

## **Remarks at the Opening of the Symposium Celebrating the 10<sup>th</sup> Anniversary of the *German Law Journal* – German-American Lawyers' Association (DAJV)**

*By Heribert Hirte*<sup>\*</sup>

First and foremost, in the name of the German-American Lawyers' Association (DAJV) I wish to congratulate the *German Law Journal* on its 10th anniversary! The *German Law Journal* has contributed extensively to the reversion of the "one-way traffic" of the transfer of law, at least on some points, which typically flowed from the U.S.A. to Europe. I can still remember quite well that, at the time Germany gradually arose from the shadowy existence of an "emerging market" in the area of capital markets, time and again it was emphasized that German law was indeed compatible with a world market—if only it was available in the English language. The *German Law Journal* recognized this deficiency and has contributed significantly to the spread of awareness and understanding of German law abroad.

But on this occasion let me emphasize that we may not leave it at that. We consistently observe that the jurists going to English-speaking nations for longer terms of study or to enjoy practical experience in their profession are likely to be numbered in the thousands each year. Inversely, the DAJV has recently determined that not a single American jurist is currently studying at a German university with the support of one of the established scholarship organizations (DAAD and the Fulbright commission). Let me repeat that: none! Therefore, in collaboration with the DAAD, the DAJV is working to change this through special short-term scholarships, which, in turn, seem possible only if we—like the *German Law Journal*—are able to present German law in the English language. But the administrative travail is considerable if we wish to not only present a law firm with the German name "Frische Felder" that could be based in London as well as in Berlin, but also a German public prosecutor's office or a municipal authority from within, since here, we may accomplish a larger amount of legal-culture export than in other fields of law. The *German Law Journal*—of that I am sure—will support us to find sufficient qualified prospects.

---

<sup>\*</sup> University Professor [Dr. iur. (University of Cologne) and LL.M. (University of California at Berkeley)]; Managing Director of the Seminar for Trade, Maritime and Economic Law of the University of Hamburg, Germany; Vice President of the German-American Lawyers' Association and co-editor of the Newsletter published by the Association. Email: heribert.hirte@jura.uni-hamburg.de.

That leads to my second point. If the English language is or will be the *lingua franca* of law at least in specific fields of law and under—at least the current—“market conditions,” we need to face the question whether we should allow German trials to be held in English under the condition that all parties agree. More than ever, this would be not only location politics, but also culture politics for the German law. For the objection is not to be neglected that it is difficult to expect command of the German language from immigrants that come to Germany while enjoining German judges to become proficient in the English language. One argument that is repeatedly brought forward is this: Even with ever so good foreign-language abilities, one remains inferior to a native speaker. Correct. But in many cases, and in Europe in particular, the main objective is how a Pole, a Turk and a German can communicate and here, English is the first choice as a “bridge language”—that is then occasionally not understood by the English since they do not speak *continental English*. And so as not to be misunderstood: I love the German language—and its dialects, for that matter.

The further spread of awareness and understanding of German law, but especially of German jurisprudential thinking, abroad is all the more important as we are confronted more and more with methodological approaches that are at odds with our previous legal understanding. I refer you to an ongoing discussion in the economic sciences, namely, the controversy between the more theoretical-mathematical “American approach” to economics and the German “economic-political” understanding of economics. Jurisprudence will not be spared this discussion; in fact, it has already reached us. In jurisprudence, this is mainly linked to the question what significance we assign to the *Economic Analysis of Law*. If you observe the selective decisions of the established sponsoring organizations I get the feeling that “true jurisprudence” can only be conducted anymore if one “analyzes” something economically?—even if the result equals what already corresponds with a sometimes centuries-old European law tradition. The *German Law Journal* has had and still has an open mind about these developments, rightly so with regard to the target nations. But I also see an obligation and responsibility on the part of the *German Law Journal* to market the German *code approach* “transatlantically.” In this context, let us not be deceived: The highly (and rightly) praised flexibility of *common law* is paid for by high transaction costs that may please the consultant lawyers but not the affected citizens. The virtually uncodified rules on corporate acquisitions in the Anglo-American legal system might be raised as an example.

And this inevitably leads to “Bologna.” Because through “Bologna,” there is the threat that we (have to) play glass bead games instead of providing a basis for utilizable scientific dogmatics. The final state examination that forces the universities to align their work with the training needs of the judiciary and the training needs of the attorneys should therefore be maintained throughout the next legislative period and beyond. To defend this high standard of German education, I hope I can count on you as well, Minister Zypries. Ultimately, the fact that German state-examination graduates frequently go on to earn best degrees at the U.S. law schools militates for this.

With renewed congratulations to the *German Law Journal*, I thank you for your attention.