Buchbesprechungen

Dann, Philipp, Feichtner, Isabel and von Bernstorff, Jochen **(eds.), (Post) Koloniale Rechtswissenschaft.** Tübingen: Mohr Siebeck 2022. ISBN 978-3-16-161841-3 (paperback) ISBN 978-3-16-162113-0 (eBook). IX, 649 pp. € 119.-

I. Introduction

The book under review addresses a sensitive topic and has, accordingly, generated quite a bit of discussion in Germany. In twenty chapters, preceded by a brief introduction and concluded by a lengthy epilogue, it discusses the ways Germany's colonial experience reflected, and in turn was reflected in, German law and academic discussions on law. This is a discussion not just involving international lawyers (although the three editors are mainly working in that field) but German lawyers generally. The result is thought-provoking and discussion-provoking, in particular perhaps in light of ongoing conversations in various branches of legal scholarship on how best to study law, how best to accommodate politics, how to position oneself as a legal scholar, and the responsibilities of legal scholarship.[1] There is little point in systematically going through the various chapters and discussing their contents – at least not for a non-German reader such as this reviewer. More relevant to me, for present purposes, is the book's contribution to that ongoing reconfiguration of the legal discipline in light of its contribution to the past, and to the ethics of current legal scholarship. And given my situatedness as an international law academic by profession and inclination, most of the following is coloured by reflections on (and stemming from) that particular branch of scholarship.

II. Political Moralists and Moral Politicians

The half-way decent academic international lawyer commands a certain professional competence. She understands the difference between jurisdiction and admissibility; she realises that a tariff is not exactly the same as a tax, and she also realises that there is some truth in the classic interpretation maxim *inclusio unius est exclusio alterius*: to include one thing usually entails excluding something else. To prohibit discrimination based on na-

[1] This latches on to some of my earlier work, including Jan Klabbers, *Virtue in Global Governance: Judgment and Discretion* (Cambridge: Cambridge University Press 2022), and Jan Klabbers, 'Bureaucrats in the Classroom? Epistemic Governance and the Expert Legal Scholar' in: Emilia Korkea-Aho and Päivi Leino-Sandberg (eds), *Law, Legal Expertise and EU Policy-Making* (Cambridge: Cambridge University Press 2022), 269-291.

DOI 10.17104/0044-2348-2023-4-949

tionality, e. g. is not, as such, to prohibit discrimination based on race – this has to be separately prohibited or included in a definition of nationality in order to be covered. As a result, all international law (and law generally, but that's a story for another day) is inherently political, creating, denying, and policing such distinctions, and therewith tapping into the political sentiments, opinions and convictions of the international lawyer – it could hardly be otherwise.

This entails that our international lawyer, working in 2023, cannot avoid taking a political stand, no matter how hard she tries. She has, broadly speaking and if she wants to be transparent, two avenues available to express political sympathies and antipathies, corresponding to Kant's classic division between the political moralist and the moral politician.[2] The political moralist will ask gratuitous questions to which she already knows the answer: 'Where is the indigenous dimension in your contribution'? or, 'Where is the environment in your story?'. No matter how justifiable the question (and often enough it is on some level justifiable, because many academic works still ignore the indigenous dimension, the environmental dimension, and much else besides, also when paying attention would be highly appropriate), the political moralist is not really very interested in the answers, although that is not excluded. The political moralist is mostly interested in being seen to ask the question, in a facile kind of virtue signaling, and very much in public. Ideally, such comments are made at public events, or on the digital platform owned by a very rich man with right-wing leanings and few scruples, and often by ignoring context, authorial intentions, and the like. The end usually is considered to justify the means, and while the putative end has to be some lofty goal, the more direct ambition of the political moralist is to be visible as having the right opinions.

The moral politician, by contrast, works differently. She will also have political convictions and may hold them strongly, and will use them to inform and steer her research. The moral politician remains driven by curiosity, and will want to find out not only *that* the law works to the disadvantage of particular groups (that is the starting point, after all), but also wants to know exactly *how* the law brings this about. The moral politician who asks about the indigenous dimension or environmental concerns is actually interested in figuring out how things work, for it may seem to her that there is something of interest going on, that there is a lot wrong with the world, and that the only plausible route to changing the world (eventually, perhaps) is to understand the world – to offer a plausible

2 Kant makes the distinction in the appendix to his *Eternal Peace*: see Immanuel Kant, *Zum ewigen Frieden* (Stuttgart: Reclam 1984 [1795]), 38.

