

Criss-Crossing Perspectives: contrasting models of press self-regulation in Germany and the United States¹

HORST PÖTTKER *University of Dortmund, Germany*

KENNETH STARCK *University of Iowa, USA*

ABSTRACT *Two media scholars—one from Germany and one from the United States—discuss in point-counterpoint style issues pertaining to press self-regulation in their respective press systems. Their intent was not only to assess press freedom and press responsibility in their own countries but also to offer reflections on each other's observations. The German perspective argues for more press freedom in Germany, while the North American perspective maintains the need for more press responsibility in the United States. Authors conclude that insights about one's own press system can be gained from considering factors in other systems.*

KEY WORDS: *Journalism, Ethics, Press Council, Press Self-Regulation, Press Freedom, Press Responsibility*

Introduction

This paper presents views of two media scholars—one from Germany and the other from the United States—on the issue of press self-regulation. The goal of both was to make an assessment of their own press systems but also to attempt to learn from the other.

The first section imparts a German perspective on press freedom and press responsibility in the Federal Republic of Germany with particular focus on the German Press Council. The second section deals with the same issues in the United States from a US perspective. The last two sections turn the tables. The third section presents a rejoinder to the previous section from a German perspective, while the fourth section assesses the first section from a US perspective.

In general, the German perspective argues for more press freedom in Germany, while the North American perspective maintains the need for more press responsibility in the United States.

A German Perspective

In the Federal Republic of Germany, legislatively designed institutions of media control serve to strengthen the social responsibility of journalists. The result necessarily diminishes somewhat the freedom of expression guaranteed in Article 5 of the Basic Law. For example, a federal office (*Bundesprüfstelle*) prohibits the circulation of writings considered dangerous to young people. In addition, monitoring of broadcasting takes place through legally prescribed committees: public channels (*öffentlich-rechtlicher Rundfunk*) internally by broadcast councils (*Rundfunkräte*) and commercial channels externally by state media institutions (*Landesmedienanstalten*) (Meyn, 1999, pp. 182–84, 218–22; Dussel, 1999, pp. 186, 267).

The strongest content restrictions allowed by German law are statutory offenses. Such offenses include propaganda for anti-constitutional organizations, public calls to resist state authority, denigration of authorities and symbols of the state, and public denial of

the National Socialist genocide of European Jews. Satirical expression of opinion is exempt.

In a liberal constitutional state, these legal precautions must remain largely formal. That applies particularly to Germany. The German democratic tradition is comparatively weak as a result of nearly total state control over journalism in the entire country from 1933 to 1945 as well as from 1949 to 1989 in the German Democratic Republic (GDR). Thus, an index of daily newspapers or political periodicals is not even possible through the *Bundesprüfstelle*. The German constitution gives media freedom the highest status, placing it at the forefront of inviolable basic rights (Article 5, Basic Law). From the beginning, the federal constitutional court has valued this right in balancing it with such competing rights as protection of the individual. The reason? The fundamental importance of free public discussion for democracy. Some legally trained observers, however, are concerned that the value of media freedom in German law in the 50 years since the foundation of the Federal Republic has declined in relation to protection of the individual (Schweizer, 1996).

Between state media control on the one hand and a widening cultural demand for social responsibility in journalism on the other, a regulatory gap develops in liberal democracies. It becomes wider as a result of commercial interests. This widening gap explains why in Germany, as in many other Western countries, unofficial institutions (for example, press councils) have arisen to remind journalists of their social responsibility and to encourage ethical standards of professional performance. Such devices are meant to forestall criticism of the media by strengthening professionalism and promoting socially responsible performance (cf. Bermes, 1991; Bertrand, 1998; Bertrand, 2000; Bromley and Stephenson, 1998; O'Malley and Soley, 2000; Pritchard, 2000). Of course, open societies have their public/consumer or special interest groups that criticize media performance, but these are not the same as instruments of voluntary self-regulation.

Self-Regulation and the German Press Council

From the beginning, press and film have been

organized as private enterprise in the Federal Republic of Germany. Next to the Voluntary Self-regulation of the Film Enterprise (FSK), the German Press Council is the oldest, best known and most important institution of media self-regulation for the journalistic profession. Later institutions (German Ad Council, Voluntary Self-Regulation Television [FSF/VPRT]) oriented themselves to the Press Council model of self-regulation.

Duties and Goals

At the outset the German Press Council was charged with four duties (www.presserat.de).² Externally, it was supposed to:

1. defend the constitutionally guaranteed press freedom against government interference and secure open access to news sources and
2. represent the interests of the press in the realm of politics as well as publicly, especially regarding pertinent legal issues.

