Verfassungsblog
ON MATTERS CONSTITUTIONAL

Facing the Music

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Something is going seriously wrong with the media. Fake are the news and alternative the facts, as everyone seems to agree from left to right, one side accusing the other and vice-versa; hate is the speech and political the correctness, and who refers to one is blind to the other, trapped as we all are in our filter bubbles and echo chambers. This all has to do with the Internet, with the rise of what people over 50 refer to as the "new media", and because this is what some still tend to consider a clunky old blog like this to be, I was invited this week by the Karlsruhe Forum for Culture, Law and Technology to reflect on Verfassungsblog's role at a conference unter the freshly outdated title "Making a State in 140 Characters. New Forms of Communication Change Politics and Culture".

In fact, it's true that the way the media have changed over the years reflects a great deal of my professional biography. I entered my journalistic profession shortly before the turn of the millennium, in the glorious, sunset-adorned *fin de siècle* of print capitalism. In 1999, I joined the staff of a major national daily newspaper which was printed overnight in hundreds of thousands of copies and delivered to what we liked to call the "decision-makers", the powerful elite of German business and politics, to provide them with a solid information basis to make their decisions on. This editorial staff was populated predominantly by males with oversized egos who were constantly fighting with one another, the whole business was wildly competitive, everyone jealously watching over who could talk to whom and who could cultivate which accesses to those powerful decision-makers (also, as goes without saying, mostly big-ego males) informing and informed by us. The most important thing was to produce exclusive news, to be the first to break a story, and the currency in which we measured the value of our work was the number of times we were quoted by our peers in the other established print media.

After almost ten years – during which the economic ground on which the whole thing was based became ever more shaky – I was thoroughly fed up with this whole editorial culture. In 2008 I quit my job to write a book or two and finally launch Verfassungsblog a year later. Setting up a blog was by no means a revolutionary thing to do any more at that time, but compared to the world I came from there were still plenty of exciting new features: It was cheap, it was fast, and it came with an instant feedback channel. The readers whom we newspaper reporters, to tell the truth, had never given much thought about, the contrary assertions of our marketing departments notwithstanding, suddenly played a very direct role in the story, providing added perspectives, contestation, even correction. The comment function made reporting feel riskier on the one hand, because every mistake could be immediately and mercilessly exposed, but in fact it was rather the opposite: It allowed writing more subjectively, more provisionally, not to pretend to be in an *ex cathedra* position to proclaim balanced and neutral truths about the world. I took up the habit of using phrases very much frowned upon among newspaper editors, such as "I suppose" and "it seems to me", and to sprinkle my texts with a lot of non-rhetoric question marks. Unlike a newspaper editorial which is forever inalterable once it's printed, a blog post is innately pluralistic. It says: Of course you can see all this in a completely different way, and if you do, please add your view to this post by means of a comment.

Technicalities

From today's point of view, I would say: that sort of change was all very nice at the time, but it doesn't say all that much about Verfassungsblog's place among the

"new forms of communication". Most of that seem to me to be just technicalities in the end.

In fact, the journalistic form in which most Verfassungsblog posts appear is as classical as it can ever be. It is the form of the Op-Ed: informed expert opinions on current political events, which has been around for the better part of a century. More importantly, the name Verfassungsblog is kind of misleading if you define a blog as a medium where the authors, without any intermediary, directly upload their text on the internet. Verfassungsblog is edited. We make decisions about what appears and what doesn't, and in which form.

We make use of the social media, of course. We have a Facebook page and a Twitter account, both growing continuously and both tremendously important distribution channels. The interesting thing about social media is how the difference between production and consumption blurs beyond recognition. Everyone posts, likes, shares, knows things and has opinions about things and has heard things and finds things interesting and amusing and outrageous, and all of that is part of the great stream of communication from which we all draw and which we all feed, *uno actu*. That seems to me to be what is really *new* when we talk about "new forms of communication". That is what is at the core of all those debates on the disturbing change happening around us right now.

Through the social media, the proverbial "little guy" out there can and does make himself heard like never before. And yet, as he does, he spirals deeper and deeper into the feeling that no-one actually listens, that his personal views don't matter one bit. And correctly so: It *doesn't* matter much what he says. All that matters is that he says *something*. Like or dislike, it's all the same as long as he interacts. The platform algorithms, unlike the old macho print-capitalism editors, do not select what gets published according to content, but they do select according to the degree of attention that a post arouses. Their attention is what has value in people, but who they are and what they specifically feel, think and say remains quite irrelevant. Which increases their anger and also their irresponsibility in the articulation of it. If it's irrelevant who I am, if I as a person don't really matter much and neither does the content of what I say and write, then I might as well post racist memes on 4Chan, drive 14-year-olds into suicide and vote for Trump just for lulz.

