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Politics of knowledge: A questionable legal innovation

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Abstract
German legal practitioners have tried to address complaints about professional exams. Two Supreme Court rulings suggest that a prediction of a candidate's future success in a professional examination cannot be verified or rebutted by a court or anyone else, but only by the individual examiner. In contrast to the apparent understanding of legal professionals, this type of knowledge is not an "unknown territory"; it is traditionally covered in research, e.g., in psychology or human resource management. It also undermines internationally recognised principles of sound assessment governance, such as validity, reliability, transparency, and fairness, as emphasised in UNESCO's global guidance on learning assessments and in OECD frameworks for evaluation and quality assurance in education systems. Situating these issues within a broader sustainability perspective, this paper argues that assessment regimes form part of society's knowledge infrastructure, and their integrity is essential for both cognitive sustainability – the long-term capacity of institutions to maintain transparent, evidence-based and error-correcting knowledge practices – and for the realisation of Sustainable Development Goals. In particular, SDG 4 (Quality Education) requires equitable, valid and reliable assessment mechanisms as a foundation of fair and merit-based professional pathways. At the same time, SDG 16 (Peace, Justice and Strong Institutions) calls for accountable, transparent and trustworthy institutional processes in all sectors, including regulated professions. Assessment systems that shield examiner judgment from external scrutiny impede these sustainability commitments by eroding public trust, weakening institutional resilience, and preventing the correction of systematic errors. This paper draws on a range of disciplines to highlight the decisions and errors made in practice. In addition, an International Education standard by the International Federation of Accountants (IFAC) is used to contrast findings. The paper thereby contributes to cognitive sustainability by examining how assessment systems can either sustain or undermine the long-term resilience and transparency of societal knowledge practices.

Keywords
Knowledge, Professional Exam, German Supreme Court Rulings

1. Introduction

As professional examinations are gatekeeping infrastructures that shape human capital formation and public trust, their design is entwined with sustainable development in two ways: first, as part of SDG 4 commitments to equitable, valid and reliable assessment; second, as elements of SDG 16 commitments to effective, accountable and transparent institutions. The present jurisprudence is compromised by institutionalising a non-verifiable form of judgment that blocks error-correction and undermines cognitive sustainability across the professions. This paper addresses two rulings of the German Supreme Court (BVerfG) on professional examinations. The decisions are based on one false assumption. The result is that errors will go uncorrected, and even blunt manipulation by examiners is possible; i.e., there is no quality control.

From a cognitive sustainability perspective, professional examination systems play a foundational role in maintaining the stability and adaptability of societal knowledge. When such systems prevent error-correction or external scrutiny, they compromise the long-term resilience of institutional learning processes and contribute to cognitive lock-in. Integrating insights from cognitive sustainability thus enables a deeper analysis of how legal assessment doctrines shape the durability, transparency and adaptability of professional knowledge infrastructures.

2. Rulings and their reflection in the legal literature

There are two rulings of the German Supreme Court dated 17 April 1991, which are considered the beginning of a "new era" (Zimmerling and Brehm, 2007: 282) in the subject matter. It should be noted that German law provides

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little guidance on the content of decisions on whether a candidate passes a professional exam. Most legal principles have been developed through court decisions.

The first ruling of the Supreme Court (BVerfGE 84, 34) covered in this paper concerns admission to the legal profession (German: *zweites juristisches Staatsexamen*). The candidate argued that the examiners' evaluation was flawed. The court referred to the equity principle codified in the German Constitution (Art. 3 Sect. 1, GG), i.e., that a court's evaluation of the candidate would put the candidate at an advantage over other candidates who did not complain. There was no reference to the concept of error whatsoever. How did the judges come to their conclusion? They separated two things: (i) aspects that may be proven to be right or wrong using objective criteria, i.e. being based on established knowledge or practice, (ii) aspects that relate to the evaluation of the performance of a candidate (German: *prüfungsspezifische Wertung*). The latter aspect has been justified as follows: (a) personal experiences and expectations of the individual examiner form the basis of the decision on the performance of the candidate in a professional exam, (b) the decision is based on complex deliberations of the examiner that may not be captured in rules. It follows logically that the latter aspects cannot be proven right or wrong. The Supreme Court did not provide any evidence to support its view. The bottom line is that aspect (i) can be challenged by a court, while a court is forbidden to take action related to aspect (ii).

