

Research Paper

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Internal freedom of the press revisited

On the current need for regulation of media ownership power from the perspective of German media journalists

Abstract: In 2021, the Ippen vs. Reichelt case in Germany brought the issue of internal press freedom back into the public consciousness. The last time this issue was widely and controversially discussed was in the 1960s and 1970s and a renewed debate on the demarcation of competencies between publishers and editors and the regulation of ownership power in journalism remains to be seen. This article traces the lines of conflict from the heyday of the Statute Movement [*Statutenbewegung*] to a re-framing of internal press freedom within publishing houses over the past few decades: from an instrument of democratizing media outlets to one for assuring journalistic quality. Lastly, this article discusses the findings of a qualitative survey of twelve German media journalists on their political opinions and ideals regarding the powers of media owners and managers. The interviewees stated almost unanimously that ownership power has been eroding during the current process of the digital restructuring of the public sphere. However, different conclusions were drawn regarding the internal freedom of the press within publishing houses: Some saw editorial statutes and editor representation as superfluous or counterproductive, while others viewed these as desirable measures for either defending workers' rights or empowering publishers, as they would give employees a greater co-responsibility for their publishing house. Only a few respondents stated that they would like to see an intervention via current media policies. Specifically, a demand for eliminating the publisher's privilege to set an overarching political direction for a medium [*Tendenzschutz*] and a vision of a media landscape without privately owned media were articulated.

1. Introduction

In October 2021, the digital platform *Übermedien* brought the topic of internal press freedom (back) into public consciousness with a journalistic bang: A research team from the »Ippen Investigative« group had spent months gathering explosive details on the management style of Julian Reichelt, the editor-in-chief of Germany's influential tabloid *Bild-Zeitung* and put together an article. The article was ready for publication, having already been subjected to an in-house legal review. But then publisher Dirk Ippen stopped the article from being published. He said the reason behind his decision was to avoid the appearance of wanting to harm their competitor, Springer Publishing, out of economic interests. The four researchers, Daniel Drepper, Marcus Engert, Juliane Löffler, and Katrin Langhans, protested this decision in a letter to Ippen. His veto, as *Übermedien* put it, »contradicts all rules of independent reporting. The decision is an absolute violation of the principle of separation between the editorial office and publishing house« (NIGGEMEIER 2021). A short while later, the researchers accepted the »Journalists of the Year 2021« award from *Medium* magazine. At the same time, they took new jobs at the investigative research association of public broadcasters NDR and WDR with the national newspaper *Süddeutsche Zeitung* as well as at the leading news magazine *Spiegel*.

In the case in question, which had a national impact, the transparency created by media journalism had a sufficiently cathartic effect. The four courageous and rebellious journalists emerged strengthened after the conflict with their employer. However, at the regional and local level, similar cases are more likely to be to the detriment of employees and the public, according to research by the investigative news outlet *Correctiv*. After the Ippen case, dozens of colleagues from local journalism were interviewed:

»Those who talk about various conflicts with their publishers and other people in positions of responsibility at publishing houses tell of publishers who exerted influence on their stories. Publishers demanded unplanned stories or stopped texts ready for publication. They tell of reporters who, out of anticipatory obedience, no longer approached certain topics.« (SACHSE 2021)

Even before that, two scientific surveys of daily newspaper editors from 2004 and 2013 suggested that the owners' influence on the editorial work had become more significant over the past few years. Additionally, more consideration was given to advertisers in news coverage and editors' overall feared losing their jobs; thus their willingness to adapt increased (KEPPLINGER et al. 2004; *P-Magazin.de* 2013).

It is obvious to relate these findings to the newspaper industry's decline in advertising and circulation and the increased pressure to economize since the

beginning of the 2000s.¹¹ It is also apparent to ask why there is no more public debate about media policy options for safeguarding the internal freedom of the press.

2. Internal Freedom of the Press: Concept, discourse history, and regulation development

In the traditional sense, the concept of the »freedom of the press,« as well as freedom of broadcasting and freedom of the media across genres, means having a right of defense against the state. It usually refers to the freedom of media organizations from external influences guaranteed in the Federal Republic of Germany. Some examples include the ban on censorship, the right to refuse to testify, and the ban on editorial searches. Hence, on one hand, the freedom of the press is an »external« freedom. On the other hand, the concept of the »internal freedom of the press« focuses on the internal constitution of media organizations. It poses the question of how »the public responsibility of making independent journalism (...) can be fulfilled by dependent journalists« (SKRIVER 1970: 7) who work in an editorial hierarchy and under certain ownership conditions. British journalist Neal Ascherson says this idea is underpinned by the following thought: »Mass media cannot be a limb of democracy without being democratic themselves« (quoted in SKRIVER 1970: 20).