Face the music

Call me old-fashioned, but I firmly believe that you are responsible of what you say or write. You must, when asked, be prepared to explain and elaborate and give reasons for what you say and write. You will be challenged. You stick your neck out when you express yourself. Just like a journalist. For many people this is terribly unfamiliar. They've read something on the Internet, they haven't given it much thought, they find it kind of plausible or feel irked or amused or confirmed in a murky, unspecific way they can't quite account for. That's how they used to talk to their neighbour over the garden fence, and now they are held responsible and criticized by strangers of any kind all of a sudden. That triggers their anger all anew: Censorship! Now we can't even speak our minds any more! Freedom of speech! Which is rubbish, of course; as if criticizing the views of others were an infringement of the right to freedom of speech and not its practice.

A few months ago, we introduced an innovation on the constitutional blog. If you post a comment, you must provide a valid email address. Pseudonyms are allowed, but you must make yourself accessible to the editorial staff if you want to express yourself there. We control that. In case of doubt, we will send a mail to the given email address and activate the comment only after it has been answered. This links your statement to your person. You have to stand by what you post. Take responsibility. The result was that the number of troll comments dropped to almost zero.

I certainly don't want to go back to the old days of print capitalism, even if that were possible. Nevertheless, I want to run Verfassungsblog as a "classical" medium in which authors take responsibility for what is written and editors for what gets published. We try to build trust in the quality of our work. We write down what we think to know and decide to opine and put it in front of the public, to their favour and critique.

Nothing much of "new forms of communication" there. Rather classical, in fact.

Abstract and semi-educated

The latest from **Poland**: President Duda, who last summer under much acclaim stopped PiS's plans to get the judiciary under their thumb, is about to strike a deal with the governing party which, according to WOJCIECH SADURSKI, is going to be every bit as unconstitutional as the initial plan was and will do irreparable damage to the independence of the judiciary. The EU institutions' help- and haplessness in finding a way to check the disintegration of the rule of law in Poland is countered by a risky move of the European Court of Justice which might pave the way for financial sanctioning of Poland on the occasion of its government's disobedience to a court injunction the case of the Bialowieca primeval forest. ROBERT GRZESZCZAK and IRENEUSZ KAROLEWSKI explain the background of this case, including the calamitous role of the black spruce beetle in it, and, despite all the criticism the Polish government deserves, warn against overstraining the European Union rule of law for the sake of the Polish.

The **European Union** has no lack of problems, and some are calling for a republican re-establishment of the EU to overcome them. Two authors who have made that claim in a particularly enthusiastic and successful manner, Ulrike Guérot and Robert Menasse, arouse the scorn of ALEXANDER SOMEK who finds their "pro-Europeanism" a "questionable blessing (…). It is abstract and semi-educated. And it's even a little dangerous" (in German).

Speaking of Republicanism: In **Germany**, the Federal President finds himself in an unusually influential position after the failure of the "Jamaica" coalition option. THORSTEN KINGREEN considers the expectation that the parties in general and the SPD in particular will be led back to state political responsibility by the Head of State to be deeply un-republican (in German).

This week, the European Court of Human Rights in Strasbourg issued a decision concerning Germany's ability to expulse Islamists who haven't yet broken the law but are considered dangerous. TOBIAS KLARMANN regrets that the European Court of Human Rights has "opted for security in case of doubt" (in German).

Our online symposium on the 3rd gender option and the judgement of the Federal Constitutional Court has come to a conclusion with a powerful appeal for scrapping gender registration altogether from GRIETJE BAARS and an analysis by CHRIS AMBROSI (in German) for whom the 3rd option should be open beyond inter*sexual persons.

Elsewhere

MARKO MILANOVIC sheds some light on the confusing matter of the judgment of the Yugoslavia Tribunal against a number of Croatian war criminals, including with the disturbing reactions from Zagreb and the repugnant spectacle offered by one of the convicted who committed public suicide in the courtroom.

ESZTER BODNÁR compares the referenda in Hungary on the "Soros Plan" and in Australia on marriage for all, and finds despite all political differences a number of similarities.

BILYANA PETKOVA asks whether the cities in the USA might become "the final bastions of data protection" in these times of big data and anti-privacy efforts by the Trump administration.

So much for this week. All the best, and take care!

Max Steinbeis

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