The second ruling of the Supreme Court (BVerfGE 84, 59) relates to a candidate for the medical profession. The reasoning was essentially the same as described above (BVerfGE 84, 59; Tz. 62 ff.); the context is the use of a multiple-choice format in the examination (BVerfGE 84, 59; Tz. 65).

When looking at more current legal literature (Fischer et al., 2026), not much has changed. The evaluation of a candidate's performance by the examiner shall be based on the examiner's personal assessments and experiences. It is asserted that a review of the performance of an examiner by a third party is neither possible nor meaningful (Fischer et al., 2026: 356, ref. 635). Again, no evidence to support this view is presented.

It should be emphasised that the concept of "error" has disappeared in this legal reasoning. The opinion of the individual examiner is the ultimate decision authority in a German professional exam that cannot be challenged. A court is explicitly prohibited from doing so (cf. reference to the German constitution in the Supreme Court's ruling mentioned above).

3. Critique from legal literature

The German Supreme Court has managed to divide the decision of passing a professional exam into two parts: One part (see aspect (i), mentioned above) may be challenged by a court, the other part (see aspect (ii), mentioned above) not. Consequently, an examiner has a strong incentive to avoid any statement where a court may rule against the examiner and focus on the other party instead (Zimmerling and Brehm, 2007: 581). Put differently, if an examiner says "this is wrong" when referring to a candidate's statement, a court can challenge his opinion. He may choose to say, "Given my experience, I am not convinced," or "This is not practically relevant" instead. This problem – let us call it plain and simple manipulation – is referred to as the issue of the smart examiner (German: *geschickter Prüfer*; Zimmerling and Brehm, 2007: 581).

4. Empirical evidence

The German Supreme Court's assumption that the examiner's evaluation cannot be wrong is easily refuted. Of course, there are errors in human judgment. They have been extensively researched in organisational science or psychology, to name just two domains. To illustrate, some effects shall be described as follows (selected from and based on Scholz et al, 2003):

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Table 1: Selected empirical evidence on judgement errors, based on Scholz et al (2003)

Effect	**Description**	**Author**
Positive illusion	Overestimation of own skills, e.g., unrealistic self-perception, excessive optimism, illusion of control, etc. *Transferred to the context of this paper:* The examiner relies on his judgment even if he has no or limited experience in the specific area of expertise.	Taylor (1989)
Overconfidence	Trust in one's own estimates that is not warranted by facts *Transferred to the context of this paper:* The relevance of an error or debatable statement of the candidate may be exaggerated.	Kahneman and Tversky (1972)
Hindsight bias	An incorrect judgment is re-interpreted when new information appears. *Transferred to the context of this paper:* A failure of the examiner to learn from their own errors.	Pohl (1992)
Following the herd	If others agree, it must be right. *Transferred to the context of this paper:* When a member of a group with diverse areas of expertise witnesses another member's evaluation, that member tends to agree.	De Bondt and Thaler (1987)
Base rate fallacy	The probability of events is not reflected; typically, rare events are over-emphasised. *Transferred to the context of this paper:* The examiner is relying on odd or special cases rather than a realistic picture of the work in the profession.	Kahnemann and Tversky (1972)
Anchoring	The beginning of a deliberation determines the path or further steps. *Transferred to the context of this paper:* The examiner has a positive or negative impression of the performance of the candidate, which is not reviewed later in the process	Chapman/Johnson (2002)

This paper will not cover group decisions in detail. It should be noted that errors in group decision-making have been documented (e.g., Antoni, 2003). The legal literature covers group decisions that, from the perspective of a judge, are not fully comprehensible (cf. Fischer et al., 2026: 355, 567). As the decision on a candidate's performance is not the consensus of a group of examiners, but rather a judgment of truth, this topic shall not be covered in detail either.

