

## Research Paper

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# How true is media reporting?

Of bad practices and ignorance in public communication

**Abstract:** There is no such thing as unquestioned truth, yet political journalism is committed to truthfulness. This article identifies typical bad practices and blind spots that cause journalism to fail this commitment. As someone who has been involved in the formation of public opinion for many years and as a lifelong consumer and observer of media, I will offer some examples of how imprecise language creates a skewed picture of reality. This is due, in particular, to a lack of differentiation, inappropriately clustering people into groups, improper personalization, and simplifying complex issues. I will highlight certain recurring clichés and stereotypes as well as some high-profile cases of media failure (such as the campaigns against Christian Wulff and Olaf Scholz). Reasons for this include questionable standards of judgment and inappropriate partisanship on the part of the writers. Finally, I will address the consequences of »digitalizing« public communication and whether it poses a danger to democracy.

To avoid misunderstandings, let me preface my paper with a personal note: Journalism is a great profession, and the best minds of the trade do excellent work. Without journalists, society would be in a bad state; journalists are a pillar of democracy. I almost became a journalist myself. I interned with a large newspaper and after doing some more work for the editorial office, I was offered a job. I first wanted finish law school, so I passed on this opportunity and became a legal scholar. I have since maintained a connection with the media world as a freelancer, and in my decades of legal and political work, have authored numerous newspaper articles in addition to academic texts, trying to explain sometimes difficult legal matters and topics of state theory to general audiences. The following is therefore neither an academic nor a populist media bashing, but a

contribution to help make our good media even better.<sup>11</sup> It is an attempt to draw on my experiences in dealing with journalists and my long years as a media consumer; to offer a realistic, differentiated picture of media production to reveal pathways towards improvement.

What we owe is not truth, but truthfulness

The essential guiding notion of any journalistic work should be truthfulness, i.e. a commitment to truthful reporting to the extent possible and to fair commentary. Criminal defense lawyer and writer Ferdinand von Schirach recently published a manifesto calling for six »new fundamental rights«, including the »fundamental right to truth«: Accordingly, every person should have a right that »statements made by public officials be true« (Schirach 2021: 19; on this topic, Schloemann 2021). He also formulated an essential requirement for journalists in their role as mediators of politics. But what is »truth«? In any case, it cannot be enforced in a court of law, nor can anyone be expected to go through the hassle of litigation to enforce good political practice. In individual cases, affected parties can take the media to court if they transgressed the limits of criminal law and freedom of expression, but even then, the judiciary can only correct such infringements on a case-by-case basis. It cannot defend the democratic dispute as such. Thus, the guiding principle of truthfulness implies something other and greater than respect for legal norms. It is, first and foremost, about authors maintaining an appropriate subjective attitude to their subjects. Those who want to report truthfully must try to suppress their own prejudice, engage with new and more precise information, and repress any likes and dislikes they either hold personally or that prevail in their own peer group.

In practice, there are many obstacles to truthful reporting and commentary. Consumers expect the media to be ever wary of »them«, i.e. politics and its actors. Subscribers reward »their« newspaper for continuous critical research and clear words in the assessment of political action. Freedom of expression allows for a wide range of different wordings and pointed reprimands of anyone who engages in political activity. Economic constraints are forcing many editorial offices to cut corners regarding their own quality standards, which is covered by freedom of the press. But all these restrictions don't change the journalists' duty to be correct, accurate, and fair. It is one of their basic professional requirements. If it is fulfilled, democracy is strengthened; if it is neglected, extreme, apolitical, and misanthropic views and movements gain ground.

1 Cf. Bull 2020b and 2018 pp. 86 et seq., 97 et seq. and 167 et seq. I already wrote about my media contacts as Federal Commissioner for Data Protection in 1983 (Bull 1983). Most of the observations I made back then about the topics, methods, and quality of journalistic work still hold true today.

## Necessary medialization and typical deficits

As I now list examples of how the quality of media products is impaired by ignorance of the actual facts and a poor assessment of those facts due to bad journalistic practices, I must acknowledge that the writers are often unaware that numerous bad practices have crept into their journalistic practice over the course of decades and with the keen participation of other sectors of society.

