

DE GRUYTER

Kent D. Lerch (Ed.)

DIE SPRACHE DES RECHTS

BAND 2: RECHT VERHANDELN

Recht Verhandeln Argumentieren Begründen Und Entscheiden Im Diskurs Des Rechts

Thomas Wischmeyer



Recht Verhandeln Argumentieren Begründen Und Entscheiden Im Diskurs Des Rechts:

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

Formal Linguistics and Law Günther Grewendorf, Monika Rathert, 2009 The volume explores new interfaces between linguistics and jurisprudence Its theoretical and methodological importance lies in showing that many questions asked within language and law receive satisfactory answers from formal linguistics including computational linguistics artificial intelligence translation studies psycholinguistics semantics phonetics and corpus linguistics

Aristotle on Emotions in Law and Politics Liesbeth Huppes-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

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

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

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

Juristische Rhetorik Wolfgang Gast, 2015-11-13 Das Buch Dieses Standardwerk zur Juristischen Rhetorik handelt von den besonderen Mitteln mit deren Hilfe der Jurist in der fachlichen Auseinandersetzung das kollegiale Einverständnis sucht Es stellt die vertrauten juristischen Methoden ins richtige n mlich praktische Licht gezeigt wird was mit den Werkzeugen der Rechts erfindung anzufangen ist und wie der juristische Rhetor sie zielstrebig nutzt zum Beispiel beim Umgang mit Definitionen am logischen Ger st des Argumentierens beim spielerischen Umgang mit rechtlichen Fundamentalbegriffen

Interdisziplinäre Rechtsforschung Christian Boulanger, Julika Rosenstock, Tobias Singelnstein, 2018-12-18 Der Band bietet eine Einf hrung in die Rechtssoziologie und die interdisziplin re Rechtsforschung die sich im Anschluss an die Socio legal Studies und die Law and Society Forschung im angels chsischen Raum auch im deutschsprachigen Raum herausbildet Die 16 Beitr ge erschlie en 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 berblick im Sinne einer Bestandsaufnahme Andererseits werden zentrale Fragestellungen zuk nftiger 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 Ph nomen in den verschiedenen Disziplinen Der Schwerpunkt liegt dabei auf empirischen zeitgen ssischen 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 interdisziplin ren 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 Universit t zu Berlin Dr Julika Rosenstock ist Wissenschaftliche Angestellte der Hamburger Stiftung zur F rderung von Wissenschaft und Kultur Prof Dr Tobias Singelnstein lehrt an der Ruhr Universit t Bochum

"Recht ist Streit" Jing Li, 2011-09-29 Die vorliegende Studie ist eine rechtslinguistische Untersuchung zur Explizierung des textgest tzten und diskursbasierten Rechtsstreits zwischen verschiedenen Rechtsarbeitern Richter Staatsanwalt Rechtsanwalt im Rechtsfindungsverfahren Als Untersuchungskorpus gelten die authentischen Textmaterialien Anklageschriften Berufungs bzw Revisionsschriften Urteile und Schrifts tze usw von sechs zusammenh ngenden Rechtsf llen aus der deutschen Rechtspraxis Die Analyse setzt sich zum Ziel einerseits zugunsten

des interdisziplinären Erkenntnisinteresses einen exemplarischen Beitrag zu der in Anbetracht ihrer Relevanz noch relativ wenig erforschten textlinguistischen Beschäftigung mit Rechtstexten zu leisten und andererseits den fachspezifischen Kommunikationsvorgang in stärkerem Maße anhand linguistischer Instrumentarien verständlich zu machen. Die entwickelten Beschreibungsansätze richten sich auf die differenzierten Sprachhandlungsmuster und die dabei verwendeten spezifischen Handlungsstrategien und Perspektivierungsanstrengungen. Dadurch wird sowohl juristischen Fachleuten als auch Laien ein transparentes Analysemodell der Rechtskommunikation unterbreitet.

