

Essay

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An ideal hobby garden (for me)

Communication studies' forays into media regulation

It could not be more absurd. Hundreds of people work on the committees of media regulation – press councils, radio councils, television councils, audience councils, media councils – and in ombudsman's offices in Germany, Austria, and Switzerland, but only around a dozen of them are experts in communication studies and media law. Imagine if only five percent of judges were lawyers! In Austria, Matthias Karmasin (Klagenfurt), member of the Audience Council of Österreichischer Rundfunk (ORF), is the only representative of communication studies far and wide. In Germany, Barbara Thomass (Bochum) was the only media studies expert ever to have sat on the Television Council of Zweites Deutsches Fernsehen (ZDF). When it comes to radio councils, only Mitteldeutscher Rundfunk (MDR) has any representative of the field at all, namely Christopher Buschow (Weimar).

In the media councils, expertise in communication studies is currently brought to the organs of media regulation by Johanna Haberer (Erlangen-Nuremberg) in Bavaria, Georg Ruhrmann (Jena) in Thuringia, Markus Heinker (Mittweida) and Rüdiger Steinmetz (Leipzig) in Saxony, and Werner Schwaderlapp (Cologne), Hektor Haarkötter (Bonn-Rhine-Sieg), and Bettina Lenzian (Cologne) in North Rhine-Westphalia. In Switzerland, Annik Dubied (Neuenburg) sits on the Press Council as the audience representative, while media law expert Stéphane Werly (Neuenburg) contributes to the Independent Complaints Authority for Radio and Television (UBI). Manuel Puppis (Fribourg), Bertil Cottier, and Colin Porlezza (both Lugano) are currently members of the Eidgenössische Medienkommission [Swiss Media Commission], which advises the government on media policy. The only relevant member of the Audience Council of Schweizer Radio und Fernsehen (SRF) is media education expert Thomas Merz (Thurgau). None of the around 30 ombudsman's offices in the German-speaking

world includes an expert in communication studies, and there are only a handful of experts in media law – Oliver Sidler and Rudolf Mayr-von Baldegg in Switzerland, for example. Where media regulation bodies include any academics at all, they are more likely to be from fields such as theology, economics, or technical sciences, rather than communication studies, media studies, or media law.

This is poor. After all, communication studies and communication law can be incredibly important when it comes to assessing questions of media regulation. Knowledge of basic rights and media law, media ethics, journalism studies, media structures, and media effect research can help in finding useful solutions. Media regulation is an ideal ‘hobby garden’ for those involved in the academic study of media. It is therefore high time that academics in communication studies gained more practical experience in media regulation. This would require, firstly, willingness on the part of the academics themselves to become involved in the field (and willingness on the part of the universities to recognize and honor such involvement). Secondly, elected bodies must be willing to pay more attention to this craft. This in turn, however, would require new election and appointment processes in Germany specifically – processes that reserve seats for academics rather than filling them all in advance with allocated positions for association representatives and parliamentarians.

I was lucky enough to be able to combine communication studies and media regulation in Switzerland, spending ten years as President of the Swiss Press Council, eight as President of the Independent Complaints Authority for Radio and Television (UBI), and six at the ombudsman’s office for public radio in German-speaking Switzerland (two years as Deputy and four as Ombudsman). That was my hobby garden. The challenges it presented varied widely.

Media ethics in the Swiss Press Council

In the first stage (1991-2001), the Press Council was the plant in my hobby garden that needed attention. The idea was to consider issues in media ethics. The opinions formed were based on the code of professional ethics »Erklärung der Pflichten und Rechte der Journalistinnen und Journalisten« [Declaration on the obligations and rights of journalists] and the guidelines that supplement it. The parties provided opinions in written form and often in hearings; the Press Council chamber responsible for the issue (one of three in total) discussed what conclusions were to be drawn. If I pushed firmly in one direction, Secretary Martin Künzi sometimes pulled me gently back in order to avoid excessive decisions. Achieving a balance was key. What made the Press Council attractive was the fact that, in Switzerland, it has the right to take the initiative in picking up cases and topics. We were thus able – and indeed wanted – to cover many fundamental