I also concede that every media representation inevitably features some degree of abridgement and distortion. The product of mediation is not the original. The very selection of topics requires a decision by an editor, and even a mere rendering of »facts« will be affected by their subjective perspective. This is inevitable, and as long as there are enough competing media products, some of the biases will even out. But on the other hand, there are always distortions and falsehoods that could actually be avoided and which, in sum, worsen the overall assessment.

A few typical wordings reveal how this process works, i.e. how imprecise language gives rise to a skewed picture of our reality:

- The worst offence in this context is a *failure to differentiate*. When people don't speak of individual politicians, parties, or groups, but instead generalize about »those« politicians, it is due to a general mistrust, built on an assumed dichotomy between the »good« people and the »bad« politicians – disregarding the obvious fact that politicians are people and share the same characteristics as very many of us. There are decent and indecent, compassionate and inconsiderate, altruistic and selfish people – among ordinary citizens as well as among the political class (and among men as well as women). Criticism of political action can only be effective if it makes clear who is being criticized, whereas blanket bashing of policies and politicians will only stir up emotions, but not contribute to rational policy.
- If there is no differentiation, people are divided into *groups* that are described and judged summarily. This bad habit is so widespread in politics and society that we hardly notice it, let alone criticize it any more. Without missing a beat, we associate members of political parties with the statements of other members of that same party; we judge ethnic groups according to their compatriots' crime statistics; we judge entire families by the actions of one of their kin. While criminal courts pass their verdicts strictly based on the individual perpetrator's guilt, politicians and journalists routinely brand and label individuals as members of a certain group. This happens particularly often in election campaigns and at places of social gathering, be it out in the open at the neighborhood pub or in the digital realm, and the media follow these bad examples. The latest example of this »sorting« of people was the almost unanimous media reaction to

#allesdichtmachen, an initiative by some artists to protest excessive pandemic restrictions. The signatories were immediately suspected of conspiring with irrational »contrarians«, ostracized, and labelled »extremists« (Blazekovic 2021).

Of course, group formation is often inevitable; moreover, it frequently reflects actual uniformity of political thought and action. The prevailing practice of assigning certain characteristics to entire peoples also stems from such generalizations; the formation of collective cultural identities in the guise a »national character« has a long and highly problematic tradition. As soon as a person is not treated as an individual, but reduced to being one of many, a skewed picture emerges and the individual is either exempted from personal responsibility or unfairly burdened. Both phenomena exacerbate the level of mistrust that is already all-pervasive, making it harder to reach a mutual understanding. The pertinent thing to do would be to extricate individuals from their supposedly dangerous group, but it is easier to lash out at an entire group than to have a thorough debate on the factual issues that cause concern, also to mainstream society – e.g. crime rates amongst certain age or ethnic groups – and to work towards solutions in a spirit of solidarity.

- In contrast, the much-lamented *personalization* of contentious political issues seems to offer the advantage that it allows us to address the concerned individuals. However, this focus on prominent actors is no less problematic, for other reasons. When we primarily talk about individuals, the debate quickly zeroes in on »scandals« or campaigns (which we will discuss later); but it always deteriorates or even obfuscates our discussion of the facts. Certainly, political decisions are greatly impacted by the personal stances of those who make them, but the deeper and more decisive reasons lie within the conflicts of interest between the involved power groups. These conflicts exist independently of the idiosyncrasies of single actors and must be solved regardless of individual character. That is why it is detrimental if a debate, such as the one on Covid 19, gets mixed up with the power-political competition between federal and state governments (federal Chancellor and state leaders) and rivalries as to who gets nominated as the next candidate for Chancellor.
- Complex relationships are routinely presented in a starkly *simplified* way. Of course, this is also inevitable, but a reporter's ambition should be to be as accurate as possible and to offer explanations that enable readers and listeners to make an informed judgment.

Anyone who has professional expertise on any subject matter knows that a press report, no matter how well-intentioned, will misstate, distort, or omit important details, simplify causalities, and misassign responsibilities. Journalistic reporting usually cannot meet the standards of accuracy of an expert – and it

does not need to. But when certain abridgements and simplifications keep occurring, creating obvious misconceptions in the minds of the public, it should give us pause. In the long run, sweeping judgments, arising from a lack of due diligence in political reporting, are more than just an annoyance: They undermine one of the pillars of democratic politics, namely the minimum level of trust that citizens must have in their representatives so that compromise and a reasonably stable social peace are possible.

