

Summary

Die Rule of Law in der deutschen Rechtsstaatstheorie des 19. Jahrhunderts

by Stephan Kirste

The article investigates the reception of elements of the rule of law during the foundation period of the theory “Rechtsstaat” in the 19th century. It is remarkable that some of the most important theorists of the “Rechtsstaat” were at the same time scholars in the comparative studies of law: Robert von Mohl, Rudolf von Gneist and Georg Jellinek. Significantly, they were mostly interested in the English and increasingly in the US-American legal orders. The concepts of the rule of law and the legal state have common roots, but developed in times nearer or more distinct to each other. Initially, when in the late 18th century and beginning 20th century the theory of the “Rechtsstaat” was influenced by natural law concepts, it shared many elements with the rule of law. Only under the influence of German public law positivism, which was in part in its comparative studies more oriented towards France, the concepts of the rule of law and “Rechtsstaat” were opposed to each other. Under the influence of European and International law these differences have nearly vanished today and concentrate, perhaps, only on the function of parliamentary laws. – Before the background of a short sketch of the development of the rule of law in England and the US, and some remarks about Anglo-American conceptions of the relation of the rule of law and the “Rechtsstaat”, the article depicts the developments of the reception of the rule of law in German legal thought in the 19th century and draws some conclusions about their present relation.