The debate over the internal order of press enterprises in Germany is rooted in the Weimar Republic. However, at that time, internal freedom of the press only meant independence from commercial influences. The understanding of the term expanded during the post-war period. It went in the direction of autonomy from hierarchies within institutions for journalists. This debate began at the end of the 1950s with an inaugural lecture printed in the research journal *Publizistik* by the legal scholar Walter Mallmann who criticized the fact that freedom of the press was widely understood only as freedom of the publisher and was pushed »into the shadow of the freedom of trade and property rights« (MALLMANN 1959: 330). Mallman wrote: »The first bearer of this fundamental right [of free journalistic expression of opinion – authors' note] is the one whose task is to express opinions through the medium of the press. That person is the journalist« (ibid.: 328). Subsequently, it became »now a matter of delineating competencies between publishers and editors, as well as the

1 One study that challenges this hypothesis in its findings is the study »Journalism in Germany« I and II: The share of journalists who ascribe a rather great or very great influence on their work to the »publisher/publishing house/director/supervisory board« sank from 24 percent in 1993 to 12 percent in 2005. Additionally, the influence on journalists by editors-in-chief appears to have sunk from 43 to 32 percent and of department heads from 45 to 39 percent (WEISCHENBERG et al. 2006: 148).

journalists' rights to information, participation, and co-management for decision-making« (HOLTZ-BACHA 1998: 73).

During the '68 riots, with the idea of democratizing all areas of life (symptomatically represented by Chancellor of the Federal Republic of Germany Willy Brandt's 1969 slogan »Let's dare more democracy«,) a striving for autonomy was also awakened in journalism. Between 1969 and 1974, the most visible signs were the establishment of editorial statutes to regulate the interaction between owners and editors and the founding of editorial committees or editorial boards to represent the newsroom in 20 newspaper and magazine publishing houses (STOCK 2001: 21). However, this so-called Statute Movement, which relied on voluntary agreements between the respective publishers and editorial offices, soon lost steam and was weakened due to an increasing resistance from publishers, who often revoked arrangements that had been made. At the time, Erich Kuby (1983: 87), staff member of the national news magazine *Stern*, had this to say about the particularly far-reaching statute in *Stern*, which was adopted in 1969 and terminated by the publishers at the end of 1979:

»The statute carved out an arena for democracy, into which the stakeholders who were determined to fight sometimes marched, but in the end did not fight. If there was a fight, which was a total of three times, the winner was a foregone conclusion, and the statute was not worth the paper on which it was distributed.«

In 1998, thirty years after the start of the Statute Movement, editorial statutes were still in effect in twelve German print newsrooms (STOCK 2001: 21). Hopes for a national press law framework with corresponding regulations for a co-management for decision-making between newsroom and publisher had long since been dashed (HOLTZ-BACHA 1997: 288). These hopes had been nurtured in a State of the Union addresses by Chancellors Willy Brandt and Helmut Schmidt and through bills that never became law. Moreover, the vigor of East German actors in journalism and media politics, for whom the internal freedom of the press was a particular concern after the Peaceful Revolution of 1989, was largely dissipated by the realities of the lobbyism by West German publishers (TRÖGER 2021; STOCK 2001: 25; HOLTZ-BACHA 1998: 79). Roughly speaking, journalists and their unions have lost the battle against the clause in the Works Council Constitution Act that gives publishers the privilege to set an overarching direction for the medium and exempts them from giving employees a seat at the table for that decision [*Tendenzschutzparagraf*].^[2]

Things developed differently in public broadcasting, where operational co-management is not restricted by the same clause [*Tendenzschutzparagraf*], but

2 Incidentally, a new analysis of the struggle of the German Journalists' Union [Deutsche Journalisten-Union, dju] regarding the internal freedom of the press and the political regulation of media between 1962 and 1979 demonstrated that the interest of the German Trade Union Confederation (the umbrella organization of the dju) to be portrayed positively in news media obstructed this struggle (LÖBLICH/VENEMA 2022).

by the director principle, which grants the director responsibility over programming, and the unique role of broadcasting councils in co-determining programming (HOLTZ-BACHA 1998: 76). Since 1987, editorial statutes and editorial boards have been established in almost every public broadcasting station; the editorial boards in turn are networking with each other in the Working Group of the Public-Service Editorial Committees [*Arbeitsgemeinschaft der öffentlich-rechtlichen Redakteursausschüsse, AGRA*]. The respective state legislature usually stipulates the structures for individual broadcasters. (The West German state of North Rhine-Westphalia was a pioneer with the WDR Act of 1985; an older overview is provided by Stock 2001: 68). An editorial statute and editorial committee are still missing for the public broadcaster in Bavaria, Bayerischer Rundfunk, as well as for the East German broadcaster Mitteldeutscher Rundfunk. For a conflict situation, the latter thus far has only established for itself a weak »Advisory Board for the Director for the Resolution of Journalistic Conflicts« [*Beirat der Intendantin zur Lösung publizistischer Konflikte*] (whose legal basis rests on an instruction by the director).