One way to improve the technical accuracy of press articles is to invite real experts to explain complex issues in understandable language. It is not uncommon for contentious issues to be debated in a »pro/con« format; scholars and practitioners could and should be involved in such exchanges. My impression is that this practice has become less common than it used to be. Of course, it is not easy for laypeople to judge who can really offer an expert opinion on a specialist topic. But an adequately well-staffed newsroom is able to find out who knows more about a subject than they do.

By the way, some editorial offices think that texts by politicians should generally not be equated with expert statements. There seems to be a widespread perception that all politicians merely submit manuscripts that are written by either their staff or ghostwriters, or that their only intention is self-promotion. Editorial offices fear that when they publish a piece by one politician, representatives of all other parties will also want the same platform, and that they could not be turned down for the sake of equal treatment. Apart from the fact that this rule is not strictly observed – it betrays a distrust of all politically active writers, promoting a nonsensical polarization of science and politics. Politicians are known to be experts on the general, and authenticity should be seen as a hallmark of quality.

The decision to publish a text should therefore be guided only by its journalistic relevance and quality, and not depend on the author's status, profession, or role. The same applies to scientific texts: I often find that a contrast is being construed between scientific positions and contributions by active politicians. However, an editorial office should be able to verify if submitted text meets scientific standards.

Again, politicians need a minimum level of trust to do their jobs; distrust is an ever-lurking aspect of their work, anyway. In this respect, they are no different from journalists; they, too, need a certain level of public trust in their integrity, and they therefore rightly defend themselves against slander from extremists, for example. »Taking credibility away from journalists is the worst,« says Anja Reschke (Reschke 2020). Talk show hosts should also remember that when they adamantly discredit politicians' credibility when they change their minds on an issue.<sup>[2]</sup>

2 Bull 2020a gives an example on p. 48 with fn. 123 (Anne Will).

## How do institutions work?

Central *functional conditions* and *process rules* keep being misrepresented. Most people still have a certain level of knowledge about the constitutional institutions of their state, but their understanding of how society and the state work and what they are capable of is deficient in many respects. Most of the time, the government's capabilities are overestimated. Accordingly, governments present themselves as almost omnipotent – even to the point of that they think they could quickly curb a global raging pandemic with »tough« rules... An example of a more harmless error is when a text states that a government has »decided on a law that is yet to be approved by parliament«. The government's job is to draft most legislation, but the final text is determined by parliament. The more important question is how powerful a government is; that depends on other players, who also must be taken into account. Daily news coverage of legislative projects often neglects to analyze the respective *interests* that are at play. Those who simply reiterate the official statements on legislative projects fail to explain the real issues at stake and the power relations that have shaped the bill. During election campaigns, parties are rightly accused that their political advertisements are hardly more substantial than commercials for laundry detergent, i.e. making lofty promises and omitting the real problems: the challenge of asserting their agenda against conflicting political forces. This happens every day, in various forms, in the media, which only cover political objectives, but not the pathways to attain them.

Another area of state organization that is all too often subject of inaccurate reporting is the judiciary. Gone are the days when judges worked in seclusion from the public and considered journalistic criticism of their verdicts an improper interference or a threat to their independence. Most courts have significantly expanded their public relations efforts, offering explanations to the media, which are often not well received. Tabloid media have been criticizing the judiciary for decades. The argument often goes that judges are too lenient in their sentencing, failing to explain, and probably sometimes also in ignorance of, the legal implications that have led to these verdicts that are supposedly overly lenient. Criticism that a court has »failed to shed light on the background of the deeds«, (or even: »failed to put them into proper historical context«) – as was the case during the NSU trials – ignore a necessary boundary of jurisprudence. This is not the task of the courts, but of truth commissions and – idealistically speaking – of parliamentary committees of inquiry.