A conceptual problem arises from the auditing literature. The public may have incorrect expectations regarding the performance of an audit (Expectation Gap, cf. Humphrey, 1997). Members of the group of examiners may be considered public, i.e., not members of the profession or not sufficiently knowledgeable in the domain in question. If there is scientific evidence that incorrect expectations are to be found, can a German Supreme Court assume that the expectations (or prejudices) of individual examiners are the ultimate authority for a decision? The answer is that the professional body administering the exam will have to operationalise the subject matter, expectations for a member of the profession.

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5. Epistemology – or a critique of an opinion that there cannot be knowledge (ignorance)

The German Supreme Court has invented a type of knowledge that cannot be verified or refuted. It is assumed that this is a "space". Legal authors' reasoning (e.g. Fischer et al., 2026: 356) cannot be understood, so the impossibility of verifying the evaluation of an examiner is limited to the courts. Conversely, if legal scholars or practitioners were unable to do this while others can, a third-party expert on the subject matter would have to be included in the trial. I have not found any reference in the Supreme Court rulings or the legal literature mentioned above that implies that simply adding a third-party expert would solve the problem. Personal comment: It would be interesting to see a psychologist deciding who gets to practice law. I would assume this is not the result that the German Supreme Court has intended.

Epistemology is the theory of knowledge and forms part of philosophy. The traditional analysis of (factual) knowledge holds that three elements are required, resulting in a definition of knowledge as justified true belief:

a) justification, i.e. there are good reasons that support a belief (Bernecker and Dretske, 2000: 3);
b) truth, the assertion or statement is true (e.g. Horwich, 1998: 8 ff.); and
c) belief, i.e. it is held by someone (Moser et al., 1998: 28).

This knowledge concerns facts or *knowing that*. It should be emphasised that the requirement that knowledge must be true cannot be eliminated. Knowledge is conceptualized to be universal, so there shall not be an interpretation that "true" means "true for an individual" or "true for a group" (i.e. relativism, cf. Moser et al., 1998: 62). Considering that knowledge is about acquiring and teaching findings in sciences and humanities at universities worldwide, it is pretty obvious why such an understanding is insufficient. Others must be able to replicate results and confirm or disconfirm them. In short, a justified belief is not knowledge. It should be noted that this definition applies only to empirical knowledge. For example, mathematics would be considered non-empirical or a priori knowledge.

Furthermore, there is *know-how* (cf. Kühnel (2004). Ryle (1949) explained that "knowing how" (his phrase) is knowledge of how to perform activities well, i.e., correctly, efficiently, or successfully. There needs to be a standard for the performance of such an activity, which is used to guide an individual's action. Put differently, e.g., a clock also performs well if it displays the correct time; however, this is not considered knowledge of the clock. An individual must be able to identify and remedy errors, repeat an action, improve their performance, and profit from the example of others (Ryle, 1949: 28 f.). In order to do that, an individual must understand the activity, i.e. make assumptions about what to do (Ryle, 1949: 29). It must be noted that Ryle considers know-how as an integrated concept (one step), i.e. it cannot be replicated by knowing what to do and actually doing it (two steps).

Table 2: Simplified conceptualisation of the concept of knowledge in philosophy

Know that	**Know how**
Justified true belief	Perform an activity by applying standards of reference.

Making a large step toward the actual acquisition of knowledge, the concept of methodology, or the application of methods, shall be considered. In other words, holding a belief does not result from gut feeling. That a method must be applied to evaluate a candidate's performance escaped the German Supreme Court's attention. Moreover, of course, a method can be applied incorrectly. Borrowing a concept from a different but somewhat related domain – prediction of the future financial performance of a company (or individual) – there is the following distinction: (i) subjective evaluations represent the lowest level of assurance, (ii) quasi-objective (scoring) models allow for intersubjective validation and critique, while (iii) objective models are considered the most reliable type (cf. Baetge et al., 2004). Objective models are used, for example, to predict insolvency cases. Research is performed to identify factors that suggest a company's future breakdown.

