



Mediation und Zivilprozess

Findet zusammen was zusammengehört?

**Der dogmatische Standort der Mediation als Teil der
Privatrechtsordnung**

PD Dr. Matthias Wendland, L.L.M. (Harvard)

Ludwig-Maximilians-Universität München

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Die ADR-Revolution

An aerial photograph of a mountain range at sunrise. The sun is low on the horizon, casting a golden glow over the scene. Below the mountains, a thick layer of clouds fills the valley, creating a sea of clouds. The sky is a mix of deep blue and golden yellow.



Trias der Primärverfahren

Verhandlung

verhandeln

Mediation

vermitteln

Zivilprozess

entscheiden

**Tres autem sunt modi quibus vitari potest, ne
controversiae in bellum erumpant:**

Primum est colloquium ...

alterum est compromissum ...

tertia ratio est per fortem

“... the central quality of mediation ... [is] its capacity to reorient the parties toward each other, not by imposing rules on them, but by helping them to achieve a new and shared perception of their relationship, a perception that will redirect their attitudes and dispositions toward one another.”

Lon L. Fuller

Privatautonomie

Kooperation

Interessenorientierung

Beziehungsorientierung

Vertraulichkeit

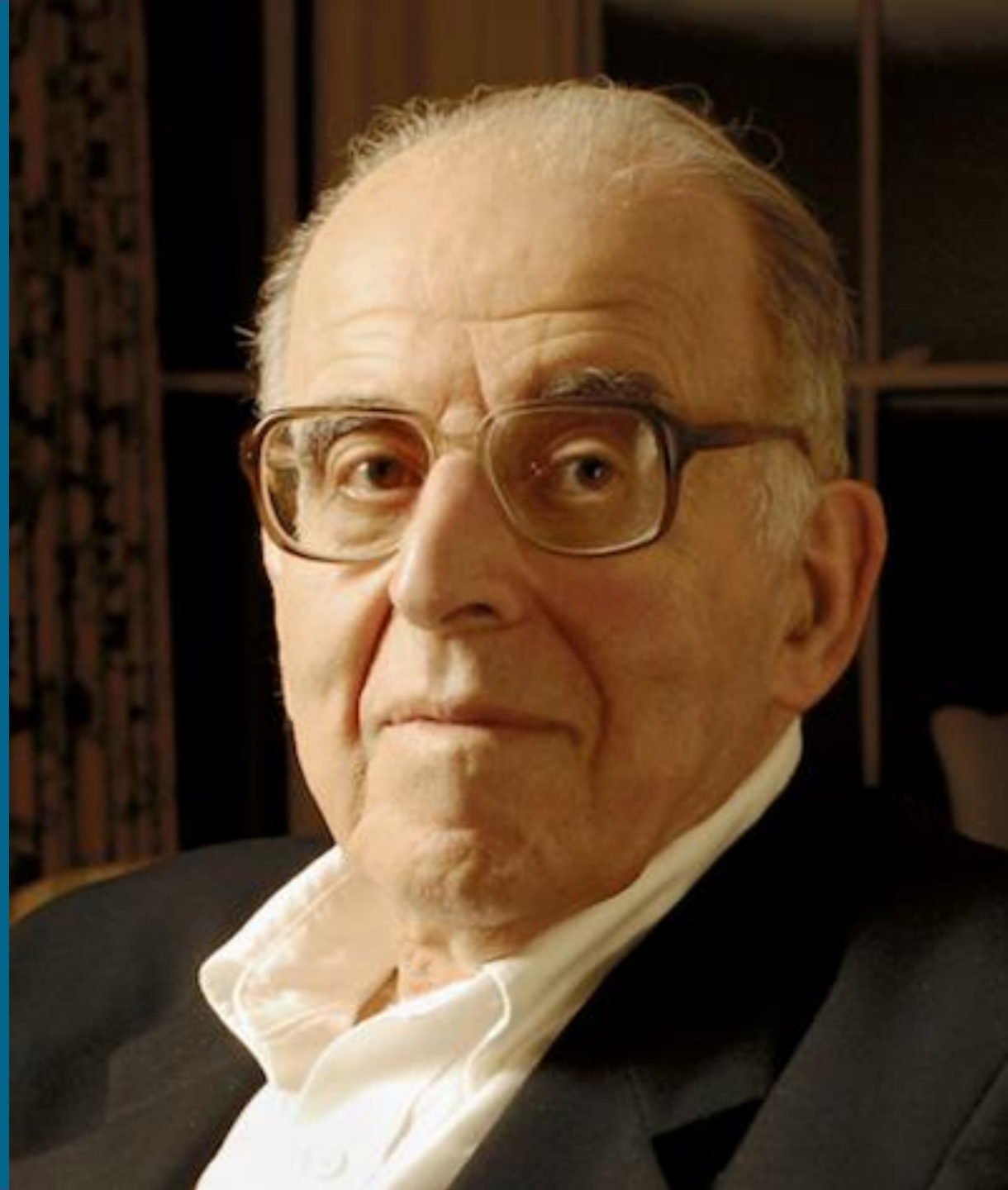
Informalität

Neutralität

Verfahrensintegrität & Rollentrennung

Das Prinzip funktionaler Differenzierung

Das Prinzip qualitativer Differenzierung



“Alternatively one might envision by the year 2000 not simply a court house but a Dispute Resolution Center, where the grievant would first be channeled through a screening clerk who would then direct him to the process (or sequence of processes) most appropriate to his type of case”.

Frank E.A. Sander

Perspektivwechsel



Transformation der Beziehung



beidseitige Interessenverwirklichung

„Alles, was ihr also von anderen erwartet, das tut auch ihnen!“

Matth. 7, 12

ius honorarium & ius civile

Minne & Recht

equity & common law

Mediation = New Equity

transactio & sententia

strenges & billiges Recht



**iustitia est constans et perpetua voluntas ius
suum cuique tribuens**

Institutiones Iustianiani

Vielen Dank!