questions, with guidelines provided by journalism studies. In 1992, for example, we provided opinions on dependent business journalism^[1] and on reporting on suicides;^[2] in 1994 on the media boycott by advertisers;^[3] in 1994, 1995, and 1997 on the publication of confidential information;^[4] in 1996 on the media ethics boundaries of satire,^[5] the mixing of political activities and journalism,^[6] and on arranged interviews;^[7] in 1998 on how shock images and images of people are used;^[8] in 1999 on the publication of racist reader letters;^[9] and in 2001 on racism in crime reporting.^[10] We often undertook literature research on a large scale or consulted academic studies whose findings were incorporated into our opinions; we sometimes conducted extensive hearings. We were constantly guided by the principle of maintaining press freedom. Many of these opinions can still be consulted to this day, as their content has stood the test of time. In order to give journalists even more guard rails, we supplemented the code with guidelines. The preliminary work provided by media ethics expert Daniel Cornu was of crucial importance here. By increasing its PR work with an annual media conference and brochure, we ensured that the Press Council – which had been set up in 1977 – was really noticed for the first time. It is the self-regulation organ of journalism; its opinions have no legal power, but merely provide a moral effect and obligation. The most effective influence of the Press Council – like the power of the media itself – stems from creating a public sphere (cf. STUDER/KÜNZI 2011; WYSS 2007; BLUM 1993a, 1993b, 1994, 1998, 2000, 2001; PRESSERAT 1993 ff.).

At least as challenging as journalism studies content were the structural questions. The idea was to broaden the support of the Press Council. During my period as President, we succeeded in attracting three further journalistic associations to join alongside the original supporting association »impressum« and in recruiting a charitable foundation as patron. Six audience representatives also took up seats on the Press Council. The three subsequent Presidents of the Press Council – Peter Studer, Dominique von Burg, and Susan Boos – were then able to work with their respective Foundation Council Chairs Enrico Morresi, Bernard Cathomas, Markus Spillmann, and Martina Fehr to develop the structures further, incorporate the Verband der Presseverlage and the Schweizerische

1 <https://presserat.ch/complaints/stellungnahme-des-presserates-vom-18-juni-1992/>

2 <https://presserat.ch/complaints/stellungnahme-des-presserates-vom-23-dezember-1992-zur-berichterstattung-ber-suizide/>

3 *Boycott der Medien durch die werbende Wirtschaft* – Schweizer Presserat

4 *Veröffentlichung vertraulicher Informationen* – Schweizer Presserat; *Wahrheit / Unterschlagen wichtiger Informationen* – Schweizer Presserat; *Veröffentlichung vertraulicher Informationen* – Schweizer Presserat

5 *Medienethische Grenzen satirischer Medienbeiträge* – Schweizer Presserat

6 *Vermischung von politischer Tätigkeit und Journalismus* – Schweizer Presserat

7 *Verhalten bei verabredeten Interviews* – Schweizer Presserat

8 *Umgang mit Schock- und People-Bildern Stellungnahme vom 20. Februar 1998* – Schweizer Presserat

9 *Veröffentlichung rassistischer Leserbriefe, Stellungnahme des Presserates vom 13. Dezember 1999* – Schweizer Presserat

10 *Rassismus in der Kriminalberichterstattung Stellungnahme des Schweizer Presserates vom 19. Januar 200* – Schweizer Presserat

Radio- und Fernsehgesellschaft (SRG), improve the way the committee worked, and secure its funding in the medium term. Apart from the continuing lack of long-term funding, the Swiss Press Council is today in a good position: It displays respectable decision-making practice. It is recognized within the sector. It consists of eleven men and ten women from all four language regions and is led by three women – a journalist as President, a media professor as Vice President, and a lawyer as Managing Director. The Foundation Council is also chaired by a woman.

Media law in the Independent Complaints Authority

In the second phase of my career in regulation (2008-2015), I took on the latest plant in my hobby garden: the Independent Complaints Authority for Radio and Television (UBI). Its role was to pronounce judgment (MASMEJAN/COTTIER/CAPT 2014). The UBI is a federal institution, selected by the Swiss government but, in terms of content, obligated only to the Federal Constitution and the Radio and Television Act. It is responsible for complaints about programs made by all radio and television providers in Switzerland, both public service and private, and about online publications from the SRG. Anyone who has a complaint about a program must first contact the responsible ombudsman's office; only once the process there has been completed can they contact the UBI without incurring costs. They have the option of an individual complaint, if the person, company, or party in question appeared directly in the program, or a popular complaint, which is used when a person wishes to complain about a program despite not being directly affected, and requires 20 additional signatures. The process at the UBI is initially conducted in written form, with right of reply and rejoinder, before ultimately moving into a public consultation in the nine-person committee. Discussions there can become heated! A speaker's proposition is frequently followed by a counter-proposition from another member, and decisions often pass with a slim majority of 5-4. Discussions are always serious and objective, and demonstrate that there is hardly ever just a single solution, but that it is possible to come to different conclusions in good faith. As President, I was always last to speak, although I sometimes intervened earlier if making a counter-proposition. The focus was always on forming and maintaining consistent decision-making practice and on weighing up audience protection against the broadcasters' programming autonomy.