It should be stressed that a judge's perspective may differ, as people may appear in court and make all kinds of assertions (whether true or not) that the judge must use as the basis for their ruling. From this perspective, the critical terms could be as follows:

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Table 3: Simplified conceptualisation of knowledge in law

Know that	**Know-how**
Justified opinion	Convincing argumentation

* Note that "true" is not a required component of legal knowledge or a legal decision.

What the German Supreme Court effectively suggests is to add another type of knowledge to the list, i.e., a prediction of an individual's future performance in the profession (or, more generally, in their job). In other words, the above table would be modified as follows:

Table 4: Simplified conceptualisation of knowledge in law, extended with the two rulings of the German Supreme Court discussed in this paper

Know that	**Know-How**	**Predict the future performance of an individual**
Justified opinion	Convincing argumentation	• Not verifiable nor refutable, incl. no third-party expert opinion possible • Does not correspond to results from other disciplines

Although each discipline in the sciences or humanities may develop its own terms and concepts, the German Supreme Court has recognised a key point: "unable" or "cannot be proven right or wrong" are themselves testable propositions. Moreover, these propositions are highly problematic: (i) Knowledge that cannot be proven right or wrong does not fit the definition of knowledge in the philosophical traditional analysis. It may be a relativist concept of belief at best. (ii) That nobody – even a third-party expert – can verify the decision is not plausible. Professions are typically built around a common body of knowledge. (iii) There are academic disciplines that research the future performance of an individual (e.g. human resource management, psychology) or of an organisation (e.g. accountancy). In other words, this deliberation of the German Supreme Court does not withstand even a basic plausibility check.

6. Looking at the accountancy profession

The International Federation of Accountants (IFAC) has issued International Education Standards (IES) for its member organisations, i.e., professional bodies for accountancy in various countries (cf. IFAC, 2025: IES 6.2). In Germany, the respective professional organisation is the Wirtschaftsprüferkammer (WPK; see https://www.wpk.de/wpk/aufgaben/ as of 25. 3. 2025). IES define knowledge and skills (know-how) that a professional should possess. It is an authoritative source that should have been covered in legal interpretations (cf. Fischer et al., 2026).

Let us look at IES 6 "Initial Professional Development – Formal Assessment of Professional Competence" (Version as of March 2025). This standard formulates seven principles for a formal examination in the profession (IFAC, 2025: IES 6 BC.10). The new items on the list are *authenticity* and *integrity*.

IES 6.9: "IFAC member organisations shall be responsible for ensuring that the design, delivery, and oversight of assessment activities and processes to assess professional competence within professional accounting education programs formally have high levels of: Authenticity, Equity, Integrity, Reliability, Sufficiency, Transparency, Validity "

IES 6.A1 covers the concepts of knowledge: know that ("technical competence"), know how ("professional skills"), and adherence to professional principles ("professional values, ethics, and attitudes "). The latter emphasises only the two other types of knowledge, not a separate type from the perspective of philosophical traditional analysis. All of them can be tested – that is the idea of a professional exam.

This paper is not intended to analyse IES in detail, but certain aspects shall be highlighted. All principles in the list shall be used with equal prominence; i.e., a low level of performance (of the accountancy body) in one aspect may not be compensated for by a better result in another.