Internally, the Press Council was supposed to

3. ascertain and redress journalistic abuses and
4. observe critically the development of press structures and guard against press monopolies.

Three decades later the sponsoring organizations of the Press Council adopted statutes that directed the Press Council to:

1. ascertain abuses in the press and work toward remedies;
2. review complaints about individual newspapers, magazines or news services and, in warranted cases, issue notices of censure and reprimands;
3. issue recommendations and guidelines for journalistic work;
4. support open access to news sources, and
5. work with the sponsoring organizations to encourage the free flow of information and the formation of public opinion (*Jahrbuch 1987, 1988*, p. 130).

The major goal of the Press Council was to protect press freedom externally and to prevent or at least discourage journalistic abuses and shortcomings internally.

Origin and Development

The German Press Council was founded on 20 November 1956 by representatives of newspaper publishers and newspaper reporters. The triggering moment was the March 1952 draft of the Adenauer government for a federal press law that intended to supervise newspapers through *Landespresseausschüsse* (state press committees). The German Journalists' Association (DJV) and the Federal Association of German Newspaper Publishers (BDZV) agreed that self-regulation was necessary to ward off state control. Two other groups later joined the newspaper publishers and editors. They were the Association of German Magazine Publishers (VDZ) on the business side and the German Journalists' Union in the industrial trade union IG Print and Paper (today the trade union for service-sector business [Verdi]—Journalism Section). An agenda was agreed upon in 1959 that largely still applies today. In these early years, Press Council activities took place primarily in the public arena. The Council successfully promoted standardization of the press law of the federal states and the protection of press freedom in the emergency legislation of 24 June 1968.

Over the course of time, however, interest shifted to internal, or professional, concerns. In 1970 the Council created a special commission to handle complaints against the press. Two years later this commission grew into a Complaints Committee with its own set of procedures. In 1973 the Press Council published a Press Code, or principles for journalists. Since then the Press Code has been expanded and supplemented with Guidelines for Publishers and Journalists. These Guidelines are an elaboration of the Press Council's 16 Principles. In 1976, the Bundestag (Lower House of the German Parliament) adopted legislation designed to protect the independence of the Complaints Committee by allocating public funds to the committee. At this time, internal conflicts increasingly dominated the activity of the Press Council. The conflict pitted the two sponsoring organizations representing employee interests against the other two organizations representing employer interests.

In 1981 an incident involving Principle 16 brought the Press Council to a standstill. Principle 16 states that periodicals, especially those found in violation of the Council's Press Code, are to publish any reprimands. Alfred Neven-Dumont, who was president of one of the sponsoring organizations, the Federal Association of German Newspaper Publishers (BDZV), refused to publish a reprimand issued by the Complaints Committee in his *Cologne Express*. Representatives of the two journalist organizations on the Press Council terminated their work. The Press Council was unable to function for four years. Finally, in 1985, Council members reached a consensus over the reform of statutes and complaints procedures. Part of the agreement called for publication of reprimands. At the same time, it was decided to create a Sponsoring Association of the German Press Council in order to build more independence of press self-regulation from the four sponsoring organizations and their conflicts. The organizational and financial responsibilities passed over to this sponsoring association.

Since 1985 the complaints work of the Press Council has taken place continuously. The Complaints Committee meets five times a year. In addition, the Press Council takes positions on flagrant journalistic shortcomings. One such case involved coverage in 1988 of a hostage drama in which two ex-convicts robbed a bank in the Ruhr town of Gladbeck, took two members of the bank staff as hostages and led police on a wild, two-day, thousand-kilometer motorway chase—including several hours in a hijacked public bus with more than two dozen passengers—through northern Germany and The Netherlands. The Council criticized journalists for crossing the line between their professional role of reporting news and assuming the role of negotiator by providing a public platform to robbers who killed two people. More recently in 1999 the Council repeatedly criticized a proposed extension of data protection that would limit journalistic access. The Press Council continuously reports about its activities in yearbooks edited by the sponsoring association. In recent years the yearbooks have been circulated widely. The yearbook summarizes complaints and explains the basis of deci-

sions, though anonymity is observed in much of the process.