## When society and politics talk

Once again, it is by no means only the media that fail to meet their educational mandate with the necessary degree of diligence. Politicians of all stripes are partially responsible as they eagerly spread oversimplified statements fraught with clichés and stereotypes:

- »The Chancellor summoned the refugees«; »Most refugees are asylum tourists« (or: »economic migrants«, »criminals« or »terrorists«): This reduces a humanitarian gesture to a political agenda; it paints a global disaster that caused millions to flee from poverty and oppression as a personal decision made by a head of government; it turns the plight of refugees into discrimination against entire peoples. Long after September 2015, a documentary revealed just how intractable the situation was. It would have been helpful to read about all of that much sooner in the newspapers.
- »The administration is acting against the interests of the citizens«; »Germany is lagging behind in digitalization«; »Civil servants are wasting taxpayers' money« – the list goes on. Individual cases are generalized, sound and flawed decisions are lumped together, and state employees are badmouthed as if they were a monolith. Obscure rankings are treated as facts, without stating their benchmarks or even putting them into perspective. Statistics are only meaningful if current data is juxtaposed with comparative historical or international data and accompanied by proper commentary.
- Commentators fail to even acknowledge that digitalization – i.e. the automation of decision-making processes and the shifting of communication processes online – is by no means an improvement for any and all governmental tasks (although the pandemic clearly highlighted the inadequacy of digital-only instructional delivery in schools). Anyone who does not wholeheartedly join the general chorus of IT enthusiasm is considered a technophobe. The media routinely report on the »black books« of the German Taxpayers Association (which should really be called the Association of Income Tax Payers, as it represents high-income earners) without any further comment; any responses from the authorities that were thus criticized are published only days later (if at all), when the reports have already done their damage.
- A particularly popular game is *red tape bashing*. It is so appealing to the media because it relieves them of the need to make any substantive assessment of administrative procedures (or so they think), at least in this first quick shot from the hip at these administrative procedures. There are several varieties of this practice: A more harmless variation is the occa-

sional compilation of curious or obsolete regulations that govern now defunct living conditions. Many a legal norm that once seemed sensible and necessary has outlived its usefulness and is no longer applied in practice – »purging« them from the lawbooks is a formality with no political significance. In most cases, however, it is affected parties complaining about individual provisions that are unfavorable to them, be it taxes, contributions or fees, formal obligations such as using certain forms or meeting certain deadlines, providing data, or submitting to the control of an authority. Regulations that appear particularly cumbersome are often the result of lobbying that is going on in the background of parliamentary deliberations – for example, when a particular industry gets unreasonable exemptions from general legal requirements. When such an exemption is difficult to implement, the blame is readily assigned to ministry officials, who in this case are totally innocent of the complexity.

- Whenever politicians promise to help »unbureaucratically«, public servants have to be extra careful. Emergencies must be addressed quickly, and when aid is being distributed, an excessive insistence of the letter of the law would be inappropriate. But the unfortunate story of COVID19 aids in the winter of 2020/21 shows that a minimum of accountability is essential. An overreliance on the integrity of the applicants is an invitation for fraudsters. We simply can't do without »bureaucracy«; for without it, government and society would not function, and chaos would spread. Blanket criticism of »red tape« is cheap. Here again, it is vital to discern who is responsible for what.

## Linguistic issues and deficiencies in content

Criticism of bad practices and ignorance and the resulting misdevelopments falls short if it stops at linguistics. Language teachers are important, but they only have a marginal impact on content. So it's not just a matter of linguistic instinct or sloppy style, but of the authors' *attitudes and views* regarding the content. As much as »attitude« is a desirable trait in a journalist, i.e. faithfulness to principles and independence from others, it is inappropriate for authors (or an entire editorial team) to uncritically adopt a third party's viewpoint in their reporting, out of sheer like or dislike of one political tendency or another, or if they are sloppy in their wording.

Party-aligned newspapers may report in a one-sided way, omit counterarguments for their party leaders' policies, and paint a rosy picture of their own people (but in this day and age, even loyal party supporters no longer buy into this sort of adulation of their leadership). Tabloid media thrive on embellishing and spreading news and photos of (would-be) celebrities, who in turn seek publicity



and deliberately open up their private sphere to gain attention. When journalists and magazines cater to this interest and take liberties to exaggerate or even invent entire interviews, they presumably count on the tacit consent of their »celebrity« victims. These circles are fraught with cynicism on both sides; court rulings awarding damages to victims quickly fall into oblivion. But again, the obligation to be truthful is incumbent on all media.

Civil servants and public officials have a duty of moderation when making political statements; journalists may and should make pointed statements when they deem it necessary. But journalists also fail in their professional duties when they excessively criticize, denigrate, or insult others. It is simply bad journalism when newspapers and magazines allow themselves to be instrumentalized by political parties or associations and go after individual politicians, and it is no better when an editorial office takes up a political group's cause of its own accord. (Upon closer inspection, similar dealings can be observed in the realms of culture and science; the only difference being that a relatively narrow circle of insiders is expressing outrage, rather than the general public).