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Table 5: Overview of principles for the formal assessment in the accountancy profession (IES 6)

Principle	**Description**	**Reference**
Authenticity	Assesses the intended learning outcomes in a way that reflects realistic situations that professional accountants may face	IES 6.A10-.A11
Equity	Fair and without bias, allowing all aspiring professional accountants an equal opportunity to complete the professional accounting education program	IES 6.A12-.A13
Integrity	Designed, delivered, and overseen to minimise the potential breaches of assessment security, improper administration and/or completion of an assessment	IES 6.A14-.A15
Reliability	Assessment activity consistently produces the same conclusion, given the same set of circumstances. According to IFAC, this is a principle based on public expectations, i.e. trust in the profession	IES 6.A16-.A17
Sufficiency	Evaluates the required professional competence with an appropriate balance of depth and breadth, knowledge, and application, and integration across a range of situations and contexts	IES 6.A18-.A19
Transparency	Details of an assessment activity, such as the competence areas and learning outcomes to be assessed, and the timing of the activity, are disclosed publicly.	IES 6.A20-.A21
Validity	Assesses the intended learning outcomes.	IES 6.A22-.A23

Let us compare the lines of argumentation of the German Supreme Court and IFAC on a selected set of aspects:

a) **Level of analysis**: The German Supreme Court does not distinguish between the examiner and the professional body, nor between the professional body's pronouncements. Errors, or even manipulation, by an individual examiner or a team of examiners will go unnoticed.
b) **Reliability and validity**: Not relevant, as the performance of the candidate and not the professional exam is in question. Methods applied are not covered, inadequate conceptualisations or errors in application will not be noticed.
c) Role of **judgement**: An aspect of the Reliability Principle is that a majority of assessors, acting independently, consistently come to the same judgment, given the same set of circumstances (IES 6.A16). Therefore, the professional body administering the examination will select appropriate assessors, provide them with an assessment rubric or marking guide, and provide training (IES 6.A17). The German Supreme Court does not even consider the possibility of an examiner's error. The individual examiner's personal experiences and expectations, and their complex deliberations that cannot be proven right or wrong, form the basis for a ruling on the subject matter.

7. Discussion

From a sustainability perspective, professional examinations are critical knowledge infrastructures that maintain the quality and social license of monopoly professions (law, medicine, accounting). If an assessment regime eschews validity, reliability, transparency, and equity as system properties – treating examiner judgement as non-refutable –, it erodes the long-term resilience of the professional ecosystem. This is misaligned with SDG 4 commitments (United Nations, 2015a) to quality and equity in education and assessment, and with SDG 16 (United Nations, 2015b) commitments to accountable, transparent institutions.

UNESCO's Education for Sustainable Development (ESD) agenda (UNESCO, 2021) explicitly links sustainable futures to how knowledge is assessed and governed, calling for assessment systems that are fit for purpose, technically rigorous, fair, and transparent. Treating assessment as a public good, with clear standards for validity, reliability, and moderation, is a prerequisite for sustainable knowledge transfer into the professions. OECD's reviews of evaluation and quality assurance likewise stress that credible systems must provide public accountability, align procedures and instruments with policy objectives, and support improvement through coherent assessment frameworks – all of which presuppose the contestability of judgement.

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Framed as cognitive sustainability, these requirements can be stated as follows: institutions should conserve and renew their capacity for truth-tracking by maintaining open error-correction channels (external review, moderation, appeals), supporting epistemic diversity (drawing on psychology, HRM – Human Resource Management, educational measurement), and avoiding cognitive lock-in that freezes inferior practices. Recent work on cognitive sustainability and epistemic diversity in transitions provides conceptual scaffolding for such reforms. Finally, the UNESCO Futures of Education report and the OECD Learning Compass 2030 emphasise the societal need for adaptive, evidence-informed knowledge ecosystems – not merely curriculum goals, but governance practices that sustain learning, trust, and public value over time. Professional examinations that are auditable, transparent and method-guided are more consistent with these forward-looking frameworks than regimes that privatise judgment behind non-reviewable discretion.

Judges of the German Supreme Court have advanced an argument that must be considered a poor parody of basic scientific principles. Critical aspects are either defined away – e.g. the examiner cannot make errors or manipulate, the design of the assessment concerning the common body of knowledge of the profession is not considered at all – or presented in a light that almost certainly prevents the professional body from losing a court case – e.g. the reference to personal experiences and expectations of the individual examiner. The latter is presented without any reference to facts whatsoever.

