Law and Society Forschung im angelsächsischen Raum auch im deutschsprachigen Raum herausbildet Die 16 Beiträge erschließen in exemplarischer Weise die theoretischen methodischen und inhaltlichen Grundlinien der Beforschung von Recht in den verschiedenen wissenschaftlichen Disziplinen darunter z B Soziologie Politikwissenschaft Rechtswissenschaft Kriminologie Ethnologie und Philosophie Sie geben den LeserInnen einerseits einen fundierten Überblick im Sinne einer Bestandsaufnahme Andererseits werden zentrale Fragestellungen zukünftiger Forschungen und damit Perspektiven des Feldes skizziert Neben den theoretischen und methodischen Grundlagen der Rechtsforschung entsteht so anhand von beispielhaften Forschungsfragen ein multiperspektivisches Bild der wissenschaftlichen Befassung mit Recht als sozialem Phänomen in den verschiedenen Disziplinen Der Schwerpunkt liegt dabei auf empirischen zeitgenössischen und gesellschaftswissenschaftlichen Fragestellungen in den Bereichen Funktion Genese und Wirkung Recht Anwendung und Durchsetzung von Recht sowie Wandel von Recht Hierin zeigt sich der Charakter der interdisziplinären Rechtsforschung als einer Grundlagendisziplin die auf eine lange Forschungstradition in Rechtssoziologie Rechtstatsachenforschung und Rechtswirkungsforschung aufbaut Die HerausgeberInnen Dr Christian Boulanger ist Wissenschaftlicher Mitarbeiter an der Humboldt Universität zu Berlin Dr Julika Rosenstock ist Wissenschaftliche Angestellte der Hamburger Stiftung zur Förderung von Wissenschaft und Kultur Prof Dr Tobias Singelstein lehrt an der Ruhr Universität Bochum Aristotle on Emotions in Law and Politics Liesbeth Hupperts-Cluysenaer, Nuno M.M.S. Coelho, 2018-02-13 In this book experts from the fields of law and philosophy explore the works of Aristotle to illuminate the much debated and fascinating relationship between emotions and justice Emotions matter in connection with democracy and equity they are relevant to the judicial enforcement of rights legal

argumentation and decision making processes in legislative bodies and courts The decisive role that emotions feelings and passions play in these processes cannot be ignored not even by those who believe that emotions have no legitimate place in the public sphere A growing body of literature on these topics recognizes the seminal insights contributed by Aristotle This book offers a comprehensive analysis of his thinking in this context as well as proposals for inspiring dialogues between his works and those written by a selection of modern and contemporary thinkers As such the book offers a valuable resource for students of law philosophy rhetoric politics ethics and history but also for readers interested in the ongoing debate about legal positivism and the relevance of emotions for legal and political life in today s world

Philosophical Foundations of Precedent Timothy Endicott, Hafsteinn Dan Kristjánsson, Sebastian Lewis, 2023-03-27 Philosophical Foundations of Precedent offers a broad deep and diverse range of philosophical investigations of the role of precedent in law adjudication and morality The forty chapters present the work of a large and inclusive group of authors which comprises of well established leaders in the discipline and new voices in legal philosophy The magnitude of the resulting project is extraordinary presenting a diverse array of innovative and creative philosophical investigations of the practice of adhering to past decisions in law and allied fields of practical reasoning And by the same token the contributions elucidate the reasons that courts and other decision makers may have for departing from what has been done before The phenomena under investigation include the law and practice of common law and civil jurisdictions around the world In addition to its fundamental relevance to common law jurisdictions this work will be of broad and significant interest to theoretically minded audiences in continental Europe Latin America and Asia because it involves an extensive study of practices of precedent in civil law systems as well as common law systems

The Concept of Argument Harald R. Wohlrapp, 2014-06-26 Arguing that our attachment to Aristotelian modes of discourse makes a revision of their conceptual foundations long overdue the author proposes the consideration of unacknowledged factors that play a central role in argument itself These are in particular the subjective imprint and the dynamics of argumentation Their inclusion in a four dimensional framework subjective objective structural procedural and the focus on thesis validity allow for a more realistic view of our discourse practice Exhaustive analyses of fascinating historical and contemporary arguments are provided These range from Columbus s advocacy of the Western Passage to India over the trial of King Louis XVI during the French Revolution to today s highly charged controversies surrounding euthanasia and embryo research Excavating foundational issues such as the purpose of argument itself assent of an audience or critical examination of validity claims and the contested role of argument as a generator of knowledge the book culminates in a discussion of the relationship between rationality and reasonableness and criticizes the restrictions of rational argument relying on fixed logical economic or cultural criteria that in reality are mutable Here a true open argument requires the infusion of Paul Lorenzen s principle of transsubjectivity which recognizes but transcends the partiality of the individual and which can be seen in the pragmatic and expanding consensus that humanity can control itself to safeguard the future of a