 DOI 10.17104/0044-2348-2023-4-949

description and analysis of what is happening and why.[3] The moral politician does not ask things just in order to be seen to be asking them, unlike the political moralist. Both may want to change the world, and both may want the world to change in the same direction, but they employ different approaches. For the moral politician, the end does not always justify the means, and at any rate, the moral politician places no premium on her own visibility. As MacIntyre might have put it, the political moralist is after the external rewards of the practice of scholarship, while the moral politician looks for the internal rewards.[4]

Reading *(Post)Koloniale Rechtswissenschaft*, it becomes clear that the volume, edited by Philipp Dann, Isabel Feichtner and Jochen von Bernstorff, falls squarely into the second category. In Kant's terms, the book is the work of moral politicians: it represents a serious attempt to understand the way Germany's colonial past reflects and affects German law. In doing so (*inclusio unius est exclusio alterius*, after all) there is little attention for the indigenous dimension or the environmental dimension.[5] Racial concerns are paid some attention to; mostly in Liebscher's informative opening chapter and the no less worthwhile chapter by Lembke.[6] But there is little or no attention for other groups seen as disadvantaged: gender is largely absent, sexual orientation is largely absent, as are class considerations and the plight of indigenous people as a group (or groups) distinct from the colonised. And inadvertently, in all too quickly accepting the equation between autism and the sort of thoughtlessness that may result in banal evil, the volume even underlines that one cannot focus on everything all at once and to the same extent – there are just too many balls in the air; and too many constituencies to keep happy if one tries.[7]

The volume is best seen as a sincere investigation into how colonialism affected German law and its categories at the time, and how it still has an

3 For elaboration and inspiration, see Anne Orford, 'In Praise of Description', LJIL 25 (2012) 25, 609-626.

4 Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (2nd edn, London: Duckworth 1985).

5 With one exception: Sigrid Boysen, '(Post)Koloniales Umweltrecht' in: Philipp Dann, Isabel Feichtner and Jochen von Bernstorff (eds), *(Post)Koloniale Rechtswissenschaft* (Tübingen: Mohr Siebeck 2022), 393-426.

6 Doris Liebscher, 'Zwischen rassistischer Rechtsspaltung und Antidiskriminierungskategorie' in: Dann, Feichtner and von Bernstorff (n. 5), 9-44; Ulrike Lembke, 'Wir sind Deutsche, wir sind Weisse und wollen Weisse bleiben' in: Dann, Feichtner and von Bernstorff (n. 5), 231-270.

7 In his contribution, Waldhoff (in apparent agreement) quotes Trutz von Trotha, writing in 1996 that debates on colonial law display a certain amount of autism – therewith inadvertently contributing to the stigmatisation of autism: Christian Waldhoff, 'Kolonial-Finanzverfassung', in: Dann, Feichtner and von Bernstorff (n. 5), 67-91 (69).

afterlife. This is not about documenting all the wrong Germany has done as a colonial power, and most assuredly is not about trying to come to an objective evaluation or even, more likely perhaps, a set of subjective evaluations. Nor is it about the justification of Germany's colonial reign; this, so von Bernstorff's excellent analysis suggests, was not seriously problematised to begin with.[8] Instead, this is mostly about self-reflection, confession, atonement perhaps: a generation of German lawyers, many of them, it seems, with somewhat left-leaning sympathies – liberal social-democrats of varying ilk – and (thus?) some sense of collective guilt for the sins of their grandfathers and great-grandfathers, looking back and trying to figure out what the colonial experience means both for themselves and for the discipline they are part of, in law itself as well as in legal scholarship. In her insightful epilogue Alexandra Kemmerer suggests the volume represents the beginning of some sort of social or scholarly process – a start to the process of coming to terms with the colonial past.[9] And perhaps it does this too. But mostly this is an exercise in self-reflection.