3. A paradigm shift in justification: From democratization to quality assurance

From the late 1960s to the end of the 1970s, the topic of the internal freedom of the press produced an amazing body of nuanced scientific literature. This included dissertations (KELLER 1971; BRANAHL 1979), legal opinions and treatises (KÜBLER 1972; WEBER 1973; HOFFMANN-RIEM 1979), surveys (NOELLE-NEUMANN 1977), pamphlets (SKRIVER 1970), anthologies (WILFERT 1968), and conference documentation (*Loccumer Protokolle* 1970). The political biases of the writers seem clear if one were to read these texts today. The writers usually aligned their beliefs along the black-red-yellow colors of Germany's three major political parties in the federal parliament. As Branahl (1979) pointed out, the positions on the internal freedom of the press usually rested on either a »liberal doctrine« (»freedom of the press as an individual right of defense against the state«), a »conservative interpretation« (»guaranteeing freedom of the press as a guarantee of the private-sector structure of the press industry«), or a »welfare-state interpretation of fundamental rights« (»freedom of the press as a right of participation«).

Accordingly, Wolfgang Hoffmann-Riem (1979) saw it as the task of the state to safeguard areas of autonomy for journalistic work to guarantee fundamental rights for producers of news media and media consumers. Hoffman-Reim, who was a nonpartisan lawyer, became head of the department of justice in the state of Hamburg, whose senate was led by the Social Democratic Party (SPD) at the time. Later on, the SPD's endorsement led him to become a justice of the Federal Constitutional Court of Germany. On the contrary, Werner Weber, a jurist

from Göttingen (1973: 7), worried that the »handling of fundamental rights [...] had become noticeably less objectionable in recent years.« He believed the regulations envisaged would do »a dubious and in part even fatal service« (p. 8), and indeed, would even »manipulate« the freedom of the press as defined by the Basic Law for the Federal Republic of Germany [the constitution of Germany – translators' note]. Incidentally, his publication was based on an expert opinion commissioned by the Federal Association of German Newspaper Publishers [Bundesverbandes Deutscher Zeitungsverleger]. Elisabeth Noelle-Neumann, who famously networked with political elites from the Christian Democratic Party (CDU), argued, based on survey data from the Allensbach Institute, that journalists were quite content and that reform efforts would destroy the »internal partnership within newspapers.« Noelle-Neumann stated: »The ties between newsroom and the publisher have been cut, and publishers are labeled as capitalists bent on maximizing profits« (NOELLE-NEUMANN 1977: 107). The printing of her publication was financed by the Association of Foundations of the Press [Stiftervereinigung der Presse] and the foundation of the conservative newspaper *Rheinische Post*.

If these discursive struggles for internal freedom of the press seem outdated today, it is probably because they stemmed from the democratization ideas of the '68 movement and were justified by participation geared toward the public good. Most of the argumentative skirmishes in texts from this period also referred to this. Even though literature since the 1980s has been sparse, it still shows a paradigm shift in the rationale for the internal freedom of the press. It is no longer primarily about the individual liberties of employed journalists but quality assurance. Even before the 1980s, this argument appeared occasionally. The debate at the end of the 1960s was partly concerned with the soaring concentration of the press in the Federal Republic of Germany. It was in the 1980s that the issue of safeguarding diversity reemerged in connection with the regulation of newly licensed private broadcasting services. In the early 1990s, European Union (EU) institutions raised the issue of »pluralism and media concentration« and briefly threatened the protection of the publisher's privileges [*Tendenzschutz*] with plans to safeguard internal media freedoms (HOLTZ-BACHA 1998). Moreover, in 1991, the German Federal Constitutional Court confirmed in a ruling regarding the WDR Act and the State Broadcasting Act of North Rhine-Westphalia the media politics of the Social Democratic Party, which favored shared decision-making, and made clear that editors were entitled to a voice in decision-making »not in the interest of their professional self-fulfillment or to assert their subjective views but in order to fulfill their function as mediators. [...] The participation of editors remains tied to the principle of diversity« (BVerfG 1991).

Just as the discussion on journalistic ethics has evolved into a debate on journalistic quality in order to be more relevant to practices in the field and/or to

appear more zeitgeisty (THOMASS 2016: 543), so too has the internal freedom of the press acquired a new argumentative basis that has been aligned with a more fashionable debate over quality. Hence, the lawyer and editorial board consultant Martin Stock wrote a book titled *Innere Medienfreiheit – Ein modernes Konzept der Qualitätssicherung* [Internal freedom of the press – A modern concept of quality assurance] to revive the topic under these new premises. Stock wrote that in order to live up to such quality standards as professionalism, relevance, and acceptance, it would be necessary to ensure »systematic preliminary decision-making and positioning« and »structural premises«; the internal media freedom would be an »effective measure to provide quality« (STOCK 2001: 15). At first glance, the topic has been given a more apolitical framing, albeit without yet having noticeably promoted its importance.