## The empirics of media failure

The discussion is not new. My small private archive contains several decades' worth of newspaper clippings that cover and critically comment on journalists' failures. These critics include some eminent representatives of the trade, such as Herbert Riehl-Heyse, Robert Leicht, Hans Leyendecker, Gunter Hofmann, Heribert Prantl, Georg Mascolo; they found choice words to remind their unprofessional colleagues of the damage they are doing to the people concerned and indirectly to our democracy. In most of the cases, hindsight shows that their media-critical comments were well founded. The most prominent example is the case of German President Christian Wulff, who was so relentlessly hounded by a whole army of newspapers, led by »Bild«, that his resignation became inevitable, even though the accusations were false except for some ridiculous trifles.

Many similar media campaigns – not all of them launched by the tabloid press – have been forgotten, such as the one against Hamburg's Senator of the Interior Hartmuth Wrocklage, who was ousted from office by the majority of Hamburg's newspapers following anonymous allegations and insinuations from the police. The background was a fierce dispute over the Senator's security policy, which was sharply attacked by conservative sections of the population, parts of the police leadership, and the Springer press. The Hamburg press (except for the taz) engaged in this populist bashing of Wrocklage primarily because he had announced that he would take civil action against those who spread the insinuations and slander. Dr. Martin Schmidt, member of the Green-Alternative List in

the Hamburg Parliament, said that Wrocklage had »made a serious mistake« by »violating a basic rule that applies to all politicians: He criticized the press that attacked him. You can't do that if you're a Senator and want to stay one.« The State Press Conference (LPK) considered his announcement to fight back in court as an »unacceptable attempt to suppress critical voices«. While some considered it clumsy or even naive, it was really no more than a sign that the politician was the inferior party in this dispute. »Instead of openly confronting the issue, Mr. Wrocklage resorts to repressive methods against independent journalism, which he obviously struggles with.« Only the editorial director of *taz* Hamburg objected to this almost grotesque distortion of the circumstances, attesting the LPK »undifferentiated bias«, i.e. »the opposite of serious journalism«. <sup>13</sup> The Hamburg correspondent of *Süddeutsche Zeitung*, on the other hand, considered Wrocklage's reaction »ludicrous« because it was »politically highly unwise«. I have a hard time understanding how a ruthlessly persecuted politician would be acting »wisely« by refraining from exercising his rights.

### Small mistakes, big consequences

In the hustle of day-to-day journalism, inaccuracies are unavoidable when the information situation is unfavorable, as is often the case. However, it is a bad practice to disregard relevant information that *is* available, especially when the matter at hand is important.

I personally experienced a disquieting example of this in the context of a particularly difficult role I held, showing me how easily major misunderstandings can arise from small inaccuracies – and how difficult it is to prevail against journalists' biases.

I was one of the two legal representatives of the Federal Government in the proceedings on the first NPD party ban. The trial failed because various intelligence offices in charge of protecting the Constitution had recruited paid informers to serve on the NPD's executive committees. They reported on the goings-on in the executive committees for considerable fees. <sup>14</sup> This observation of the NPD by intelligence services was widely presented as if the state had »infiltrated« the party with its

3 The quotes are from the documentation of the newspaper *taz* Hamburg dated 5 June 2001, p. 21. »Medien. Macht. Meinung«. Haug von Kuenheim has reported on a previous media campaign against Wrocklage (Kuenheim 1996).

4 For more details on this case, see: Bull 2003, which also contains references to some questionable procedural decisions by the court that contributed to the inglorious end of the trial. The (first) NPD decision of 18 March 2003 is printed in the Official Records: BVerfGE 107, 339

»agents« in order to make the party appear extremist to the public. In fact, it was not even remotely proven that the informers had had any impact on the party's public image.<sup>51</sup> Moreover, the Office for the Protection of the Constitution had already ended its cooperation with the NPD informer five years earlier after he had published particularly poisonous anti-Semitic statements.