III. A Matter of Perspectives

It has become common to think of international law in terms of being informed by different theories,[10] but this may be an overestimation, a conceit even. What the discipline has no shortage of, however, is different approaches and methodologies,[11] acting like colouring agents (in Weiler's felicitous analogy[12]) and making things visible that would otherwise remain hidden from view, or overshadowed. Such approaches can and do exist side-by-side: looking at international law from a colonial perspective does not mean that a feminist perspective is mistaken, and vice versa: they will, instead, highlight different things, different patterns of oppression and exploitation, both reflecting and giving rise to different (sometimes related) political agendas.[13]

8 Jochen von Bernstorff, 'Koloniale Herrschaft durch Ambivalenz' in: Dann, Feichtner and von Bernstorff (n. 5), 271-313.

9 Alexandra Kemmerer, 'Die verspätete Rezeption', in: Dann, Feichtner and von Bernstorff (n. 5), 619-646.

10 Andrea Bianchi, *International Law Theories* (Oxford: Oxford University Press 2016); Jeff Dunoff and Mark Pollack (eds), *International Legal Theory: Foundations and Frontiers* (Cambridge: Cambridge University Press 2022).

11 Not so much in any technical sense but rather in suggesting what topics are interesting and important, and how these can best be approached. A striking example is David Kennedy and Martti Koskenniemi, *Of Law and the World* (Cambridge MA: Harvard University Press 2023).

12 Cited in Jan Klabbers, *International Law* (3rd edn, Cambridge: Cambridge University Press 2020), xviii.

13 This borrows from 'conceptual pluralism': see Hilary Putnam, *Ethics without Ontology* (Cambridge MA: Harvard University Press 2004).

 DOI 10.17104/0044-2348-2023-4-949

But such perspectives rarely amount to theories, at least not if by 'theory' is meant a coherent set of assumptions and axioms and hypotheses allowing for accurate description and explanation of past and present and prediction of the future.[14]

But usually the point of adopting a perspective is not to offer explanation; nor could it. Instead, adopting a particular perspective usually is informed by political sympathies or antipathies, and these come to life by offering different, at times competing, interpretations of the same events or facts. The creation of the welfare state, by this logic, can be seen as doing good for workers and the disadvantaged. It can be seen as protecting industry against revolutions and uprising. It can be seen as legitimising the state – and it can be seen as all of the above, even simultaneously. Likewise, setting up the European Union may be seen as bringing an end to war in Western-Europe; as setting up a common market for the greater good of Big Capital; or even, as some suggest, as the continuation of colonialism by other (or not so other) means. And again, the explanations flowing from different perspectives are not mutually exclusive.[15]

Being informed by a particular perspective and allowing it to steer research and conclusions is, in and of itself, not a bad thing – quite the opposite perhaps. Part of what makes for a good academic is the ability to shed new light on things, to question hidden assumptions, to connect dots not connected in quite the same way earlier. It allows for making things visible that would otherwise remain invisible and one should ideally be transparent about one's agenda; but not much more should be expected. By this standard, looking at international law as imperialism will show up much that will suggest that indeed, international law can be seen as imperialism, in much the same way as donning constitutional spectacles will suggest that much of international law can be understood in constitutional terms.[16] Whether such discussions are persuasive then depends on the evidence presented and how comprehensive and sophisticated the discussions are, rather than on making the claim to begin with. By this standard, an analysis of international law informed by an imperialism perspective is probably bound to be more

14 It is likely that by this standard, no legal theory can meaningfully be said to exist, a claim that aligns with Thomas Kuhn's observation that there exist no true paradigms in the social sciences: Thomas M. Kuhn, *The Structure of Scientific Revolutions* (2nd edn, Chicago IL: University of Chicago Press 1970).

15 Peo Hansen and Stefan Jonsson, *Eurafrica: The Untold History of European Integration and Colonialism* (London: Bloomsbury 2014).

16 Jan Klabbers, 'Constitutionalism as Theory', in: Jeff Dunoff and Mark Pollack (eds), *International Legal Theory: Foundations and Frontiers* (Cambridge: Cambridge University Press 2022), 220-239.

compelling than a constitutionalist reading of international law,[17] if only because there is too much that cannot meaningfully be squeezed into the latter box. Either way though, while a particular perspective can dominate within a particular group of scholars for a particular period of time,[18] no perspective is likely to come to be seen as explaining everything under the sun.