Sponsors and Committees

The four sponsoring organizations (DJV, Verdi, BDZV, VDZ) state as their purpose the promotion of press freedom in the Federal Republic of Germany and a positive image for the German press. Each organization sends five representatives to the Plenum of the Press Council; half of the 20 members are active in publishing while the other half are active in journalism. From among its members, the Plenum chooses the speaker and the deputy speaker of the Press Council; the office of the speaker changes annually. The Plenum appoints from its membership ten members to the Complaints Committee, half of the ten working primarily in publishing and the other half primarily in journalism. In the interest of continuity, the chair of the Complaints Committee (in 2002 Ursula Ernst-Flaskamp) can serve for an unlimited period of time in that office. As a nationally relevant institution, the Press Council maintains its business office in the old federal capital of Bonn. The full-time executive secretary (in 2002 attorney Lutz Tillmanns) with a staff of five is responsible for public information efforts and administrative details. The annual budget of the German Press Council amounts to about 425,000 Euros. About 30 per cent of the funds come from public resources and 70 per cent from the four sponsoring organizations.

Principles of Conduct for Journalists

In resolving disputes the Press Council adheres closely to its Press Code. Originally adopted on 12 December 1973 and revised on 17 September 1997, the Code was developed to exemplify the professional ethics of the press. The 16 Principles deal with such issues as accuracy, privacy, confidentiality and human rights. (See Table 1 for the Council's 16 Principles of Conduct for Journalists.)

A set of 36 guidelines provide an explanation or elaboration of the 16 Principles. Half of these relate to Principles 2 (accuracy), 8 (privacy) and 11 (sensationalism). Two Principles—9 (publi-

cation of unfounded accusations) and 10 (offending moral or religious beliefs)—do not carry any explanatory guidelines. To give an example, Guideline 12.1 reads, "When reporting on crimes, the suspect's or perpetrator's religious, ethnic or other minority membership will only be mentioned if this information is directly relevant to the understanding of the event. It must be particularly born in mind that any such mention could awaken prejudices against groups in need of protection." Such specifications are deemed necessary so the Complaints Committee can determine the justification of complaints. Several guidelines remind journalists of their duty "to balance different goals and interests carefully" (for example, Guideline 5.1, "Confidentiality").

In its preamble the Press Code emphasizes professional ethics. It attempts to reflect the journalist's professional duty to help foster a public sphere while at the same time observing the claim of a universal morality (Pöttker, 1999). In many ways the Press Code is pragmatic. Yet professional standards of journalistic conduct remain unclear in the absence of a clear structural concept. For example, this codification of journalistic professional ethics addresses reporting about such events as catastrophes, crime and medical topics while ignoring other potentially sensitive subjects such as war, economics and travel.

Complaints Procedures and Activity

Complaint procedures are relatively straightforward. Anyone may make a complaint to the Press Council, and the Council itself can initiate a proceeding. Complaints must be written. The accused publication may address the complaint before it goes to the Council's Complaints Committee. Council deliberations are conducted in private. Where findings are found in favor of the complainant, offending publications are expected to publish the results.

The Press Council received 5075 complaints between 1985 and 2000.³ Of these, it decided 1313 cases between 1990 and 2000. The number of complaints and the number of considered cases during this decade varied but overall showed an increase (See Table 2). During this

Table 1. Principles of conduct of the German Press Code and percentage of cases relating to each Principle during 1990–95 and 2000

Principle	Percentage	
	1990–95	2000
1. Respect for the truth, observance of human rights and accurate informing of the public are the overriding principles of the press.	5.9	8.2
2. The publication of specific news and information in word and picture must be carefully checked with respect to accuracy in the light of existing circumstances. Its sense must not be distorted or falsified by editing, title or picture captions. Documents must be accurately reproduced. Unconfirmed reports, rumors or assumptions must be quoted as such. When reproducing symbolic photographs, it must be clear from the caption that these are not documentary pictures.	24.9	34.7
3. Published news or assertions that subsequently turn out to be incorrect must be rectified in an appropriate manner by the publication concerned.	2.0	1.5
4. Dishonest methods must not be used to acquire news, information or pictures.	2.6	2.6
5. Confidentiality is to be adhered to in principle.	0.4	0.0
6. All those employed by the press shall observe professional secrecy, make full use of the right to refuse to give evidence and shall not disclose the identity of informants without their express consent.	0.3	1.3
7. The responsibility of the press towards the general public requires that editorial publications not be influenced by the private and business interests of third parties. Publishers and editors must reject any attempts of this nature and make a clear distinction between editorial texts and publications for commercial reasons.	3.6	3.3
8. The press shall respect the private life and intimate sphere of persons. If, however, the private behavior of a person touches upon public interests, such information then may be reported. Care must be taken to ensure that the personal rights of uninvolved persons are not violated.	18.3	21.3
9. It is contrary to journalistic decorum to publish unfounded claims and accusations, particularly those likely to injure personal dignity.	8.6	10.8
10. Publication in word and image which could seriously offend the moral or religious feelings of a group of persons, in form or content, is irreconcilable with the responsibility of the press.	3.5	1.8
11. The press will refrain from an inappropriate sensational portrayal of violence and brutality. The protection of young persons is to be given consideration in reports.	3.0	4.6
12. There must be no discrimination against a person on racial, ethnic, religious, social or national grounds or because of his/her sex.	16.0	5.1
13. Reports on cases or investigations that are still before the courts must be free from prejudice. For this reason, before and during legal proceedings, all comment, both in portrayal and headline, must avoid being one-sided or prejudicial. An accused person must not be described as guilty before final judgement has been passed.	7.4	4.1
14. Reports on medical matters should not be of an unnecessarily sensationalist nature, since they might lead to unfounded fears or hopes on the part of some readers. Research findings that are still at an early stage should not be portrayed as if they were conclusive or almost conclusive.	1.7	0.5
15. The acceptance or granting of privileges of any kind which could possibly influence the freedom of decision on the part of publishers and editors are irreconcilable with the prestige, independence and responsibilities of the press. Anyone accepting bribes for the dissemination of news acts in a dishonorable and unprofessional manner.	0.1	0.0
16. It is considered fair reporting when a public reprimand issued by the German Press Council is published, especially by the newspapers or magazines concerned.	0.0	0.0
Total	98.3 (N= 578)	99.8 (N= 384)