I tried to explain the complicated circumstances to any journalist who asked, but they failed to report the crucial details. At that time, a RBB television team immediately rushed from Berlin to Hamburg for a long conversation with me for their upcoming show »Kontraste« – they only reported one sentence from our conversation, which was not only irrelevant, but also did not explain the special relations between the Offices for Protection of the Constitution and the NPD. Quite obviously, the show's writers had already made up their minds when they spoke to me and only sought my confirmation rather than any contradiction. On this occasion, I remembered something veteran journalists had winkingly warned me against in the past: Do not let your texts be »researched to death«...

## Security policy as a journalistic challenge

Secret services have always been the subject of special journalistic interest, but the coverage of their activities is usually extremely superficial and sometimes – as in the case of monitoring the NPD – downright misleading. The secret services themselves are partially to blame for this poor public information, because they shroud themselves in an aura of secrecy beyond the degree necessary to protect their sources. No one objects to the fact that foreign intelligence services like the BND strictly protect their sources; foreign spies operate in very dangerous environments all over the world. Even a domestic intelligence service must protect its undercover operatives from detection by those who are being monitored and from acts of retaliation by those who feel betrayed. But the undercover agents of the Offices for the Protection of the Constitution who provide information on extremist activities are not in as great a danger as foreign spies, and the public has a legitimate interest in knowing what the domestic intelligence service's methods. In principle, the affected parties even have a right to know what information the authorities hold about them; however, security authorities routinely make use of the legal exceptions to this right. As Federal Commissioner for Data Protection, I encouraged security authorities to engage in some form of public relations work to convey to the public that they are operating lawfully.

As the federal government's representative in the NPD trial, I made the unpleasant experience that the constitutional protection service withheld the

5 This is also the case for four of the seven judges of the BVerfG Senate, cf. BVerfGE 107, 339 (381).

information necessary to assess the request to ban the party even from the nation's highest court. I advocated for explaining the inner workings of the Office for the Protection of the Constitution to the Federal Constitutional Court in open court so the judges could get a realistic picture. I did not succeed, and so three of the seven judges and many observers of the trial sided with the NPD's defense tactic, namely that the state had »infiltrated« its executive boards with its agents and had them create a certain public image of this undesirable party that would have it banned.

Other security agencies have also always dealt in secrecy. Before the introduction of data protection legislation, the police would never have expected that their methods of investigating criminals and of detecting threats to public safety could be scrutinized and possibly challenged by outsiders. Since then, public debate has criticized many police information rights as being too vague, too incriminating, thus disproportionate, and therefore illegal. The Federal Constitutional Court has repeatedly corrected legislative attempts to codify police law. This gave rise to a public notion that the entire nation is under »complete«, »blanket«, and deeply invasive »surveillance«. That was and is wrong, but the next time the German Constitutional Court finds a new police authorization too vaguely worded and therefore scraps the regulation, many observers who don't listen or read carefully will once again come to the conclusion that Germany has become or is at the verge of turning into an Orwellian surveillance state. Nothing can dispel such stereotypes, not even the fact that most of us say that we are quite satisfied with our local authorities and feel protected rather than threatened by our police.

Often, just a few words make all the difference as to whether a text accurately explains a context or renders an opinion without reflection. As a rule, reporting picks up on more or less familiar themes and then adds a new variant, an exception, or an extreme example to our existing notion of how the world works. Those who understand this starting point can adapt their presentation in a way that it either corroborates an existing judgement (or prejudice) or clearly contradicts the common perception. If your only agenda is to provide readers or listeners with a basis to form their own judgement, you research more thoroughly and thus write differently: more open-mindedly, avoiding expletives and the usual metaphors (on the concept of »Constructive Journalism«, cf. Hooffacker 2021).

To put it bluntly: Using catchphrases such as »surveillance state« pushes our perception in a system-critical direction, even if the example at hand does not even justify it; whoever speaks of a »waste of tax money« makes it harder to clarify the actual processes; whoever calls a controversial practice a »violation of fundamental rights« without further justification robs the affected party of their opportunity to explain the legal implications. Freedom of expression means you have the right to use all these catchphrases – but is that enough?