This suggests that one temptation needs to be avoided: the temptation to view the chosen perspective as the one and only perspective, invoked to explain both each and every thing that happens and each and every thing that is omitted. The Marxist international lawyer will blame capitalism for everything that is wrong with the world, and one does not need to be a Marxist to see that often enough she may have a point. Sophisticated justifications have been developed to facilitate such an approach.[19] But this should not be allowed to become its own truth to the exclusion of all other perspectives. Likewise the fascist international lawyer (assuming such a creature exists) will do much the same, and some of their points may hit home too – witness only the popularity of Schmitt's critique of liberalism. Much like the proverbial person with the hammer will see nails everywhere and in everything, so too the international lawyer donning particular spectacles will see much to confirm the accuracy of those spectacles. None of this should be surprising, and none of this should be taken to undermine the value of bringing different perspectives to the fore, but the keyword here is 'different': these are not mutually exclusive, they all have their blind spots, and none of them *a priori* has a monopoly on truth. Hence, for individuals engaged in scholarly activities, the big challenge is to resist the temptation offered by political moralism. Tempting (and often persuasive) as it may be to blame Big Capital or imperialism, doing so should not become a substitute for proper analysis and thoughtful reflection. Instead, it should be backed up by impeccable research, tracing processes and the constitutive or facilitating role of the law, lest it becomes yet another example of loudmouth politics.

And what applies to authors applies to readers as well: a book or an article should not be deemed 'excellent' for its politics, but for its scholarly qualities; not because one agrees (agreement between academics being highly overrated

17 Seminal is Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (Cambridge: Cambridge University Press 2005).

18 See generally Diana Crane, *Invisible Colleges: Diffusion of Knowledge in Scientific Communities* (Chicago IL: University of Chicago Press 1972).

19 Among the more sophisticated is Tzouvala, suggesting that just as relevant as what legal texts actually say is what they leave unsaid, something that can be ascertained through close reading and interpretation of the silences – referred to as 'symptomatic reading'. See Ntina Tzouvala, *Capitalism as Civilisation: A History of International Law* (Cambridge: Cambridge University Press 2020).

 DOI 10.17104/0044-2348-2023-4-949

at any rate), but because it shines a different and plausible light on what one thought one knew. Thus far, the discipline of international law has still often enough got it right: the scholarship of Orford, or Anghie, or Chimni, or Charlesworth and Chinkin (to name just some of the more obvious examples of scholars offering heterodox perspectives), is widely respected because it is excellent scholarship.[20]

The book under review emphatically stays on the right side of the dividing line: it is an exercise in moral politics rather than political moralism, and inspired by a drive to self-reflection. The editors have been criticised for producing a book on the colonial legacy in German law without involving anyone other than white, more or less well-established scholars,[21] but that seems to have been precisely the point: self-reflection will need to start with the self. If the book served a different goal the criticism would perhaps have been compelling, but as it is, it misses the target. The volume is not meant as a description pure and simple of how the colonies were part of German law or how they helped to form German law. It is not a *Handbook of German Colonial Law*, or a *Companion to the German Colonial Experience*, or a *Very Short Introduction to German Colonial Rechtswissenschaft* (indeed, it is definitely not very short to begin with […]). Instead, it approximates a collective look in the mirror; a visit to the psychiatrist or even the confession booth; and it would have been improper to delegate this task to others, even (or especially) to do so in the name of some ideal of representation or inclusivity.

Indeed, in a curious way, one of its chapters unintentionally indicates just how akward this would have been. The one chapter that does not quite fit the volume is the one written by Will, a scholar hailing from the former German Democratic Republic (GDR),[22] about the colonisation of the former GDR by the Federal Republic. There is nothing wrong with that chapter as such, hugely informative as it is, but its tone is different from those of the other

20 This refers, respectively and among others, to Anne Orford, *International Authority and the Responsibility to Protect* (Cambridge: Cambridge University Press 2011); Anghie (n. 17); Bhupinder S. Chimni, *International Law and World Order: A Critique of Contemporary Approaches* (2nd edn, Cambridge: Cambridge University Press 2017); and Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester: Manchester University Press 2000).

21 Cengiz Barskanmaz, 'Postkoloniale Rechtswissenschaft: Der Ausschluss dauert an', responded to by Alexandra Kemmerer, 'Postkoloniale Rechtswissenschaft: Ein Anfang is gesetzt', both in *Frankfurter Algemeine*, 22 March 2023.

