

“STEIN WITHOUT JONAS”: THE RENAMING OF THE “*KOMMENTAR ZUR ZIVILPROZESSORDNUNG*” AND THE CRITICAL REFLECTION ON THE INFLUENCE OF NATIONAL SOCIALISM ON GERMAN LEGAL DOCTRINE

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1. INTRODUCTION: “STEIN WITHOUT JONAS”

The Stein-Jonas Commentary on the German Code of Civil Procedure, named after the proceduralists Friedrich Stein and Martin Jonas, was first published in 1879 by Ludwig Gaupp under the title *„Civilprozeßordnung für das Deutsche Reich nebst den auf den Civilprozeß bezüglichen Bestimmungen des Gerichtsverfassungsgesetzes und den Einführungsgesetzen“*.

This Commentary played a key role in the training of generations of young German and and foreign academics.

Friedrich Stein, author of the groundbreaking book *„Das private Wissen des Richters: Untersuchungen zum Beweisrecht beider Prozesse“* (Private Knowledge of the Judge: Studies in the Law of Evidence), became its editor from the 3rd edition (1896).

From the 10th edition (1911), his pupil Martin Jonas also joined the Commentary as editor.

Following Stein's death, Jonas edited the Commentary alone from the 12th and 13th editions (1925) until the 16th edition (1938), to which Rudolf Pohle also contributed.

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The 17th edition was published after the war by Adolf Schönke under the title '*Kommentar zur Zivilprozeßordnung*', already used in the 15th edition, but shortened to '*Die Zivilprozeßordnung*' in the 16th.

From the 19th edition in 1964 until 2024, the title was 'Stein-Jonas, *Kommentar zur Zivilprozeßordnung*'.

The title was changed in the 22nd edition of 2002, when the hyphen separating the Authors' names was replaced by a vertical slash (Stein/Jonas), and when the letter ß in the word *Zivilprozessordnung* was replaced by a double "s" following the *Reform der deutschen Rechtschreibung*, which came into force on August 1st, 1996.

Now, after sixty years, the Commentary changed its name. From the 24th edition in 2024, the reference to Martin Jonas was removed from the title, and the Commentary changed its name to 'Stein, *Kommentar zur Zivilprozessordnung*'.

Good reasons were given for excluding the reference to Martin Jonas.

This decision, made jointly by the publisher and the Commentary's current editors, forms part of ongoing reflection in Germany on the relationship between the so called "*Spitzjuristen*"—i.e. editors of commentaries—and the National Socialist regime. A study published in 2023, commissioned by the Bavarian Ministry of Justice from the Munich-Berlin Institute for Contemporary History (IfZ), on Otto Palandt (1877–1951) and Heinrich Schönfelder (1902–1944) and their links to National Socialism is emblematic in this respect.¹

During the same years, Mohr Siebeck, the publisher of the Commentary, commissioned Professor Bernd Mertens, of the Institute of Legal History at Friedrich-Alexander University Erlangen-Nuremberg, to examine Martin Jonas's work during the National Socialist period.

Professor Mertens was specifically asked to investigate how Jonas applied Nazi ideology in his roles at the Reich Ministry of Justice and the Reich Supreme Court (*Reichsgericht*).

The publisher also asked about Martin Jonas's attitude towards the scientific legacy left to him by his mentor, the Jewish academic and jurist Friedrich Stein (1859–1923).

While in the preface to the 12th and 13th editions of the Commentary, *Die Zivilprozeßordnung für das Deutsche Recht* (dating from 1925–1926), Jonas still spoke of his 'sincere desire' to 'keep Stein's spirit alive in the present and future legal generations', in the 16th edition of 1938, the title of the Commentary was changed to "*Die Zivilprozeßordnung*" and, due to his Jewish origins, Professor Stein's name was removed from the title and many footnotes, in accordance with National Socialist instructions.

¹ The report (in German) is available on the IfZ website: https://www.ifz-muenchen.de/fileadmin/user_upload/Presse/Downloads/IfZ_Gutachten_Palandt-Schoenfelder_Zusammenfassung.pdf.

Research conducted by Bernd Mertens and published in the 2024 edition of the German Journal “*Juristen Zeitung*”² prompted the publisher and editors to remove the reference to Martin Jonas from the title of the Commentary and apologise to readers for the delay.

The Introduction to Volume 1 of the 24th edition of the Commentary states that keeping only the reference to Friedrich Stein not only acknowledges his role as coordinator of the Commentary, but also sends a message against anti-Semitism and all forms of exclusion, intolerance, and hatred in scholarly debate.

Further in-depth research is being carried out in the publisher’s archive at the State Library in Berlin by Professor Mertens.

The aim of this essay is to provide non-German-speaking readers with an account of the aforementioned research, which was originally published in German in 2024.

2. MARTIN JONAS AND NATIONAL SOCIALISM

Martin Jonas received his doctorate in 1907 from the University of Halle for a thesis on civil procedural law supervised by Friedrich Stein. He then became a senior ministerial official in the Reich Ministry of Justice from 1920 to 1938. In this role, he was responsible for reforms concerning civil procedural law.