fragile damaged world **Objektivität und Flexibilität im Recht** Carsten Bäcker, Stefan Baufeld, 2005 Jochen Bung
 Objektivität im Recht als Wahrheitsbezug Andreas Funke Lasst sich juristische Objektivität auf eine Allgemeine Rechtslehre
 gründen Vanessa Heinz Schleier des Nichtwissens und Gesetzgebung Christian Schmid Der Schleier des Nichtwissens Peng
 Hsiang Wang Recht Semantik und Objektivität Steffen Wesche Objektive Bedingungen und relative Normen Carsten Backer
 Die diskurstheoretische Notwendigkeit der Flexibilität im Recht Verena Klappstein Demokratische Legitimation und Grenzen
 der Verlagerung von Entscheidungen auf den Rechtsanwender Sascha Ziemann Ist Rechtskraft noch zeitgemäss Zur
 Unflexibilität des Rechtssystems bei der Durchführung von Strafverfahren Nils Teifke Flexibilität der Menschenwürde Zur
 Struktur des Art 1 Abs 1 GG Sebastian Kneisel Vom Internationalen zum Transnationalen Recht Die Entstaatlichung der
 Schiedsgerichtsbarkeit Anusheh Rafi Chaos im Recht Auf der Suche nach einer Ordnung ohne Grund oder einer grundlosen
 Normativität Stefan Baufeld Diesseits der Logik Warum die Logik zur Lösung juristischer Probleme wenig beiträgt und
 warum die topische Rhetorik dies kann Bernhard Jakl Flexibilität im Recht und Flexibilität des Rechts in der
 Wertungsjurisprudenz und der kantischen Rechtsphilosophie **Recht verhandeln** Kent D. Lerch, 2005 Das juristische
 Alltagsverständnis von der Aufgabe der Gesetzesanwendung ist nach wie vor geprägt von der rechtspositivistischen
 Vorstellung es gelte nur das Recht das in den Rechtstexten enthalten sei aus diesen herauszuparieren da dort die
 Entscheidung jedes einzelnen Rechtsfalls im Prinzip bereits vorweggenommen sei Durch richtige Auslegung finde man das
 richtige Recht und könne es dann anwenden Kritik an dieser Vorstellung vom bloßen Auffinden und Anwenden des Rechts
 erfolgte erstmals in den fünfziger Jahren als man sich auf die klassische Rhetorik als eine Argumentationstheorie zur
 ückbesann mit der sich präziser als mit traditioneller Semantik oder Logik begreifen lässt was vor sich geht wenn Juristen
 Entscheidungen fällen Die Beiträge des Bandes untersuchen die pragmatische Seite der juristischen Argumentation z.B. den
 Aufbau einer Gerichtsrede oder bestimmte persuasive Techniken mit dem Instrumentarium der modernen Kommunikations-
 und Sprechakttheorie Pluspunkte Die Band vervollständigen das dreibändige Kompendium zur modernen Rechtslinguistik
 Fundierte Analysen zu den kommunikations- und medientheoretischen Aspekten der Rechtsvermittlung und -auslegung
 Grundlegende Studien zum Verhältnis von Sprache und Recht aus pragmatischer und soziolinguistischer Perspektive
 Wegweisende Ergebnisse eines groß angelegten Projekts der Berlin-Brandenburgischen Akademie der Wissenschaften
The Schopenhauerian Mind David Bather Woods, Timothy Stoll, 2023-11-14 Arthur Schopenhauer 1788-1860 is now
 recognised as a figure of canonical importance to the history of philosophy Schopenhauer founded his system on a highly
 original interpretation of Kant's philosophy developing an entirely novel and controversial worldview guided centrally by his
 striking conception of the human will and of art and beauty His influence extends to figures as diverse as Friedrich Nietzsche
 Ludwig Wittgenstein and Iris Murdoch within philosophy and Richard Wagner Thomas Hardy Sigmund Freud Thomas Mann
 Samuel Beckett and Jorge Luis Borges outside it The Schopenhauerian Mind is an outstanding wide ranging collection that