22 Rosemarie Will, 'Die deutsche Wiedervereinigung als Kolonialisierungsakt?' in: Dann, Feichtner and von Bernstorff (n. 5), 581-616. Will's Wikipedia page states she was born in Bernsdorf, located not too far from Dresden in the former GDR, <https://de.wikipedia.org/wiki/Rosemarie_Will> (visited 30 August 2023).

contributions: it amounts to a 'j'accuse!' instead of the more soul-searching attitude informing the other chapters; these may perhaps not quite amount to a 'mea culpa', but seem open to that possibility.

IV. Aphasia

The book is effectively divided into three parts, and its title well reflects its contents: *(Post)Koloniale Rechtswissenschaft*. The idea is to examine and reflect on how German law and legal scholarship contributed to, digested, and reflects on Germany's colonial and post-colonial experience. The first part traces how the colonial experience at the time influenced German law on a number of topics: not just its constitutional structures, but also its family law (with questions concerning mixed marriages), nationality law (and recognition of children born in mixed race relationships), its Church law, and even company law which, as Feichtner shows in her excellent contribution, owes much to the colonial experience.[23]

The second part takes things a step further, and includes contributions about continuities, both in legal and diplomatic practice (such as the negotiation of bilateral investment treaties, as the exemplary piece by Venzke and Günther shows[24]) and within the academic discipline of international law, with Kleinlein providing a fine overview of the lukewarm reception generally of post-colonial international law approaches among German colleagues.[25] The third part eventually aims to discuss a number of issues related to what in German is so wonderfully referred to as *Vergangenheitsbewältigung*, roughly to be translated as the 'digestion of the past'. This addresses topics such as the restitution of cultural objects (a strong chapter by Spitra[26]) or whether or not items in the public sphere (think of street names and statues) should be reconsidered. The author of the latter piece, Riegner, introduces what turns out, perhaps inadvertently, to constitute the *Leitmotiv* of the volume: the search for a proper vocabulary and attitude to discuss these things.[27] The problem is not so much that of *amnesia*, Riegner suggests, but *aphasia*: it's not that no one knows what

23 Isabel Feichtner, 'Koloniales Wirtschaftsrecht und der Wert der Kolonisation', in: Dann, Feichtner and von Bernstorff (n. 5), 189-229.

24 Ingo Venzke and Philipp Günther, 'Kontinuität und Wandel im völkerrechtlichen Investitionsschutz', in: Dann, Feichtner and von Bernstorff (n. 5), 465-496.

25 Thomas Kleinlein, 'Dekolonisierung und Dritte Welt in der Völkerrechtswisschaft der Bundesrepublik', in: Dann, Feichtner and von Bernstorff (n. 5), 427-463.

26 Sebastian Spitra, 'Rechtsdiskurse um die Restitution von Kulturerbe mit kolonialer Provenienz', in: Dann, Feichtner and von Bernstorff (n. 5), 521-550.

27 Michael Riegner, 'Postkoloniale Erinnerungspolitik im deutschen Recht', in: Dann, Feichtner and von Bernstorff (n. 5), 551-580.

 DOI 10.17104/0044-2348-2023-4-949

went on, but rather a problem of not quite knowing how to think and talk about colonial experiences.

Germany's appearance as a colonial power was relatively short-lived, at least following the conceptualisation used in this volume. Germany was a colonial power, so the authors assume, between 1884 and either 1914 or 1919 marking either the start or the formal end of World War I, when Germany was stripped of its colonies which were then placed as mandate territories under supervision of the League of Nations. Those territories included (but were not limited to) today's Namibia, parts of Togo, Ghana and Cameroon, German East Africa (nowadays parts of Tanzania, Burundi and Rwanda), plus a stretch of what is today located in China. Compared to other colonial powers, Germany's colonialism was relatively modest in terms of duration and geographical coverage, but obviously overshadowed by the rise to power of the Nazis and their own brand of expansion: the search for *Lebensraum*. This, in turn, raises questions about the very definition of colonialism, questions not asked in the volume except in Will's above-mentioned chapter about the (putative) colonisation of the GDR by the Federal Republic. She makes the credible point that while this may not have constituted colonisation as usually defined (involving geographical distance between the metropolitan area and the colonies), it nonetheless does represent some form of expansion utilising similar patterns of thought and practice. And thus, in doing so, she problematises the very idea of colonisation: why are some forms of exploitation considered 'colonial', but not others? Why are different categories used for practices which may eventually boil down to much the same? In other words, this raises the politics of framing, and it is a mild surprise that this is not further explored in the volume. Then again, with close to 650 pages, the book is big enough as it is.