From 1938 onwards, Jonas was the president of Chamber IV at the Reich Supreme Court (*Reichsgericht*). He held this position until he committed suicide in his Leipzig office in April 1945.

In September 1939, Jonas applied for membership of the National Socialist Party, which became effective on January 1st, 1940.

At the time of his appointment to Chamber IV of the *Reichsgericht*, five of its seven judges were National Socialist Party members.

Professor Bernd Mertens conducted a detailed study of Jonas’ work at the Reich Ministry of Justice and at the Supreme Court of the Reich, where he presided over numerous cases concerning the annulment of so-called “mixed” marriages between Aryans and Jews.

However, here, only the part of the Martens’ research concerning the Commentary is of interest.

² MERTENS, „Spitzenjurist“ im Nationalsozialismus (in Verwaltung, Justiz und Wissenschaft) - das Beispiel Martin Jonas, in *Juristen Zeitung*, 82-90, downloadable from the publisher’s website: <https://www.mohrsiebeck.com/artikel/spitzenjurist-im-nationalsozialismus-in-verwaltung-justiz-und-wissenschaft-das-beispiel-martin-jonas-101628jz-2024-0022/>.

3. THE COMMENTARY AFTER STEIN'S DEATH AND DURING THE PERIOD OF NATIONAL SOCIALISM

From the 12th edition in 1925 onwards, Jonas continued the Commentary, having been explicitly designated by Stein as his successor in this role.

Initially, the publisher was skeptical about entrusting the Commentary to Jonas, since he was relatively unknown in academic circles and had been involved in the reform of the German Code of Civil Procedure in 1924, which had been criticized by the local Bar Association.³ However, this initial mistrust was evidently overcome, and Jonas continued to work on successive editions of the Commentary until his suicide.

Stein's name as editor was retained until the 15th edition.

The 16th edition (1938) was edited by Jonas alone, in collaboration with Rudolf Pohle, with whom he had worked at the *Reichsjustizministerium*.

In the introduction to the 12th edition (1925), Jonas wrote: 'I have not taken on the legacy he [Friedrich Stein] entrusted to me lightly—burdened by a sense of responsibility towards practice and science, and not least towards the deceased Friedrich Stein, but also driven by a sincere desire to keep his spirit alive among present and future generations of jurists'. However, after only four editions, Stein was no longer mentioned. A reference was made, nevertheless, to Gaupp as the founder of the Commentary.

Research conducted by Bernd Mertens on behalf of the publisher Mohr Siebeck attributes this exclusion to Stein's Jewish origins.

The research also recounts how the Jewish lawyer Max Friedlaender commented on this exclusion, stating, 'The fact that a man of Jonas's stature, who in the past proudly referred to Stein as "his brilliant Mentor", could have carried out such an action constitutes one of the inconsistencies in the character of the German people with which psychologists should engage'.⁴

Stein's name was also systematically removed from numerous footnotes within the Commentary. In this regard, the research draws a significant comparison between the 15th edition of 1934 and the 16th edition of 1938, referencing the commentary on § 253 of the German Code of Civil Procedure (ZPO). In the 15th edition, Stein was cited in 36 of the 117 footnotes, but in the 16th edition of the Commentary, all references to Stein had been removed. This was in line with the National Socialist Party's instructions, which, since 1936, had urged all publishing houses to 'stop publishing and propagandising non-Aryan academic works'.

Stein's name was reintroduced alongside Jonas's in the 17th edition of the Commentary, dated 1949, after the war was over.

³ MERTENS, 'Spitzenjurist' im Nationalsozialismus, 87.

⁴ MERTENS, 'Spitzenjurist' im Nationalsozialismus, 88.

Could Jonas have refused to remove any reference to Stein from the 16th edition of the Commentary?

Was it his deliberate choice, or did the publisher contribute to it by making a special request based on instructions from the National Socialist Party?

In-depth research ongoing in the Mohr Siebeck archive, which was donated to the Berlin library, will provide further clarification in this regard.

Nonetheless, Mertens' research highlights how, even after 1935, some courageous authors and publishing houses (clearly not aligned with the regime) continued to publish works containing quotations from Jewish jurists.

One example is Fritz von Hippel's monograph on the duty of truth in civil proceedings, published in 1939 by the Frankfurt publisher Klostermann.⁵ In this volume, Hippel cites both the Jewish jurist Leo Rosenberg and Friedrich Stein, including the 16th edition of Stein-Jonas, to which he added Stein's name.

Based on this finding, Mertens' research concludes by highlighting the close link between Jonas and National Socialism, pending further developments.

4. CLOSING REMARKS

In this short essay, we hope to highlight that behind what may initially appear to be a mere stylistic simplification that may not even be noticed by a non-German reader eager to deepen their knowledge of German civil procedural law by reading the new edition of Stein's Commentary on the German Code of Civil Procedure, there is a significant critical reflection on the painful past of a community of jurists. We felt it was important to draw attention to this, particularly for the benefit of younger generations of jurists, at a time when preserving the historical memory of recent years is crucial.

⁵ HIPPEL, *Wahrheitspflicht und Aufklärungspflicht der Parteien im Zivilprozess*, 1939.

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