In this paper, I have argued that the distinction between aspects that (i) may be right or wrong using objective criteria, i.e. being based on established knowledge and practice and (ii) an evaluation of the performance of a candidate based on personal experiences and expectations of the individual examiner and the complexity of a prediction of the future performance of a candidate (German: *Beurteilungsspielraum or prüfungsspezifische Wertung*) is flawed. The core of the German Supreme Court's ruling is that the latter cannot be verified by a court or by any third-party expert. When looking at philosophy or other disciplines, a type of empirical knowledge that nobody can verify or refute is not documented. On the contrary, researchers in other disciplines have developed methods to objectively evaluate an individual's performance (e.g., in human resource management or psychology). Even the simple fact that there may be judgment errors undermines the German Supreme Court's line of argument, as a court may no longer rely on the examiner's personal views as the ultimate decision criterion. It should be noted that the reliability of a professional examination that would be based on the views (and prejudices) of the individual examiner is effectively nil.

What to expect?

a. "Business as Usual"

The German Supreme Court has given professional organisations a toolkit that they or an individual examiner may use to manipulate the examination or hide errors. The success of this approach depends on whether candidates and the public accept the flawed line of reasoning described above.

b. German Professional Bodies

The problem described in this paper could become regarded as a worst-case scenario. The quality assurance system has broken down. The task of courts would have been to address errors in professional examinations, not to find an excuse for doing nothing. Candidates may reconsider their decision to join a profession. Customers may ask themselves why they should pay high fees for the professional service in question. The public may question its trust in the profession. Of course, there may be measures in a professional services company's quality management system that help mitigate some of the effects. However, this does not help the solo practitioner.

c. Administrative law

Cynically, the topic described in this paper could dramatically reduce the complexity of administrative law. Courts may look for comparable ways to redefine the problem so that public administration cannot make a mistake. This public administration would always be "right". Moreover, courts would have less work to do.

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8. Passage of time and theoretical aspects towards a solution to the problem

This paper presents assertions made by the German Supreme Court in 1991. The question arises: how could these false assertions survive for so long?

Firstly, rulings of the German Supreme Court must be adhered to by other courts (§ 31 Sect. 1 BVerfGG). This is part of the law's systematic nature. A court ruling is presented as being related to discovering the truth. In the German Supreme Court, truth is referenced in the context of evaluating evidence. In German: *„Das Bundesverfassungsgericht erhebt den zur Erforschung der Wahrheit erforderlichen Beweis"*(§ 26 Sect. 1 BVerfGG). As discussed in this paper, the ruling itself is a justified belief and therefore not expected to be true. There are limits to challenging or changing a false ruling, although attempts are made to frame changes in jurisprudence systematically.

Secondly, the rulings discussed in this paper concern professions granted a monopoly. Without passing the professional exam, an individual may not practice in Germany. Some regulations are intended to protect the profession. For example, the concept of diligence relates to the professional conduct of auditors (§ 4 BS WP/vBP, in German: "Gewissenhaftigkeit "). § 4 Sec. 1 BS WP/vBP reads that an auditor is bound by law. In German: "*WP/vBP sind bei der Erfüllung ihrer Aufgaben an das Gesetz gebunden, haben sich über die für ihre Berufsausübung geltenden Bestimmungen zu unterrichten und diese und fachliche Regeln zu beachten*." WP is an auditor (German: Wirtschaftsprüfer), the typically used professional designation; vBP is a sworn auditor (German: vereidigter Buchprüfer) working only for small- and medium-sized clients. Access to the latter profession designation has been closed. Without explaining the meaning of this requirement in detail here, it should be obvious that any risk of non-compliance resides with the individual professional. It implies a risk of not being able to perform their job.

From an academic perspective, different approaches may offer concepts for addressing the issue highlighted in this paper. A preliminary selection is presented below.