Commendably, the volume wastes little energy on questions of whether reparations to individual or collective victims are due. Even Spitra's chapter merely broaches the topic; he is far more interested in restitution questions, and it is perhaps worth noting, *en passant*, that these are not limited to colonial exploitation. There is, e. g. a lot of bad blood between Greece and the United Kingdom over the latter's hold on what the United Kingdom refers to as the Elgin Marbles, with the Acropolis Museum in Athens pointedly reserving a very visible empty slot for them should they ever be returned. To avoid discussions on reparations is not a bad thing. Reparations involve identifiable victims and involve somewhat distateful calculations ('you have suffered twice as much as your neighbour and should receive double of what he should receive'). More importantly perhaps, thinking in terms of reparations presupposes that individuals can be held responsible for what was and is, in the end, a rather structural phenomenon; and therewith

an insistence on such reparations obscures the perfidious role of law and legal structures more generally.[28] Plus, if one adopts a perspective of the world as one of constant struggles for domination, then there is no end to the sort of reparations that would be ethically imperative.

One of the strong points of *(Post)Koloniale Rechtswissenschaft* is that its focus rests firmly on the ramifications of the colonial experience throughout Germany's legal order. The three editors may all be best known as international lawyers, but the volume contains insightful contributions on constitutional law, the law of public finance, administrative law, church law, environmental law, and criminal law.

The book pays relatively little attention to the actual activities of Germany in its colonies. The volume does not aim to demonstrate that nasty things took place; it is more interested in figuring out how this reflected and affected German law and German approaches to law. The one exception is the Herero and Nama massacre, officially considered a genocide by German authorities since the start of the 21st century, and discussed with great subtlety in historical perspective and with the help of archival materials by Goldmann.[29] But beyond this, the actual practices on the ground in the colonies are given relatively little attention – the book is far more interested in how German lawyers and authorities discussed and debated things, and that is a different perspective altogether.

V. Final Remarks

In the end, this is an excellent, if somewhat idiosyncratic, volume. Where one would expect the editors (if anyone) to write an epilogue and defend the work in public, this is actually done by one of the contributors; and where one would expect editors to formulate a *Leitmotiv*, this too is left to one of the contributors, and in a contribution placed fairly late in the book as well. And yet, this only adds to the sense of collective self-reflection. If many edited volumes these days are the brainchildren of editors with strong views on what they want a book to be like, what they want to focus on, what they want to be its central argument and guiding threads, here this seems to have been left somewhat open – I am somewhat reminded of the old East-German practice of publishing works not under individual names, but as *Autorenkollektiv*.

28 The point is well-made by Scott Veitch, *Law and Irresponsibility: On the Legitimation of Human Suffering* (Abingdon: Routledge 2007).

29 Matthias Goldmann, 'Ich bin Ihr Freund und Kapitän', in: Dann, Feichtner and von Bernstorff (n. 5), 499-520.

 DOI 10.17104/0044-2348-2023-4-949

As the editors suggest in their brief introduction, historical studies of German's colonial past may have been emerging for the last couple of decades, but what has been missing is a systematic attempt to understand the role of law and legal scholarship and the responsibility thereof for, and embeddedness in, colonial continuities. As Margalit might have put it, doing so is significant 'since who we are depends on our not forgetting things that happened and that are important in our lives'.[30] Therewith, *(Post)Koloniale Rechtswissenschaft* is an exercise in self-reflection more than anything else, coming close (without quite slipping into) a quest for redemption.

And perhaps its best quality is that despite the slipperiness of the topic and the explosive nature of its politics, the authors have by and large succeeded in resisting attempts to simplify, to adopt the spectacles of political moralists. It would have been all too easy to decry German law and legal scholarship as imperialist and racist and capitalist, and leave it at that. The great merit is not just showing traces (and sometimes considerably more than traces) thereof, but also showing how these came to the surface and came to be part of German law and the everyday experiences of authorities and lawyers alike. Instead of expressing condemnation and then taking what William James referred to as a 'moral holiday'[31] (the favoured *modus vivendi* perhaps of Kant's political moralist), the work actually traces how environmental law in Germany came to be informed by the colonial experience, how German family law was influenced, and what German criminal law owes to the German colonialism.