4. Survey of German media journalists: Method and sampling

We began the project in the summer of 2020 at the University of Leipzig as part of a methods seminar. We wanted to clarify the extent to which German media owners and media managers exerted influence on journalism within publishing houses and on society at large, including the means by which they exert this influence. Additionally, we were interested in who the most influential people were and whether current media policies and legal frameworks are satisfactory or need to be changed.

We attempted to answer these questions through qualitative semi-structured interviews with German media journalists, who can be considered experts on the topic as they are close to the field of interest due to their investigations and background discussions – at least closer than media experts, for instance in communication studies. We concluded that we had reached saturation after having conducted twelve interviews. Table 1 provides an overview of the media journalists who we interviewed between July 7 and December 6, 2021. The main criterion for the participants was having at least eight years of professional experience in media journalism. Otherwise, the sample was compiled with the aim of obtaining the greatest possible variance through various aspects such as:

- Men and women;
- Journalists from general interest media and media specialized in media journalism as well as media journalism aggregators;
- Full-time employees and freelancers respectively self-employed journalists;
- Journalists from public and private institutions, as well as those supported by unions and churches;
- Journalists from media with different editorial stances, ranging from liberal-conservative to left-wing.

We reasoned that participants with such diverse background would provide the greatest possible diversity of perspectives to illuminate the topics of interest. The fact that important news media are not represented in the sample arose for different reasons. Some of the news media did not have any media journalists with suitable professional experience at the time of the survey (as media journalism is generally not popular among major news media, cf. GRAF 2022 and HAARKÖTTER/KALMUK 2021: 6). Some inquiries were left unanswered or were rejected.

Table 1. Sample of interviewees*

Name	Medium	Position	Years in Media Journalism
Bouhs, Daniel	RBB radio eins <i>Das Medienmagazin</i> and other outlets	Freelance Journalist	20
Grimberg, Steffen	MDR 360G and other outlets	Author	25
Hilker, Heiko	<i>DIMBB-Medien-News</i>	Publisher and Editor	9
Huber, Dr. Joachim	<i>Tagesspiegel</i>	Head of Media Department	32
Leiterer, Annette	NDR <i>Zapp</i>	News Director	12
Meier, Christian	<i>Die Welt</i>	Media Editor	21
Niggemeier, Stefan	<i>Übermedien</i>	Shareholder and General Manager	25
Pitzer, Sissi	BR <i>Das MedienMagazin</i>	Senior Editor	37
Renner, Kai-Hinrich	<i>Berliner Zeitung</i>	Editor	28
Roether, Diemut	<i>epd medien</i>	Senior Editor	19
Schuler, Thomas	<i>Übermedien, Der Spiegel, taz, Correctiv</i> and other outlets	Freelance Journalist	30
Wenk, Karin	<i>M – Menschen machen Medien</i>	Senior Editor	31

*All data refer to the time of the interview. Three interviewees (Daniel Bouhs, Annette Leiterer, and Kai-Hinrich Renner) are no longer active in media journalism.

Ten interviews were conducted online via Zoom and two in person at the Institute for Communication and Media Studies at the University of Leipzig. The duration ranged from 36 to 82 minutes. No participant took up our offer of anonymity. The transcripts of the interview recordings were slightly copy-edited by the researchers for better readability and authorized by the interviewees.

5. Survey findings

We first discuss the interviewees' responses regarding the most powerful media owners and managers, whether they instrumentalized their newsrooms politically or economically, and in what other ways they influenced journalism and society. At the end of the interview, we present the interviewees' ideals for media policy.¹³ Roughly summarized, the interviewees identified the most powerful individuals in the private sector, because they saw that less power was concentrated in the hand of individuals in the public-service sector. Interviewees stipulated that political influencing in newsrooms is the exception rather than the rule. Examples cited mainly pointed to the Axel Springer publishing house and publishers of private owner-operated regional newspapers. Participants said that the owners' interest in journalism today would be primarily of an economic nature and corresponding pressure would be passed down to the editorial level more so than ever before (these results will be presented in detail in Krüger et al. 2023).

After the interviews first addressed the empirical and observable level, we also asked the normative question: »Generally speaking, do you think that media owners in Germany have too much power, or perhaps too little? Is there anything that needs to be changed in terms of media policy or media law? Or is everything fine just as it is now?« We prompted interviewees with the keyword »internal freedom of the press« if the answer did not already touch on this aspect.

