

Editorial

A More International Approach

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Germany has a long history of influence on the legal systems of many different countries.¹ For example, a scholar with significant international influence in the 19th century is Friedrich Carl von Savigny.² His work on the declaration of intent (“*Willenserklärung*”) and act of legal significance (“*Rechtsgeschäft*”) has had an impact on the law of contracts around the world.³ Germany’s international impact on legal systems not only stems from individual figures but also from legislation. As an example, the German Code of Civil Procedure (“*Zivilprozessordnung*”), which entered into force more than 140 years ago,⁴ has served as a model for a system for dispute resolution in various legal systems,⁵ in particular Japan and Greece.⁶ Additionally, German criminal law has been influential in South America. For more than a century, countless publications of German professors have been translated into Portuguese and Spanish.⁷

It is all the more surprising that access to the German legal system is particularly difficult for non-German speakers. One could think that Germany has rather chosen to stay within its borders in this respect. This manifests itself in various ways:

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¹ It is important to emphasize that Germany’s impact has not been exclusively positive: one example is its role in (post)colonialism. This has been discussed in detail in Philipp Dann, Isabel Feichtner and Jochen von Bernstorff (eds), *(Post)Koloniale Rechtswissenschaft* (Mohr Siebeck 2022).

² Friedrich Carl von Savigny served as a law professor and as Minister of Justice of Prussia between 1842 and 1848.

³ Herbert Roth, ‘Entwicklung und Reformen der ZPO’ [2018] JR 159; Nick Oberheiden, ‘Der Geltungsanspruch deutschen Rechts im Ausland’ [2010] ZRP 17, 18.

⁴ RGBl 1877, p 83.

⁵ Countries like Austria, Switzerland and Italy as well as the regions of East Asia, Scandinavia, Northern and Eastern Europe, have also been influenced.

⁶ Herbert Roth, ‘Entwicklung und Reformen der ZPO’ [2018] JR 159; Nick Oberheiden, ‘Der Geltungsanspruch deutschen Rechts im Ausland’ [2010] ZRP 17, 18.

⁷ At least since 1898, publications on criminal law have been translated for Brazilian readers. An overview can be found in Wolf Paul, ‘Strafrecht und Rechtsstaat in Brasilien. Ein kriminologisches Portrait’ in Sérgio Costa and others (eds), *Brasilien heute* (Vervuert Verlag 2010) 232.

The last time that the German Code of Civil Procedure was “officially”⁸ translated into English was ten years ago. Furthermore, a translation into other languages is completely missing. In general, German legislation at large has not been translated to English.⁹ The question arises how an article on German law can be published, when there is no clarity on how a certain legal term in German should be translated into another language. In addition to that, there are hardly any judgements in a language other than German. As a matter of fact, the judgements of Germany’s highest court for the ordinary jurisdiction (“*Bundesgerichtshof*”) are only available in German.¹⁰ At least, decisions of the Federal Constitutional Court (“*Bundesverfassungsgericht*”) that are particularly important are occasionally published in English.

So why is there, contrary to the current state of Germany’s legal system, a need for a journal, which publishes articles on German law in English? The German legal system is nearly inaccessible for non-German speakers and its approach has shown to follow the principle of staying within its borders. However, Germany would greatly benefit from an international audience reading its legislation and publications, commenting on it and thereby enhancing the academic discourse. As a start, German legislation should be translated into English more broadly and frequently. Furthermore, German lawyers should orient themselves in the future towards publishing more in English. The Heine Law Review is committed to contribute to achieving this goal.

⁸ The translation was initiated by the Federal Ministry of Justice, but provided by a private entity.

⁹ Thomas Riehm and Quirin Thomas, ‘Deutschlands „Commercial Courts“ auf dem Prüfstand’ [2022] NJW 1725, 1729; a full list of translations can be found under <https://www.gesetze-im-internet.de/Teilliste_translations.html> accessed 19 January 2024. The translation was provided most of the time by the Federal Ministry that was responsible for the legislation. However, private entities have also translated entire legislations.

¹⁰ <https://www.bundesgerichtshof.de/EN/Home/homeBGH_node.html> accessed 18 January 2024.