explores the rich nature of Schopenhauer's ideas, texts, influences and legacy. Comprising 38 original chapters by an international team of contributors, the volume is organised into five clear parts: Knowledge and Reality, Aesthetics and the Arts, Ethics, Politics and Salvation, Before Schopenhauer, After Schopenhauer. The Schopenhauerian Mind covers all the key areas and concepts of Schopenhauer's philosophy, including fields omitted in previous studies. It is essential reading for students of nineteenth-century philosophy, Continental philosophy and philosophy of art and aesthetics, and also of interest to those in related disciplines such as literature and religion.

Civil Judgments at First Instance Zhixun Cao, 2025-02-19. This book provides an in-depth discussion and introduction to Chinese civil procedure from both a theoretical and practical perspectives, as well as a comparative study of its relevant systems with those of the West. The subject matter of this book is Chinese civil judgments. Judgments as the final judicial product which affects the legal relationship between both parties or even multiple parties provide a desirable object to observe and evaluate the service of judicial proceedings and the protection of the parties' procedural rights. And since judgments are in most cases regarded as the default termination of any civil litigation, there is no need to argue for a comparative study on this topic which has already inspired Chinese doctrines and newest reforms. One of the aims of such research is to modernize Chinese civil justice considering the experience of leading legal counterparts. Next to the theoretical analysis, this book introduces empirical data in China to the English literature which could provide a vivid illustration for legal researchers to be better informed about the Chinese legal system and its real version of rule of law. In other words, this book likes to describe the real judicial practice in China and summarize how Chinese lawyers understand and facilitate the production of civil judgments. Moreover, this book intends to focus on the adjudicative techniques in the civil litigation which should constitute the mutual basis of most civil justice. Even there is no well-developed theory under the name of Adjudicative Techniques in some jurisdictions, it is not uncommon to discover some principles, methods, institutions and practical operation which is functionally and substantially comparable to the ones in other civil justice systems.

Towards a Rational Legislative Evaluation in Criminal Law Adán Nieto Martín, Marta Muñoz de Morales Romero, 2016-08-27. This book launches a debate on the need to evaluate criminal policies and what is more complex and ambitious to develop an evaluation method. The contributions address topics such as the general methodology for evaluating public policy, preparing criminal statistics and analyzing costs, cost effectiveness and cost benefits. Additionally, the work explores the state of affairs in various countries including Spain, Sweden, USA, Germany and in the EU. It also examines issues such as the relationship between legislative evaluation and criminal principles and the constitutional courts' control over criminal acts.

Contemporary Methods in International Legal Research Juan J. García Blesa, 2024-12-01. This book is a concise practical guide to some of the most relevant ways of thinking and doing international legal research today. It is designed to help students and early career researchers to get acquainted with the theory and practice of a selection of non-doctrinal modes of legal research that include feminist international law, critical international law and TWAIL complemented

with qualitative methods of empirical legal research The book also encourages a meaningful dialogue with traditional doctrinal styles of legal research The book s most innovative aspect is its practical learner centred approach which focuses on the applied learning of the modes of research presented

Zwecke im Recht des Verfassungsstaates Thomas Wischmeyer, 2015-05-06 Von der teleologischen Auslegung bis zur Zweck Mittel Relation Zwecke sind im Recht ubiquit r Doch die Suche nach dem zwecksetzenden Subjekt im komplexen Rechtserzeugungsprozess des Verfassungsstaates gilt als aussichtslos Worauf aber verweist dann die demokratische Idee vom Gesetzeszweck Anders formuliert Wer ist der Gesetzgeber

Crisis of the Criminal Law in the Democratic Constitutional State Eduardo Demetrio Crespo, Alfonso García Figueroa, Gema Marcilla Córdoba, 2023-03-13 The book shares the results of project research granted by the Castilla La Mancha government which has been composed by philosophers of law and criminal law researchers whose main conclusions are represented by the manifestations and trends of the current crisis of the constitutional State The works identify these trends and manifestations in order to develop alternatives and remedies to solve the current negation process that classical liberties are involved from the point of view of philosophy policy and dogmatic