Individual complainants can refer UBI decisions to the Swiss Federal Court in Lausanne. There, too, both options remain on the table: The judges in Lausanne can confirm the UBI's decision or overturn it. Once again it is clear that it is possible to set differing emphases on the same legal basis. The SRG took a decision

of the UBI, which stated that it was not permitted to talk about Botox without mentioning the animal testing necessary for the process, to the European Court of Human Rights in Strasbourg, where judges upheld the ruling, just as their counterparts at the Swiss Supreme Court had done (BLUM 2016: 204-205).^[11] In another case, which concerned a commercial from the Association Against Animal Factories that SRG was refusing to broadcast, the UBI protected the conduct of SRG against my request, while the Supreme Court focused on the animal rights activists' right to freedom of speech (BLUM 2016: 201-203), just as the European Court of Human Rights would do.^[12]

Ultimately, the UBI only upholds complaints when the audience has been obviously manipulated. A program is no longer objective if the audience is unable to form its own opinion freely. Luckily, this does not happen often, which means that journalism largely serves public discourse and is thus serious journalism (BLUM 2016: 239-242). Incidentally, the UBI is also currently headed by a female President. The committee consists of five women and four men, reflecting all four language regions of Switzerland (cf. BLUM/RIEDER 2014; BLUM 2016; UBI 2009 ff.).

Bringing everything together in the ombudsman's office

In the third stage of my career in this field (2016-2020), I welcomed the ombudsman's office of SRG Deutschschweiz to my hobby garden. It had already flourished in 2005-2007, when I was Deputy to the then ombudsman Achille Casanova. But it is only when one takes on full responsibility that one realizes what the position truly means. The ombudsman is a kind of broker or justice of the peace. He does not make decisions himself, but instead brings the parties to the table or gives his estimation of the situation. This view is guided by the Radio and Television Act, media ethics, the journalistic guidelines of Schweizer Radio und Fernsehen (SRF), and common sense. Given the extremely high number of cases dealt with by SRG Deutschschweiz – it receives an average of one or two new complaints every day –, rulings are only given in exceptional cases. The ombudsman refers simpler cases to the editorial office responsible to be dealt with directly, so he can focus on the others. He writes a final report on each. During my four years in the role, I wrote 1000 final reports, filling around 20 folders (cf. BLUM/STAUB 2017; ELIA 2007; BLUM 2012a, 2012b; OMBUDSSTELLE 2016ff.). In doing so, I was in constant direct or indirect contact with the audience – in the form of lectures and discussions, in articles in *Link*, the SRG Deutschschweiz magazine, in

11 Europäischer Gerichtshof: Auf SRG-Beschwerde nicht eingetreten - Medien (persoenlich.com)

12 Schweizerische Radio- Und Fernsehgesellschaft Et Publisuisse Sa C. Suisse (Coe.int)

interviews, and through social media activity (BLUM 2016 b-e, 2017 a-c, 2018 a-c, 2019 a-e, 2020a).

What made my role at the ombudsman's office so fascinating was the fact that it allowed me to mobilize and make use of all my knowledge and experience: knowledge of history and constitutional law in order to give an estimation of the situations on which the programs reported; journalistic experience for dialog with those responsible for the programs; political experience for dialog with those making complaints (who always included a few obstreperous characters, just like among dissatisfied voters); knowledge of communication studies in order to apply theories and study results to the formulation of journalistic principles; and experience of media law (at the UBI) for the correct application of the Radio and Television Act. It was essential to apply all of this, given that the Ombudsman of SRG Deutschschweiz is known to everyone and often the target of hostility (cf. KLEIN 2018a, 2018b; BAUMANN 2020). I even had to refer a fellow citizen to the police in his canton for defamation after he suggested sending me, the Swiss Media Minister, and all journalists from SRF radio and television to a concentration camp to be set up for the purpose; he was sentenced accordingly. Many of my final reports triggered a lively public response, with hundreds of media articles and social media posts – some congratulatory, some reasoned, some offensive. It took a thick skin and the ability to remain calm. But it was an experience worth having. I was succeeded by two people sharing the position: one man and one woman.

Three hypotheses

Which conclusions can be drawn from my foray into practical media regulation as a communication studies expert? I pose the following three hypotheses:

- Hypothesis 1: Input from communication studies and media law in the field of media regulation can be very fruitful, as the contribution of findings from academic theories, studies, and court decisions can only be beneficial to the »opinions,« »final reports,« and »reasoning of decisions« made there. Communication studies has plenty to offer practice.
- Hypothesis 2: The presence of communication studies and media law specialists in the organs of media regulation enlivens the discourse between academia and practice, benefitting both.
- Hypothesis 3: Practice also enriches academia: The experience gained is incorporated into publications and helps to fill out theories or develop them further. My list of publications would certainly look different if I had not spent time in the hobby garden of media regulation (cf. BLUM 1992, 2000, 2007; RÖBEN 2007; PRINZING/BLUM 2015; BLUM/PRINZING 2020).

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