Zwecke im Recht des Verfassungsstaates

Thomas Wischmeyer, 2015-05-06. Von der teleologischen Auslegung bis zur Zweck-Mittel-Relation. Zwecke sind im Recht ubiquitär. 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?

Dialogik des Rechts

Rolf Gröschner, 2013. In einer Sammlung seiner Schriften erscheint Rolf Gröschners 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.

Handbuch Sprache im Recht

Ekkehard Felder, Friedemann Vogel, 2017-05-22. Das Handbuch *Sprache im Recht* beleuchtet die zentrale Rolle der Sprache für die juristische Arbeit im Kontext institutionellen Rechts. Im Fokus stehen die sprachlichen Produktions- und Rezeptionsprozesse juristischer Textarbeit. Dazu werden semiotische, semantische und pragmatische Aspekte der rechtlichen Fachkommunikation im Spiegel von Mündlichkeit und Schriftlichkeit behandelt. Neben der Relevanz der Rechtssprache aus dem Blickwinkel der Legislative, Exekutive und Judikative werden einschlägige Phänomene des Rechts in ihren Grundzügen behandelt, wie z.B. die Bedeutung von Normtexten für die Rechtsfindung, der Stellenwert der Rechtsterminologie in Kommentaren und Rechtswörterbüchern, das Sprechen vor Gericht sowie das Übersetzen und Dolmetschen. Der Band geht u.a. auf folgende Leitfragen ein: Wie werden in juristischen Entscheidungen Bedeutungen von Normtexten gerechtfertigt und damit Recht gesprochen? Mit welchen sprachlichen Mitteln konstituieren Akteure Geltungsansprüche sowohl vor Gericht als auch im parlamentarischen Rechtsetzungsprozess? Wie werden juristische Normkonzepte in die Gesellschaft vermittelt? Das Handbuch verdeutlicht den

enormen Einfluss der Rechtssprache und macht dies für Laien transparent *Rechtsvergleichende Argumentation* Thomas Coendet, 2012 English summary Citing foreign legal systems for the sake of producing a convincing judicial argument has been a custom in judicial decision making for more than a century However a generally accepted theoretical framework for this kind of reasoning has not been established as yet Thomas Coendet's account provides comprehensive information on the fundamental questions raised by the comparative approach in contemporary legal discourse German description Welche Bedeutung haben rechtsvergleichende Argumente bei der Anwendung nationalen Rechts Diese Frage beschäftigt die rechtsmethodologische und rechtsvergleichende Wissenschaft seit langem Entsprechend erstaunlich ist dass bisher keine ganzheitliche Theorie der rechtsvergleichenden Argumentation existiert Thomas Coendet legt nun einen umfassenden Entwurf für eine solche Theorie vor Er entwickelt seine Theorie entlang der Grundfragen die das Problem der rechtsvergleichenden Argumentation aufwirft Wie interagieren eigenes und anderes Recht normativ miteinander Weshalb sollte man rechtsvergleichend argumentieren und wie funktioniert eine solche Argumentation Und schliesslich Wie ist rechtsvergleichendes Argumentieren methodisch zu gestalten damit es praktisch gelinge Die auf diesem Weg entwickelte rechtsvergleichende Argumentationstheorie informiert all jene die in der juristischen Arbeit an der Überschreitung räumlicher Grenzen interessiert sind 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 *Zufall und Kontrolle* Boris Burghardt, 2018-07-24 Lässt es sich rechtfertigen dass wir einander moralische oder strafrechtliche Verantwortlichkeit für unser willensbedingtes Tun und die daraus resultierenden Folgen zurechnen Unter Rückgriff auf die Diskussion um moralische Glück zeigt Boris Burghardt dass die Antwort auf diese Frage weniger eindeutig ist als es scheint **Voraussetzungen und Grenzen legitimen Wirtschaftsstrafrechts** Michael Lindemann, 2012 English summary Coping with the structural problems involved in the prosecution of white collar crimes continues to be of great relevance The discussion surrounding this subject is primarily on the level of substantive law but does however involve a multitude of issues related to procedural law In this book Michael Lindemann prioritizes consolidates and explores the weak points in the existing system He then provides detailed solutions to the problems thus making a significant contribution to a dialogue which on no account should