## False standards and damaging campaigns

Stereotypes become opinions. Opinions become alliances for or against other people. Political-minded journalists find it difficult to stick to reporting rather than taking sides, and the tendency to make harsh judgments has grown, not only in the neighborhood pubs and virtual hangouts. The media's standards have become stricter, sometimes petty, and judgments are rendered not only along the lines of right and wrong, but are ever more often moral condemnations. It is a good thing that corruption in all its forms is now being more closely monitored and fought, and that nepotism is being exposed. But it is not a good thing that politicians are held to higher standards than ordinary citizens, and that a slip-up that can happen to anyone is magnified into a political crime that can cost them their office. Let's remember the media campaign against then-Federal President Christian Wulff: An alleged lack of transparency about the financing of his private home and an invitation to a holiday trip turned into accusations of dishonesty and bribery, leading to criminal proceedings and the resignation of the accused. When the court finally acquitted Christian Wulff of all charges, the damage was beyond repair.<sup>6</sup> Green politician Cem Özdemir suffered a setback of his hitherto very successful career due to an accusation that he had used airline bonuses for business trips for private purposes – an incorrect, but hitherto unchallenged and rather common practice. In 2021, we should note the tenacity with which Federal Minister of Finance, Olaf Scholz, keeps getting confronted with allegations of omissions or errors that really don't amount to anything by the light of day.

The Scholz case, despite its formally inconspicuous language, is an apt example of reporting that fails to fulfil the journalistic mandate of elucidating facts and providing fair commentary. There is one particular author who keeps bringing up Scholz<sup>7</sup>, always with the core message that he must justify himself on a variety of issues, that he rejects the accusations, that he does not admit guilt or take responsibility – always insinuating that he is fundamentally and knowingly guilty. Recently, the journalist added that these (unproven) accusations will cast a heavy shadow on the election campaign (cf. Gammelin 2021a). She only uses catchwords to describe his alleged wrongdoing, and always states there are still many unanswered questions and a great need for explanation. This method of casting a politician in a bad light is very successful – at least, this editorial office is dedicating a lot of space to these texts. Therefore, I would like to explain what strikes me about these texts upon closer inspection.

What is the nature of the accusations made against Olaf Scholz? In a more

6 About this, among others, cf. Kepplinger 2018. Further evidence in Bull 2020b: 441 (444 including footnote 15 as well as 452). A fair commentary on Wulff's behaviors and the accusations against him has been provided by Adam Soboczynski (Soboczynski 2014).

7 For example: cf. Gammelin 2020. More about this: Bull 2020b: 441 (445 with fn. 19).

recent article in this series, the one dated 23 April 2021,<sup>81</sup> the key sentence reads: »It's a huge handicap for him as a candidate for Chancellor having to defend his work in the Bundestag's fiercest investigative body, which he had initially wanted to prevent.« I beg your pardon? Parliamentary inquiry committees are set up by political opponents; they are a stage for dramatic, lengthy political disputes and attempts to drive a wedge into government coalitions – it is obvious that those concerned would rather prevent such initiatives, but can't if the opposition is strong enough. And it is equally obvious that they must then defend their work. The author says, without a hint of self-criticism: »And something, experience teaches, always sticks. It costs trust, especially in an election campaign.« Right – but is that the fault of the person who is summoned before the committee? In fact, distrust is also always sown by the press.

The accused fervently denies the charges, and his critic concedes that »a really major transgression cannot be proven«. The only accusation that remains after the testimony before the investigation committee is Scholz's official use of a private email account, to which he admitted. The author comments as follows: »An email affair ultimately cost Hillary Clinton the Presidency five years ago«. What a comparison! What was the Clinton »affair« again? It was political opponents (possibly with the help of Russian secret service agents) deliberately using reports on »private-official« use of emails as ammunition in an election campaign. And what exactly was and is the damage (to democracy) when internal government communication takes place on a private device? When such trivia are blown into a state affair, there is a lack of appropriate standards for what constitutes proper political action.

The author seems to have run out of ammunition when, at the end of her summarizing article on the matter, all she has left to talk about is the Minister's rhetorical qualities. She notes that Scholz speaks »stoically and consistently friendly«, but not as eloquently or as persuasively as his state secretary Jörg Kukies. And just like that, a commentator on a parliamentary committee turns into an election campaign strategist, reproaching the Vice-Chancellor for his inability to »win hearts«.

