Clara Günzl

Eine andere Geschichte der Begründungspflicht

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[An Alternative History of the Courts' Duty to Give Reasoned Judgments. Early Nineteenth Century Perspectives.]

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Although written and published reasons for court decisions are an essential part of modern German legal literature, they have only been around since the late eighteenth and early nineteenth centuries. Starting from this astonishing fact, the study focuses on how contemporary jurists thought about this new obligation.
Firstly, the thesis reevaluates the legal obligations to state reasons to the parties in German territories and states (B.). The different rules show that establishing this obligation was not a clear cut but a slow process lasting over one hundred years. Against this background the discussions took place.
The following chapter C. addresses the "Läuterung" (leuteration). This old Saxon legal remedy enabled the parties to ask for an explanation of their verdict. In comparing legal textbooks and encyclopedia articles the study demonstrates that the "Läuterung" probably fulfilled similar functions as the obligation to state reasons. Both coexisted for about a century.
Chapter D. presents three proposals for reform and a regulation from 1803 to 1813 that explicitly demanded respectively defended an obligation to give reasoned judgments. All sources assumed positive effects of this obligation on the judges as insiders as well as the parties and the whole "nation". On the one hand, the judges should be encouraged to think carefully about the verdict. On the other hand, the reasons were meant to convince every possible reader that the law had been applied justly. In these sources the obligation to give reasoned judgments is named as a clear improvement.
Chapter E. focuses on the later perception of the obligation to state reasons. It is structured by topics and reconstructs the discussions and casual remarks scholars made about the still new obligation. Surprisingly, different opinions about the origin of the obligation existed (E. I.). Rarely scholars wrote about which readers should be addressed by the reasons (E. II.). However, they discussed whether the obligation made public trials obsolete since after a trial finished the official reasons were accessible to anyone interested (E. III.). The reasons were even used as an argument in the dispute whether a codification in civil law was necessary (Kodifikationsstreit) (E. IV.). Few authors gave clear guidelines regarding style and structure of the reasons leaving this issue to local customs in every court (E. V.). Wherever the obligation to state reasons existed in a territory, scholars around 1800 animated young judges to evade it by using an empty phrase instead of a full motivation. However, scholars in the 1820s and 1830s did not accept this practice any longer (E. VI.). The legal force of the reasons was an important doctrinal discussion until the code of civil procedure came into force in 1879 (E. VII.). Finally, the study presents authors emphasizing that the reasons would require the judges to be trained scholars themselves (E. VIII).

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