In August 2023, as I am working my way through *(Post)Koloniale Rechtswissenschaft*, news comes through that Robbie Robertson, lead guitarist and songwriter of The Band, has died. As one does, I listen to some of The Band's songs again, a little wistfully perhaps: songs with religious overtones like the gospel *The Weight*, with its classic opening line "I pulled into Nazareth, feeling 'bout half past dead'", and *The Night They Drove Old Dixie Down*, where a farm hand named Virgil Kane (different spelling from Abel's brother, but somehow related no doubt) recalls the Confederate defeat, having been somewhat excited to see general Robert E. Lee passing by, and mourning his elder brother, for 'a Yankee laid him in his grave'. In a few lines, Robertson manages to evoke the complications of politics and memory, and how events may be experienced by regular people, such as farm hands named Virgil Kane. Perhaps it took an outsider (Robertson was born

30 He wrote this in a marginally different context, concerned with the relationship between forgetting and forgiveness. See Avishai Margalit, *The Ethics of Memory* (Cambridge MA: Harvard University Press 2002), 208.

31 William James, *Pragmatism* (Indianapolis IN: Hackett Publishing Company 1981 [1907], Kuklick ed.), 36.

and raised in Canada, in Toronto) to show understanding and empathy with the Confederate plight, without glorifying it or justifying it: 'you can't raise a Kane back up when he's in defeat'. Or perhaps it was his native American heritage (his mother was of Mohawk and Cayuga descent and had been raised on the Six Nations reserve) which coloured his deep understanding and compassion.[32] Either way, Robertson exemplifies the moral politician, thoughtfully aiming to come to terms with his own and others' experiences – and much the same applies to *(Post)Koloniale Rechtswissenschaft*. I am not familiar with similar volumes coming out of the Netherlands, France, the United Kingdom, Belgium, *et cetera*, to address the influence and legacy of the colonial experience on Dutch, French, English, or Belgian law, but if these do indeed not exist, then they are long overdue.

Jan Klabbers, Helsinki/Finland

32 See his obituary, <https://www.theguardian.com/music/2023/aug/10/robbie-robertson-obituary> (visited 10 August 2023).

 DOI 10.17104/0044-2348-2023-4-949

Eine neue Perspektive auf das deutsche Verfassungsrecht.

Herdegen/Masing/Poscher/Gärditz
Handbuch des Verfassungsrechts
2021. LVIII, 1837 Seiten.
In Leinen € 249,–
ISBN 978-3-406-73850-0

beck-shop.de/27607444

Grundgesetz im internationalen Kontext

Eine moderne Darstellung des deutschen Verfassungsrechts muss auf die Wechselwirkungen der nationalen Verfassung mit unions-, europa- und völkerrechtlichen Strukturen eingehen. Daher beschreiben die Autorinnen und Autoren das deutsche Verfassungsrecht stets mit Blick auf die **Wertungen ausländischer Rechtsordnungen.** Das neue Werk berücksichtigt alle Schnittstellen und Rangfragen der verschiedenen rechtlichen Ebenen sowie deren gegenseitige Rezeptionen und beachtet dabei die jeweiligen historischen und **institutionellen Gemeinsamkeiten und Unterschiede.** Von großem Interesse sind dabei auch die Beziehungen der nationalen Verfassungsorgane zu den Organen der EU, des Europarats, der NATO, der Vereinten Nationen etc.