5.1 Erosion of ownership power during the digital structural change of the public sphere

The majority of respondents did not see any current need for regulating media policy or media law and said the current situation was basically fine and/or owners and managers were already in a weakened position due to the current digital structural change of the public sphere. Annette Leiterer, the then newsroom director of a public television program for reporting on the media industry, *NDR Zapp*, said:

»I don't get the impression at all that it's currently easy for media managers to do their business. I don't think your question is quite current anymore. For example, the influence of someone like Rezo, a famous German Youtuber. He doesn't own a media group, but he has an enormous reach and publishes very opinionated articles with a clear political message. And in that respect, he has a very, very big impact. [...] So much has shifted that when

3 We would like to remind readers that the interviews took place before the scandal surrounding the (now former) director of the public Broadcaster for Brandenburg-Berlin (RBB), Patricia Schlesinger, occurred. The controversial case of the publisher Dirk Ippen and the former editor-in-chief of the national tabloid *Bild*, Julian Reichelt, fell in the middle of our data collection period.

we talk about who pushes public opinion, we have to deal a lot more with algorithms and the corporate politics of tech giants.«⁴

Steffen Grimberg, author of the public broadcast program MDR 360G which reports on media issues, also found the question a little outdated. He also considered that the balance of power had »shifted«:

»This may have been an issue 20 years ago and perhaps even more so 50 years ago. It's unfortunate, but the emergence of new players like Google and Company has shifted this issue massively. I think it would be ill-advised to now strive for the ideals of the 1970s, especially along the lines of what some of the older generations of social democrats sometimes still do—for example, the unbundling of large newspaper associations and so on. There's no question that they have disadvantages. I'm afraid that »no alternative« has become a non-useable phrase, but we are there in a certain way. We have reached the end of the line, at least within the existing system. One thing is for sure; we will undoubtedly see much more consolidation in the press sector.«

Similarly, Christian Meier of the nationally distributed daily newspaper *Die Welt* opined:

»[...] I don't think media owners have too much power in Germany. Moreover, the power of opinion is much more broadly distributed today than it was 30, 40 years ago, simply due to the digital revolution. Digital platforms are increasingly determining which media sources have the greatest reach, thus influencing opinion-forming. Regarding media policy, all publishers should be able to have a framework to produce independent journalism.«

Kai-Hinrich Renner, who was still with the *Berliner Zeitung* at the time of the interview, said pointedly:

»I think the power of German media owners is eroding quite a bit right now. This has to do with the digital revolution, the rise of social media. Media power is now going in a completely different direction.«

The power of GAFAM, an acronym for the five largest IT companies Google (now Alphabet), Apple, Facebook (now Meta), Amazon, and Microsoft, was also emphasized by freelance journalist Thomas Schuler, who also said that nevertheless the power of media owners must be limited:

»How should a meaningful regulation of the media and their owners look like? That's an important question, and I can't answer it quickly. I can just say one thing: It is urgent that politics, academia, and journalists continue to address this question. It has become even more difficult with Google and Facebook, but not obsolete.«

He also recalled that at the beginning of his journalistic career reporting on media issues 30 years ago, »the direct influence on the content and the associated abuse of power were much more strongly perceived and discussed.« However, the zeitgeist has changed, he said. Our question about desiderata of media policy in this regard

4 Cf. »Pact with the devil«, an interview with Henning Eichler in this issue.

»[...] is fully understandable in the context of your project. Otherwise, you would almost have to apologize for this question or explain it. My point is that such questions used to be perfectly normal for media journalism. Today they are rarely encountered.«

Schuler's observation of the changing issues in media journalism points to a larger shift in the political-cultural hegemony, which will be discussed in the final section.

5.2 Media journalism as a substitute for media policy

Daniel Bouhs, who worked as a freelance journalist at the time of the interview, stated that German media owners »exercise relatively little concrete influence« and that there are »much worse conditions in neighboring countries.« Therefore, he said:

»I don't know whether anything needs to be changed in terms of media law. Of course, I think it's important that newsrooms make it public when they are affected by journalistic abuse of power. Of course, we don't know what we don't know. But we have seen from the example of [publisher Dirk] Ippen that if an attempt is made to prevent reporting with a specific reference to economic interest, it is quickly exposed. And as long as there is a journalistic boomerang effect, I believe in the end things will work out well in this country.«

Like Bouhs, the *Übermedien* CEO Stefan Niggemeier also relied more on the transparency produced by his own profession than on state intervention:

»I'm a media journalist who, in a sense, is confident in thinking that politics is rarely the right contact to talk about this. Instead, I think what really helps is when media institutions raise the issue among themselves and when it gets critical attention in other media. That happens far too rarely. [...] What helps best with a sensitive topic such as journalism, is when the system of journalism takes care of itself.«

Thomas Schuler spoke about possibilities of increased self-regulation within the industry and about media journalism, which he said was currently placed in a weak position:

»Ideally, media control each other through economic competitive bids and through journalistic control. As it should be. However, since critical reporting on media issues, which is dedicated to questions of power and its abuse, only happens rudimentarily and has been having a hard time for years, this idea remains mostly a theoretical one. With a few exceptions, I can hardly recall any media stories that systematically addressed these questions as well as questions about where and how owners intervene and manipulate the presentation of facts according to their wishes.«

5.3 Pros and cons of editorial statutes and editorial staff representations

Diemut Roether is the editor in charge of *epd medien*, a press agency service operated by the Protestant Church. For Roether, the Ippen vs. Reichelt case illustrated that on the one hand »journalists, if they join forces and act in solidarity, can certainly achieve something even in opposition to the owners.« On the other hand, answering the question if anything needs to change in regard to media policy, Roether recalled:

