

# Courage to be wrong, or education to get it right? A response to Michaela Hailbronner

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2014-02-23T14:42:49

Michaela Hailbronner makes important arguments in her informed and carefully balanced [post](#). I agree with much of what she says. I just think the main problem of interdisciplinarity in Germany is not lack of courage. It is lack of expertise.

Much of her analysis strikes me as sound. I would agree that many US law professors have few scruples to write on topics and in areas about which they know very little. But regardless of whether one finds that refreshing or annoying, I do not think it is a relevant factor in the creation of scholarly knowledge.

I also think it is true, to some extent, that US professors care more about being interesting whereas Germans care more about being right, though I would not formulate it this way—scholarship can be interesting and still be right, and being right is considered important in the US, too. (Of course, what is correct, doctrinally, is often harder to determine in the US, due to the open-ended and dynamic nature of US law.) Instead, I would describe the difference like this: in the US, there is a premium on being *original*—new, big ideas are appreciated. In Germany there is still a premium on being *solid*—using the entire available scholarship on a topic is required; staying within the existing consensus is often a plus. This makes much US scholarship more daring and has the expectable consequences—a lot of scholarship turns out to be irrelevant, but pieces with staying power move the discipline forward in very beneficial ways.

I suspect this difference is not just attitudinal (or “cultural”). Rather, it has to do with the institutional conditions for the production of scholarship. In the top US law schools, the typical law professor is an individual entrepreneur with few constraints from his university, who offers his scholarship like a product on a marketplace. In Germany, where professors were until recently public officers, there is more emphasis on solidifying existing knowledge as a service to the community. German professors still publish legal commentaries (those marvels of German Gelehrtheit, recently analyzed in an impressive [book](#) by Kästle and Jansen); that would be unthinkable in the United States. And it is telling that the reports in the United States and in Germany have very different suggestions on how quality could be improved: the [ABA report](#) suggests to ease the current restrictions on law schools in order to enhance competition through diversification, while the [Wissenschaftsrat report](#) suggests the establishment of new stricter rules for quality in scholarship: “representatives of the discipline need to come to an agreement as regards quality standards and appropriate evaluation procedures within the discipline.” (p. 51).

In the end I do not think the problem of interdisciplinarity in Germany can be solved by courage to be wrong alone. Take law and economics as an example. There is now a lot of law and economics literature from Germany. What much of it lacks is not courage, however—it is quality. It is the work of amateurs in the word's original sense—people who do what they love, not what they are experts in. Such work can be excellent—even Richard Posner has no advanced degree in economics—but it is not surprising that often, it is not. By contrast, most (not all) of the best scholarship on law and economics that is internationally influential comes from people like Hans-Bernhard Schäfer, Christian Kirchner (who, sadly, died earlier this year) and Anne van Aaken, who have acquired PhDs in economics in addition to their legal studies.

It may take some courage to dabble in a discipline one has not studied. It takes more courage, for young scholars in Germany, to invest yet more time into one's education than it already takes. Adding a PhD in economics or some other discipline, on top of the requirements of a legal dissertation and a legal habilitation is a heroic feat, and one that is often not rewarded in appointments. If Germany seriously wants to enhance interdisciplinarity, it should enable young researchers to acquire additional expertise without having to spend additional time. One solution would be to allow young researchers to write one of the two books currently required, dissertation or habilitation, in a field other than law. An even more courageous step would be to allow non-lawyers into law faculties. This has become normal in US law schools but still seems unthinkable in Germany. The Wissenschaftsrat refrains from such wide-ranging reforms when it discusses diversification of faculties; it confines interdisciplinarity to exchange with other actors. In view of the conservative attitudes among German legal professionals, which Hailbronner mentions towards the end of her post, this may, unfortunately, be prudent.