Der Inhalt:

- **Grundlagen** (Begriff der Verfassung, Verfassung und Verfassungsgerichtsbarkeit im internationalen Mehrebenensystem, Verfassungsrecht als Ausgleichsordnung, Verfassungsentwicklung und -rechtswissenschaft)
- **Verfassungsprinzipien** (Demokratie, Rechtsstaat, Sozialstaat, Bundesstaat)
- **Staatsorganisation** (Staatsangehörigkeit, Regierungssystem, Gesetzgebung, Rechtsprechung, Verwaltung, Verfassungsgerichtsbarkeit)
- **Grundrechte** (Allgemeine Grundrechtslehren, Menschenwürde, persönliche Freiheit, Gleichheit, Kommunikation, Religion, Gewissen, Ehe und Familie, Wirtschaft und Arbeit)
- **Teilordnungen der Verfassung** (Parteien-, Wahl- und Parlamentsverfassung, Finanzverfassung, Medienverfassung, Umweltverfassung, Außen- und Wehrverfassung, Sicherheitsverfassung)

Erhältlich im Buchhandel oder bei: **beck-shop.de** | Verlag C.H.BECK oHG · 80791 München | kundenservice@beck.de | Preise inkl. MwSt. | 172585
facebook.com/verlagCHBECK linkedin.com/company/verlag-c-h-beck twitter.com/CHBECKRecht

C.H.BECK

EU-Grundrechte auf neuestem Stand.

Der »Jarass«

kommentiert die mit dem Vertrag von Lissabon rechtsverbindlich erklärte Grundrechte-Charta und bietet zudem einen einführenden Überblick über das System des Europäischen Grundrechtsschutzes.

Wichtig für deutsche Juristen

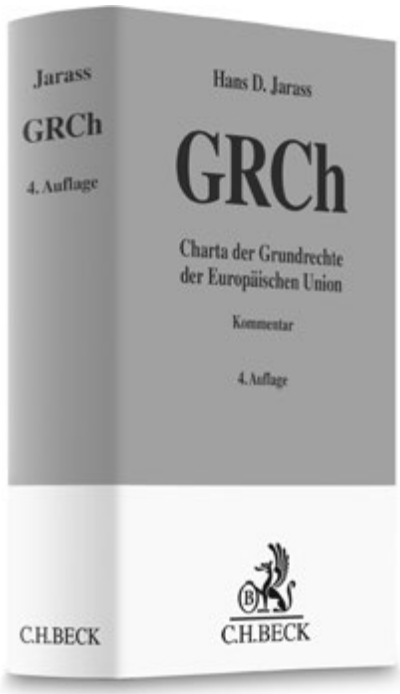
Die europäischen Grundrechte sind nicht deckungsgleich mit den deutschen Grundrechtsregelungen. Teilweise werden Schutzbereiche normiert, die im Grundgesetz nicht ausdrücklich geregelt sind, wie z.B.

- der Schutz persönlicher Daten
- das Recht auf Bildung
- Rechte von Kindern und Älteren
- die Gewährleistungen zum individuellen Arbeitsrecht oder
- das Recht auf eine gute Verwaltung.

Die 4. Auflage

verarbeitet die seit der Vorauflage ergangene Rechtsprechung des EuGH (und des EuG) und der nationalen Gerichte sowie die umfangreiche neue Literatur.

Rechnung getragen wurde insbes. der gestiegenen Bedeutung der Rechtsschutzgewährleistung in Art. 47, auch für Verfahren vor den nationalen Gerichten.



Jarass
GRCh · Charta der Grundrechte der Europäischen Union

4. Auflage. 2021. XV, 572 Seiten.
In Leinen € 119,–
ISBN 978-3-406-76314-4

beck-shop.de/31693719

Der Autor

Professor Dr. Hans D. **Jarass** ist einer der bekanntesten Staatsrechtslehrer im deutschsprachigen Raum. Auf dem Gebiet des Verfassungsrechts ist er insbesondere durch seinen Standardkommentar zum Grundgesetz der Bundesrepublik Deutschland, der im Jahr 2020 unter Mitwirkung von Prof. Dr. Martin Kment in 16. Auflage erschienen ist, hervorgetreten.

”

... eine hervorragende Praxishilfe, die nicht zuletzt auch einer ersten Einarbeitung in die - auch manchem grundrechtsgeschulten deutschen Juristen eher noch fremde – Materie des Grundrechtsschutzes auf EU-Ebene dienen kann.

Prof. Dr. Hermann Weber, in: LKV 03/2017, zur 3. Auflage 2016

C.H.BECK

Erhältlich im Buchhandel oder bei: **beck-shop.de** | Verlag C.H.BECK oHG · 80791 München | kundenservice@beck.de | Preise inkl. MwSt. | 172622
facebook.com/verlagCHBECK linkedin.com/company/verlag-c-h-beck twitter.com/CHBECKRecht