»Difficult question. [...] There were editorial statutes in the 1970s. It was, I believe, really rather a good movement to guarantee journalists a certain independence. Even in the private companies, which have the privilege to set an overarching direction for the medium [*Tendenzschutz*].«

She said she finds »anything that strengthens the internal freedom of the press is good, as it also strengthens journalists in their freedom of opinion.« In response to the argument that the owners themselves were under great pressure today due to digitalization and GAFAM, she stated:

»No, I don't think the answer can be that owners need to be strengthened even more, given that large corporations sort of dominate the market on the internet. Of course, you need to make sure that the owners can somehow do their work on the economic level. But I honestly don't believe that weakening the internal freedom of the press will strengthen the business model, rather, I imagine it to be more so the other way around.«

This was confirmed by Joachim Huber from the nationally distributed daily newspaper *Tagesspiegel*. He previously worked at the regional daily newspaper *Mannheimer Morgen*, where an editorial statute has given the editorial staff a say in the appointment of chief editors and department heads since 1969.⁵¹ Huber stated:

»I have to say, I found that to be a very, very good measure because it's not the case that you then want to have the one you like best and are most sympathetic to. Rather, in the end, the most capable one comes out on top. Otherwise [without a statute, like at the *Tagesspiegel* – authors' note], the appointment is naturally placed solely in the hands of the publisher. Now, I believe that we have a very good publisher. But I'm sure that there are also other ones. Especially regarding stories of succession – one person founds a publishing house, then he passes it on and then it is passed on yet again – It's not necessarily a given that the third person in the line of succession is a good publisher or understands the business. And that's where such supportive measures like an editorial statute help a lot.«

5 In 1996, the publishing house of *Mannheimer Morgen* terminated the editorial statute, which had been one of the first in Germany to be negotiated with the newsroom. But the council of the newsroom fought back; the Higher Labor Court [Landesarbeitsgericht, LAG] declared the termination invalid, and the Federal Labor Court [Bundesarbeitsgericht] confirmed that the LAG had jurisdiction to make that decision (VON OLENHUSEN 1999).

Such participation rights also foster a sense of shared responsibility for the fate of the newspaper, Huber further explained:

»You also think a lot more about what a newsroom is supposed to achieve when you have such a statute. Because you also have to take care of it yourself: What do we want? What do we do? What do we leave out? I found that very, very helpful. But it took more time. It costs time because you have meetings and so on, but it makes you much more aware of what's happening with a newspaper or what a newsroom wants to do. So, anything that supports and strengthens the internal freedom of the press must always be promoted. But publishers often think that editorial statutes are against them. But indeed, they are directed at the newsroom.«

Kai-Hinrich Renner agreed. At the time of the interview he was an editor for the daily newspaper *Berliner Zeitung* which had an editorial statute between 2006 and 2017 and, since 2019, has had a declaredly interventionist owner with Holger Friedrich (cf. FRIEDRICH 2021). Renner said: »I also think that a sensible editorial statute does not harm a publisher in any way.« At the time of the interview Renner was the editor at the *Berliner Zeitung*. And he stated for the record:

»Such a debate would be important. In many newsrooms the internal freedom of the press is nowhere near enough. The miserable economic situation of some publishers makes the situation even worse when for example certain issues are no longer allowed to be covered out of consideration for the few remaining advertising customers.«

In this case, more participant rights would be advisable, but, in reality, they would be difficult to implement:

»Editorial statutes would certainly help. Though, I believe that if you don't have an editorial statute by now, you won't get one any time soon. The influence of unions within media companies is relatively low. The owners are not willing to accept editorial statutes. In light of the structural crisis in the media, the prevailing mentality in most houses is that there is no need for experiments, but instead the reins should be pulled tighter.«

According to Renner, this was »a very short-term, economic mindset of the publishing side, which is not necessarily conducive to new ideas.«

Karin Wenk from the magazine *M – Menschen machen Medien*, which is owned by the German United Services Trade Union [*Verdi*], views editorial statutes and editors' representations as »helpful«, above all so that editors could »defend themselves« against the publishers' privilege to set an overarching direction for the medium [*Tendenzschutz*]:

»For many, many years, unions have repeatedly pleaded for such editors' representation and editorial statutes. If I'm informed correctly, there are still five or six [in the private media sector – authors' note]. Some are put on hold. We used to think that was much more favored or pushed and that editors would give themselves such statutes. That continues to be a hard nail to hammer.«

In contrast, Christian Meier of the daily newspaper *Die Welt* sees less potential in editorial statutes for solving the potential problem of limited diversity of opinion in newsrooms:

