

# Battle Rule or Welfare Institution?

German Civil Procedure Law in the Interwar Period

by *Martin Löhnig*

## I. Starting Point: The Imperial Code of Civil Procedure of 1879

On 1<sup>st</sup> January 1879, a uniform code of civil procedure came into force in the German Empire, ending the coexistence of different procedural models that had existed until then. It is the result of a productive competition and synthesis of these models, especially in the long Hanover deliberations in the late phase of the German Confederation (1862 – 1866). In these, the principle of orality, as regulated in the Civil Code of Procedure of the Kingdom of Hanover, prevailed in an expanded form as the defining principle of procedure,<sup>1</sup> whereby a far-reaching consensus on the basic lines of procedural reform in Germany had been reached. After the German Empire was founded in 1871, the Hanoverian procedure, which – based on the model of the common law procedure – was initially divided into two stages, was then transferred into an independent undivided procedure by its originator Adolf Leonhardt himself: a procedure characterized by liberal ideas for the “struggle for justice” (Ihering), describing the dispute between the parties in the free play of forces before the court acting as arbitrator. The *Reichszivilprozeßordnung* thus not only unified the law, but also, as the result of decades of work, brought to fruition a completely new, systematic and principled edifice of civil law doctrine. A building whose shell was erected during the time of the German Confederation and which still exists today despite (or because of) ongoing renovation and reconstruction work. The interwar period appears as a phase of particularly intensive work and hard-fought academic disputes about civil procedure.

## II. The Weimar Discourse: Liberal Procedural Law vs. Social Procedural Law

Friedrich Stein, who we still encounter today in the title of the “Stein/Jonas”, stated in 1921 in the preface to his *Grundriss des Zivilprozeßrechts*: “For me, the legal procedure is technical law in its very sharpest form, dominated by changing expediency, devoid of eternal values”.<sup>2</sup> This statement by the proceduralist, who died in 1923 and whose commentary also shaped the years that followed, is the leitmotif, as it were, of a trend in Weimar procedural jurisprudence. It is the statement of a classical liberal-

---

<sup>1</sup> *Ahrens*, *Prozessreform*, p. 639.

<sup>2</sup> *Stein*, *Grundriß des Zivilprozeßrechts*, Vorwort, p. III.