be limited to the law relating to economic offences German description Die Beschäftigung mit den theoretischen und praktischen Aspekten des Wirtschaftsstrafrechts führt immer wieder auf bestimmte grundlegende Problembeschreibungen zurück Zu ihnen gehören neben Schwierigkeiten bei der Abgrenzung legaler von illegaler Wirtschaftsbetätigung Probleme bei der forensischen Rekonstruktion komplexer wirtschaftsstrafrechtlich relevanter Sachverhalte sowie die Gefahr vorweggenommener Sanktionswirkungen durch grundrechtsinvasive Ermittlungsmassnahmen Diese nur auf den ersten Blick isoliert zu betrachtenden Grundprobleme der strafrechtlichen Aufarbeitung von Wirtschaftskriminalität weisen vielfältige Interdependenzen auf und bilden den Nährboden für die ebenso ubiquitäre wie problematische Absprachepraxis im Wirtschaftsstrafverfahren Die Bewältigung der damit verbundenen Aufgaben kann nur mithilfe eines integrativen Ansatzes gelingen der neben den Verbindungslinien von materiellem Strafrecht und Strafprozessrecht auch ausserstrafrechtliche Instrumente der Konfliktregelung in den Blick nimmt Michael Lindemann entwickelt hierzu Lösungsansätze die sich als Beitrag zu einem zwingend intra und interdisziplinär zu führenden Dialog verstehen

Europäische Integration im Kontext des Rechts Andreas Grimm, 2012-11-27 Das europäische Recht ist ein entscheidender Faktor der Integration Europas besonders auch in Zeiten der politischen und ökonomischen Krise Zugleich lässt sich die europäische Rechtsgemeinschaft nicht als bloßes Beiprodukt politischer Entscheidungen und Prozesse verstehen sondern muss als ein spezifischer und eigenständiger Kontext der Integration begriffen werden Wer also die Integration durch Recht und die Rolle des Europäischen Gerichtshofs EuGH im Einigungsprozess erfassen will so die zentrale These dieses Buches muss sich mit dem europäischen Rechtskontext und der ihm immanenten Rationalität auseinandersetzen Ausgehend von den Arbeiten Max Webers und Ludwig Wittgensteins wird hier mit dem Konzept der Kontextrationalität ein neuer und vielversprechender analytischer Weg für die theoriegeleitete Integrationsforschung entwickelt Anhand von aktuellen Fallstudien zur Grundrechtsjudikatur des EuGH wird zudem gezeigt wie eine Kontextanalyse zu einem angemessenen Verständnis von Integrationsprozessen durch Recht nicht nur in Europa führen könnte

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 Ambiguierung und Disambiguierungsstrategien im Zusammenhang mit religiösen Identitätsbildungsprozessen besser zu verstehen und die nicht genug beachtete Ambiguität von Ambiguität zum Vorschein zu bringen

Medizinische Indikation Andrea Dörries, Volker Lipp, 2015-08-26 Rechtliches Handeln beruht rechtlich und ethisch auf dem Zusammenspiel von medizinischer Indikation und Patientenwille Anders als der Patientenwille hat die medizinische Indikation in der wissenschaftlichen wie in der praxisbezogenen Diskussion bisher jedoch wenig Aufmerksamkeit gefunden Was verstehen Medizin und Recht unter medizinischer Indikation Wo ergeben sich Begrenzungen für Patientenwünsche Was tragen Leitlinien zur medizinischen Indikation bei und welche Rolle spielen ökonomische Rahmenbedingungen Im ersten Teil

dieses Buches zu den Grundlagen analysieren namhafte Autorinnen und Autoren die medizinische Indikation aus Sicht der medizinischen Ethik des Rechts der Konomie sowie aus begriffstheoretisch historischer Perspektive Im zweiten Teil verdeutlichen Praxisbeiträge die Problemlagen in den verschiedenen Bereichen der Medizin

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