»Internal freedom of the press is always a big issue. If a newsroom thinks it has to have an editorial statute, they should stand up for it. Basically, what is needed are self-confident newsrooms and the principle that there needs to be a broad spectrum of opinions in a newsroom, which does not have to contradict the publishers' privilege to set an overarching direction for the medium [*Blattlinie*] on a particular topic. I mean, what is needed are strong editors-in-chief, independent editors-in-chief, in cooperation within a strong newsroom. That is precisely what makes for strong editors-in-chief, when they also allow opinions that oppose the publishers' editorial direction on a topic [*Blattlinie*]. In my opinion, there's a need for action wherever the free development of media companies is supposed to be unnecessarily restricted.«

Incidentally, this is a position reminiscent of the aforementioned publication by Noelle-Neumann (1977: 9). It featured the editor of the national daily newspaper *Frankfurter Allgemeine Zeitung* (FAZ), Kurt Reumann, who had received his doctorate under Emil Dovifat⁶, and had worked with Noelle-Neumann at the University of Mainz. Reumann wrote in the preface, »that ultimately it is not statutes and organizational regulations that guarantee the freedom of the editor. More important, assuming talent, are solid trainings and personal courage.«

5.4 Further-reaching media-policy aspirations

Two interviewees answered our question about their wishes regarding media policy and regulation of ownership power by referencing »non-profit journalism« – meaning the currently discussed demand that the state should recognize organizations as non-profits and provide them with tax benefits if their purpose is the production of non-commercially oriented journalism.⁷ MDR author Steffen Grimberg explained this kind of circumvention strategy:

»This makes it all the more important to look at how journalism can be financed and safeguarded beyond today's existing power relations. And that is where we would open a new can of worms also having to do with power in one form, namely the forms of doing non-profit journalism. Also, the other modes of distribution, some of which already exist such as *Correctiv* [an investigative journalistic research center funded by

6 Emil Dovifat was a journalism studies scholar and one of the founders of journalism studies in Germany. He was also the doctoral advisor of Elisabeth Noelle-Neumann [translators' note].

7 In 2021, the current federal government included the topic in its coalition agreement. More details can be found at the Forum Gemeinnütziger Journalismus [Forum of Nonprofit Journalism]: <http://forum-gemeinnuetziger-journalismus.de/>.

donations – translators’ note], but which always has to pull some tricks in order to have their non-profit status recognized or to be able to tap into certain pots of funding.«
 Thus, media policy should make it possible for professional journalism to increasingly be produced outside of large, financially strong, and hierarchical companies. Sissi Pitzer from the Bavarian public broadcaster Bayerischer Rundfunk put it this way: »In other words, how can I finance independent journalism beyond advertising money and subscriptions? In my opinion, that’s a very important field.«

Two interviewees expressed even more far-reaching ideas concerning the power relationship between owners and employees in journalism. Karin Wenk, from the trade union magazine *M* stated: »We must finally manage to eliminate this unbearable publishers’ privilege to set an overarching direction for the medium [*Tendenzschutzparagraf*].« She said, this had also been demanded by the union IG-Medien, and now also the union Verdi, for a long time. »Well, then the *Bundestag* will have to amend the Works Constitution Act.« According to Wenk, if this privilege providing paragraph would no longer be applied to media companies, it would have less of an effect on the publishers’ authority to set guidelines for content than on the current limitation of editors’ participation in business management decisions:

»I think that an owner or publisher of a newspaper will always give a direction. So they don’t need a protection of that privilege; they really don’t need a paragraph for that. Springer’s corporate principles can also be written into employment contracts without the privilege protection paragraph [*Tendenzschutzparagraf*]. However, this publishers’ privilege protection paragraph enables the media company to keep its economic data under lock and key. The Workers’ Council in another company can request such economic figures. But in the case of companies with the publishers’ privilege protection in place, the companies can say, no, this falls under the publishers’ privilege protection, and hence they obscure or conceal the data.«

Finally, Heiko Hilker, publisher of the daily newsletter DIMBB-Medien-News and former media policy spokesperson for the parliamentary group of the party »Die Linke« in the Saxonian state house of representatives, fundamentally questioned the power of private ownership over media, since the profit orientation of journalism created a conflict of interest with its independence. Regarding the protection of publishers’ privileges [*Tendenzschutz*], he said:

»The owners can specify a direction. And here the motives don’t matter. You can talk about whether it’s interference, but that doesn’t go far enough for me. For me, the question of who the media should serve is a question of principle. Privately financed media are part of a capitalist society. But how did Marx put it? The first freedom of the press is not to be a business.«

Even if it appeared difficult to imagine today – politics could change the framework to ensure freedom from the constraints of the market:

»I have to create majorities for other legal framework conditions. That is the way in a democracy. It can be stipulated that no owner may hold more than five percent of a media company's shares. I can promote cooperative media companies [...]. We can demand compliance with quality standards and obligate media companies to be more transparent.«

When asked whether he could imagine a law stating that there must be no private media, Hilker recalled that »there was a time in Germany when there was no private radio, no private television. That was changed in the eighties. One might ask, why was this pushed through? [...] The legislative has a lot of freedom to shape things. It just needs to utilize them.«

6. Conclusion and Reflection

The survey of experienced German media journalists revealed a broad picture of political wishes and assessments, some of which can be viewed critically. Some interviewees argued that more than 50 years after the heyday of the Statute Movement, the question of internal press and media freedom has become outdated. The structural shifts in the media world due to digitalization were too fundamental, reducing the power of media owners and managers. Other interviewees, however, argued that editorial statutes and editorial representation committees did not necessarily mean a weakening of publishers. They said they could also motivate employees to assume more co-responsibility for their own company – a topic that future empirical research could analyze.