NB. The *N* values are not directly comparable. For 1990–95 the figure 578 refers to cases *decided* by the Complaints Committee, while for 2000 the figure 384 refers to total cases *considered*. Two other points: issues not covered by the Press Code during 1990–95 amounted to 1.7 per cent, and complaints occasionally involve more than one principle; thus, percentages are given rather than actual frequency of cases.

Table 2. Number of cases acted upon by the Complaints Committee of the German Press Council, 1990–2000

Year	No. of cases
1990	105
1991	102
1992	60
1993	99
1994	102
1995	112
1996	130
1997	182
1998	156
1999	120
2000	185
Total	1353*

* This figure includes 40 cases that were acted upon but not decided for various reasons, such as the complainant withdrawing the complaint before the decision was made.

time there was no discernible trend in the dispositions arising from the cases but nearly 50 per cent (45.4) of the complaints were deemed to be unfounded, that is, without merit (See Table 3).

Table 1 reveals the nature of cases received by the Press Council in relation to the 16 Principles of the Press Code. Data are presented for 1990–95 and for 2000. Two issues—accuracy (Principle 2) and privacy (Principle 8)—comprise well over half (43.2 per cent for 1990–95 and 56 per cent for 2000) of the total number of cases. The number of discrimination cases declined from 16.0 to 5.1 per cent. The reasons are unknown, although the guideline for this Principle (12.1—see above) is the only one—apart from protection of privacy and youth—that prohibits publication of information even though the information could be accurate.

German journalists are seldom accused of a violation of specific professional norms such as protecting informants (Principle 6) or integrity in the selection of information (Principle 15). Presumably, this has less to do with these job-specific norms being adhered to and more with the fact that these norms generally are not well known. Thus, their functional sense is little understood in Germany's political culture, where the journalistic profession does not enjoy high esteem. In addition, the portion of cases involving Principle 7 (separation of reporting and advertising) amounted to only 3.6 per cent in the period 1990–95 and 3.3 per cent for 2000 as compared with 10.4 per cent in 1985–89. This can hardly be explained by the assumption that journalists in recent years have adhered more strongly to the distinction between reporting and advertising. The reverse would seem to be the case. That is, the decline of complaints involving reporting and advertising may be explained by diminishing expectations in society about the duties and needs of journalism (Schwarz-Weiss Buch, 1990; Schwarz-Weiss Buch, 1996).

The Press Council does not always demand the publication of reprimands. This has less to do with a diminishing severity of the relevant violations of professional ethics and social responsibility and more to do with the concern of the Complaints Committee. The concern is that publication would exacerbate the original offense. Most newspapers and magazines publish reprimands according to Principle 16 of the Press Code. But occasionally periodicals refuse. As noted above, one refusal involving the chair of the German Newspaper Publishers' Association led in 1981 to the complaints work of the Council being suspended for four years.

While offending newspapers and magazines

Table 3. Nature of disposition of cases decided by the German Press Council, 1990–2000 (N = 1313)

Disposition	Percentage
Unfounded (<i>unbegründet</i>)	45.4
Justified—no steps taken (<i>ohne Massnahme</i>)	5.9
Justified with advice notice (<i>Hinweise</i>)	18.5
Justified with notice of censure (<i>Missbilligungen</i>)	18.3
Justified with reprimand not made public (<i>nicht-öffentliche Rügen</i>)	2.4
Justified with reprimand made public (<i>öffentliche Rügen</i>)	9.4