Of course, her recommendation to emulate the state secretary's style will not be the last of her critical engagement with the Minister. Indeed, in the same article, as in numerous previous contributions, the author also rehashed other accusations. She blames Scholz for the fact that the G-20 summit in Hamburg was disrupted by violent protesters as well as for the billion-dollar fraud of Wirecard AG. She has nothing to say about the actual perpetrators; they have gone into hiding or are held in pre-trial detention; the courts will (hopefully) deal with their ingenious crimes. Journalists and political opponents accuse authorities and ministers of

8 Cf. Gammelin 2021b. The thesis of the article is illustrated in an accompanying cartoon by Burkhard Mohr.

inadequate supervision. In doing so, they are diverting attention away from the perpetrators towards politicians and civil servants who have been deceived just as much as investors who lost money. The term »political accountability« is stretched to the point that it loses any actionable value; under this perspective, taking charge of a ministry amounts to committing political suicide.

And despite unambiguous statements to the contrary, the press continues to imply that Scholz helped out Hamburg-based Warburg Bank in a dispute over a million-Euro tax debt – albeit in nebulous, evasive terms: »That he, as Mayor of Hamburg, claims not to have known anything about the Cum-Ex tax fraud is all the more difficult to believe because we know how meticulously Minister Scholz controls his house.« What an argument! You don't have to be a painstaking minister to know about the tax frauds associated with »Cum-Ex«. But being a meticulous minister would make you all the more unlikely to have helped tax criminals. A journalist who doesn't want to admit to this fact is doing the bidding of the political opposition and putting his or her own credibility on the line.

And how does digital communication change this?

Media criticism today is focused on the changes brought by the »digitalization« of public communication (cf. Schicha et al. 2021). There is hardly a paper that does not invoke the dangers of new information and communication technologies for democracy. And it's true: Some new manifestations of our political communication are a threat to the public good. Hate speech against politicians, extreme rejection and personal insults of certain political tendencies and their representatives, which have become common in some »social« media (and even seem to serve as a model for letters to newspaper editors), sow discord and poison the political climate. Insults and threats directed at anyone who thinks differently and an inability to listen and argue make compromise difficult or impossible. The ideal of rational debate about the future of our body politic is lost in the rhetorical battles of opinion groups.

Despite the disastrous consequences of extremely subjective, unenlightened opinion wars, some feel they must defend freedom of expression on this front. When the state leverages laws or litigation to protect personality rights or the copyright of third parties, they consider it an encroachment on their supposed right to be able to express themselves everywhere and without regard for others. Today, the norm is that anyone and everyone can communicate their opinions to countless others in the fastest possible way – making anyone an uncensored de facto publisher and editor-in-chief. Both those who benefit from this phenomenon and the representatives of the digital economy have elevated this reality into a *right* to disseminate their views. This happened mainly because the business model of the Internet companies is based on free access for users and financing

through advertising revenues. The state's only active role in this field is that of regulator, yet all the anger is directed against the state and its officials. The »traditional« media are losing influence and economic power because their mediating role is no longer valued enough.

Meanwhile, in the real world, angry groups of people clash in protests and counter-protests and resort to violence – even against journalists who are just trying to report on the events. As a result, the Federal Republic has dropped to a lower spot in international rankings of actual freedom of expression. And hardly anyone seems to notice the inherent paradox: Here too – as in the virtual world of the Internet – the state is not the aggressor, but the guarantor of freedom. Yet its job is made more difficult by »champions of freedom«.

There are no easy solutions to these conflicts. As a seasoned observer, my two cents are that those who act politically and those who report journalistically have always cultivated the same bad habits and displayed the same ignorance – regardless of technological capabilities and economic business models. In essence, it comes down to observing a few basic rules, above all striving for truthfulness and respect for those who think and live differently. Even if some of our social structures and institutions have ossified, even if some politicians and journalists have been in their jobs for too long – the »conservative« values from which we derive our basic rules of decent conduct have lost none of their significance.

## About the author

**Hans Peter Bull** (\*1936), Dr. iur., served as Professor of Public Law at the University of Hamburg from 1973 until his retirement in 2002. He was the first Federal Commissioner for Data Protection (1978-1983) and later Minister of the Interior of the state of Schleswig-Holstein (1988-1995). He headed the North Rhine-Westphalian government commission on »Public Service of the Future – the Future of Public Service« (2001-2003) and represented the German Federal Government in the first proceedings to ban the right-wing political party NPD before the Federal Constitutional Court (2001-2003). Throughout his academic and political career, he maintained numerous professional contacts with various media.

*Translation: Kerstin Trimble*



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