Generally, the relevance of regulations regarding the internal freedom of the press varied. While the liberal-conservative side questioned whether editorial statutes were to bring more journalistic freedom, the trade union side clearly supported such statutes as a means of emancipation and called for the elimination of the protection of the publisher's privilege to set the direction for the medium [*Tendenzschutz*]. One interviewee, who belonged to the left spectrum, mentioned the perspective of a media landscape without private ownership.

For some interviewees, the creation of publicity through reporting appeared to be a more effective means against the abuse of power by owners rather than changing the legal framework. This is possibly an effect of the specific perspectives of media journalists. Other interviewees referred to tax benefits for non-profit journalism as a desideratum of media policy. This is a topic that is currently in vogue and may indeed have the potential to distribute ownership power in journalism more broadly in the long term but would not solve the immediate problem of dependent employees working in hierarchical publishing houses. This could be an agenda-setting effect of current media policy debates (= media agenda) on the problem awareness of the respondents as »prosumers« (= audience agenda). In other words, what is not being discussed is not thought about in detail.

In any case, the fact that the topic of the internal freedom of the press is not all the rage right now seems, from our point of view, anything but justified or natural. Rather, it is linked to social power relations and the changing hegemony of ideas and ideologies. The heyday of the Statute Movement around 1970 was at the same time the heyday of the »social democratic consensus,« which was replaced by a »neoliberal paradigm« in the following decades. Such a change in the »political-cultural hegemony« renders other perspectives and questions respectively self-evident or outlandish and in need of justification (VOLKMANN 2006: 261). The loss of influence of the trade unions associated with the implementation of neoliberalism and the ongoing lobbying of publishers against internal press freedom and for the protection of publishers' privileges [*Tendenzschutz*] are probably more causal to a slowing down of the statute movement than an alleged irrelevance of the topic due to the digital transformation, or as Holtz-Bacha suspected some time ago, due to the slowing down of the press concentration process or overlapping with other problems such as the introduction of new technologies for printing and editing (HOLTZ-BACHA 1998: 76). How else could it be explained that *during* the digital structural change of the media landscape and *during* the technological upheavals since the 1980s, many public broadcasters adopted new editorial statutes, because the respective state governments instructed the directors by law to establish one, the most recent example being the Southwest German broadcaster SWR in 2014?^[8]

Internal media freedom is a question of political will. Whether the discussion about this »third rail topic« [*»Glimm and Zunderthema«*] (KULL 1995: 551) returns and how it will be framed – be it as »democratization,« as »quality and pluralism assurance,« or perhaps even as »co-responsibility of employees of media houses in economic crisis« – depends on the discussants, their positions of power, and the political-cultural hegemony.^[9]

In the meantime, yet another framing lends itself to the debate. During the incident surrounding the misconduct of Patricia Schlesinger, the then director of public broadcaster Rundfunk Brandenburg-Berlin (RBB), in the summer of 2022, another benefit of editorial participation in management decisions became apparent. While the top management collapsed under the pressure of the investigations and RBB's Broadcasting Council lost its chairwoman, the journalistic staff of the institution became visible as an independent agent during the crisis. The editors representative committee publicly demanded a resignation of the management and a far-reaching structural change at the company, in which the

8 As documented in the editorial statute of the SWR, § 1: <https://www.swr.de/-/id=15257172/property=download/nid=10563098/154heup/index.pdf>

9 Recently an influential actor brought up the topic again: In September 2022, the European Commission presented the draft for a »European Media Freedom Act« with a passage which is supposed to obligate publishers to set the »overall editorial line« of the medium together with the newsroom, and subsequently stay away from journalistic work. Publishers in German reacted with outrage (BRANDT 2022).

employees would have to be involved (Zeit Online 2022). In this way, the journalists not only assumed responsibility for further development of the institution, but also prevented more than a few audience members from perceiving the RBV as synonymous with its directors. The journalists ensured trust in their journalistic integrity by actively distancing themselves from the discredited hierarchies of their own institution and by critically investigating them and publishing about them. The establishment of editors' representation councils can thus also be understood as a »confidence-building measure vis-à-vis the audience« – and thus also acting as a contribution to a resistant, resilient journalism (cf. Daniel/Weichert 2022) in times of rampant media skepticism.

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