Rechtmäßigkeit und Zweckmäßigkeit Michael Neupert, 2011 English summary The differentiation between legality and expediency is one of the central tenets of the theory of administrative law It is Michael Neupert s opinion that this is superfluous and impracticable and this is why he is searching for alternatives German description Die Unterscheidung zwischen Rechtmassigkeit und Zweckmassigkeit wird weithin als Grundlage der verwaltungsgerichtlichen Ermessenskontrolle akzeptiert Michael Neupert argumentiert demgegenuber weder konnten die verschiedenen Ermessensfehlerlehren beide Bereiche voneinander unterscheiden noch erlaube die juristische Methodenlehre eine Begrenzung der richterlichen Rechtsanwendung Wenn die Unterscheidung zwischen Rechtmassigkeit und Zweckmassigkeit nicht bloss die juristische Selbstverständlichkeit wiedergeben will dass Gerichte nur Rechtsfragen beurteilen muss sie scheitern Von diesem Punkt aus sucht der Autor nach einer Antwort auf die Frage wie eine verwaltungsgerichtliche Überprüfung von Ermessensentscheidungen aussehen konnte Dies hängt davon ab ob eine richterliche Zweckmassigkeitskontrolle möglich ist und inwieweit Ermessensentscheidungen gerichtsfrei sein müssen

Dialogik des Rechts Rolf Gröschner, 2013 In einer Sammlung seiner Schriften erscheint Rolf Groschners Arbeit an den Grundlagen des Rechts Publiziert von 1982 bis 2012 in den drei Jahrzehnten zwischen Promotion und Pensionierung erzählen die Veröffentlichungen eine Geschichte die philosophisch dogmatisch und methodologisch in immer neue Zusammenhänge gestellt wird Es ist die Erzählung vom argumentativen Streit in dem Personen ein Verhältnis zueinander entwickeln Zunächst wird eine an Martin Buber orientierte Philosophie des Dialogs konzipiert sodann vom positiven Recht ausgehend eine in Rechtsverhältnissen fundierte Dogmatik und schliesslich in sokratischer Tradition stehend eine dialogische Methodenlehre der Jurisprudenz mit einem dezidiert alteuropäischen Verständnis philosophischer phronesis und juridischer prudentia Nicht die Norm oder die aus der Norm deduzierte Entscheidung stehen in ihrem Zentrum sondern

interpersonale im Streit um gute Gründe konstituierte Verhältnisse Lebens und Rechtsverhältnisse deren Basisbegriff das von Buber so benannte Zwischen ist der Ort eines gelingenden Gesprächs im Miteinander einer vernünftigen Argumentation oder im Gegeneinander einer juristischen Auseinandersetzung

Ambiguität, Macht und die Formierung religiöser Identitäten Klaus von Stosch, Cornelia Dockter, 2024-02-12 Der Band beschäftigt sich mit Phänomenen von Ambiguität im Zusammenhang mit der Formierung von religiöser und kultureller Identität Die interdisziplinär zusammengestellten Beiträge helfen Ambiguierungs und Disambiguierungsstrategien im Zusammenhang mit religiösen Identitätsbildungsprozessen besser zu verstehen und die nicht genug beachtete Ambiguität von Ambiguität zum Vorschein zu bringen

Gerichtsrhetorik Marcus Schnetter, 2024-09-11 Gerichte begründen ihre Urteile Dies dient der juristischen Rechtfertigung der Entscheidung Aber dienen Begründungen nicht vielleicht auch dazu ein Publikum zu überzeugen Sind Entscheidungsbegründungen also persuasive Texte die sich über rein rechtlicher Argumentation hinaus auch rhetorischer Strategien Mittel und Topoi bedienen Diese und weitere Fragen untersucht die Arbeit mit Blick auf den europäischen Verfassungsgerichtsverbund Als thematisches Referenzfeld analysiert sie den Diskurs von Gerichten und Rechtswissenschaft über den Grundrechtsschutz in Mehrebenensystemen Sie stellt heraus wie Rhetorik eine entscheidende Rolle für die Akzeptanz verfassungsgerichtlicher Entscheidungen spielt Die inter- und multidisziplinäre Arbeit vereint dabei Perspektiven der juristischen Rhetorik mit der Rechts System und Literaturtheorie um deren Erkenntnisse für die klassische Rechtswissenschaft fruchtbar zu machen Ausgezeichnet mit dem Dissertationspreis der Universität Münster 2024

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