IES 6 – covered in Section 6 of this paper – assumes that individual examiners may be erroneous. This raises the question of how the work of external experts – who did not participate in the decision on whether a candidate passed or failed the professional exam – would affect the exam's efficiency, transparency, and trustworthiness.[1]

At the organisational level, Cohen and Levinthal (1990) have proposed the concept of *absorptive capacity*. They have focused on a firm's innovative capabilities and defined the concept as the ability to recognise the value of new, external information, assimilate it, and apply it to commercial ends. Zahra and George (2002) have extended the concept by distinguishing between a firm's *potential and realised absorptive capacity.* They focus on the acquisition, assimilation, transformation, and exploitation of information. Their model puts activation triggers before the acquisition and assimilation elements. Mechanisms of social integration determine the transformation and exploitation elements (Zahra and George, 2002: 191 pp). Todorova and Durisin (2007) further elaborate on the concept by examining power relationships when exploiting information for competitive ends. This suggests future research could focus on activation triggers, social integration mechanisms, and power relationships in the German legal system. From an institutional perspective, the independence of individual judges is to be considered. In German: "Die Richter sind unabhängig und nur dem Gesetze unterworfen" (Art. 97 Abs. 1 GG).

Another theoretical approach concerns path dependence and lock-in. An organisation selecting a certain path enables future development but also inhibits alternative outcomes. This is because current knowledge is shaped by past experiences (Garud and Karnøe, 2001). Put differently, there is a link between mental models (ideas, beliefs) and institutions (Moreno-Casas, 2024). A comprehensive review by Goldstein et al. (2023) presents various cases of path-dependency and institutional lock-in and offers solutions. One important implication is to apply a forward-looking perspective, i.e. to focus on desired outcomes and then work backwards to break the lock-in. A useful synthesis is to construe the current doctrine as a form of cognitive path-dependence and institutional lock-in that suppresses absorptive capacity for external knowledge (psychometrics, educational measurement, organisational psychology). Cognitive sustainability – the durable stewardship of methods, standards and error-correction – requires activation triggers and integration mechanisms that keep institutions open to challenge and learning. The UNESCO and OECD (Taguma and Barrera, 2019). frameworks translate these into actionable design criteria (validity, reliability, moderation, transparency and accountability), while scholarship on epistemic diversity and justice cautions that excluding external expertise diminishes both legitimacy and problem-solving capacity.

[1] Thanks to one of the reviewers for suggesting to add corresponding thoughts.

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9. Final comment

So where are we? The German Supreme Court has failed to distinguish between knowledge and opinion (see Table 4). Empirical knowledge is called empirical because it can be verified or refuted based on experience. German courts will have to find another excuse for non-action, or do their work.

Framing the findings through the lens of cognitive sustainability highlights that assessment systems are not merely administrative instruments but long-lived knowledge infrastructures whose design influences a society's epistemic resilience. Systems that suppress external review and deny the possibility of examiner error diminish institutional learning capacity and accelerate cognitive degradation. Sustainable, future-oriented governance therefore requires assessment regimes that maintain open pathways for challenge, validation, and continuous epistemic renewal.

From the academic perspective, selected theoretical concepts have been presented that may address the problem in the future. From a sustainability perspective, professional examinations are critical knowledge infrastructures that maintain the quality and social license of monopoly professions (law, medicine, accounting). If an assessment regime eschews validity, reliability, transparency, and equity as system properties – treating examiner judgement as non-refutable –, it erodes the long-term resilience of the professional ecosystem. This is misaligned with SDG 4 commitments to quality and equity in education and assessment, as well as with SDG 16 commitments to accountable, transparent institutions. UNESCO's Education for Sustainable Development (ESD) agenda explicitly links sustainable futures to how knowledge is assessed and governed, calling for assessment systems that are fit for purpose, technically rigorous, fair and transparent. Treating assessment as a public good, with clear standards for validity, reliability, and moderation, is a prerequisite for sustainable knowledge transfer into the professions. OECD's reviews of evaluation and quality assurance likewise stress that credible systems must provide public accountability, align procedures and instruments with policy objectives, and support improvement through coherent assessment frameworks – all of which presuppose the contestability of judgement.

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