Freedom of the Press:

The Results of the Spiegel Affair

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The end of the Second World War and subsequent division of Germany into the Federal Republic of Germany (FRG) in the West and the German Democratic Republic (GDR) in the East. With the Soviets controlling the Eastern zone and the concurrent Cold War that was gripping the entire world, many differing attitudes towards free speech and freedom of the press occurred. But while the FRG was left to run its own democratic state by the allies, its practises did not always uphold the standards of a fully egalitarian nation. This paper will focus on the Spiegel affair which took place in Western Germany from 1962-1965 and compare that to some of the restrictions that attempted to strangle the hold on information within the GDR.

On October 8th, 1962, Hamburg based, weekly political magazine, *Der Spiegel,* published an article on the NATO manoeuvre *Fallex62.* That publication displayed to the whole of the nation the poor state in which the Army(*Bundesweh*) found itself in. The NATO representatives awarded the armed forces a grade of “Prepared for defence to only a limited extent”; the lowest grade possible for this particular assessment. The incident became known as the Spiegel Affair and became a hotly debated topic within German political, legal and social sectors for a number of years to come. The actions resulting from that specific publication forever tarnished the reputation of then Chancellor Konrad Adenauer; acted as a watershed moment for the newly divided nation with it being the first major political crisis since the Adenauer government took over in 1949 a moment which would give voice to the community in an effort to stifle the misuse of government power. And finally, the incident sparked a debate within both the legal and social communities that, by the end of the court cases, provided evidence that the country truly was on the path to becoming a more mature, democratic nation that respected its media outlets and their modern rights dealing with freedom of the press, much to the chagrin of the its Eastern counterparts.

The citizens of the Federal Republic of Germany were just beginning to wrestle with the constraints and depression that seemed to rise brick by brick with the construction of the Berlin wall a mere year earlier. For many however, being a part of the democratic west made being a divided country somewhat tolerable. The Spiegel Affair of 1962 became the first major crisis of the Adenauer government and first since the end of the war and occupation by Allied troops. This incident led directly to the questioning of the true democratic nature of the country and government, specifically Chancellor Konrad Adenauer and the Federal Minister of Defence, Franz Josef Strauss. In order to properly understand the feelings of the people, the state of the government and the legal measures that followed the crisis, one needs to properly understand the circumstances surrounding the 1962 incident.

*Der Spiegel* had previously attacked the Adenauer government and specifically Franz Josef Strauss, a year earlier in an article for an alleged bribery scandal involving a contract for the construction of military facilities. This incident is only brought up to give proper foresight in displaying Strauss’ resolve in seeing the magazine and its owner, Rudolf Augstein, taken down. The article on October the 8th 1962, presenting the results of the NATO procedure *Fallex62* spoke about many details relating to West Germany’s military preparedness and that of other NATO and communist countries. The West German government and especially Strauss were heavily criticised as being accountable for what the article termed, “completely inadequate defence preparations.”[[1]](#footnote-1) Strauss, the Bavarian conservative and CSU deputy chairman, had been Minister of Defence since 1956 and was thus an integral figure in the creation of the new army (*Bundeswehr)[[2]](#footnote-2).* Strauss was convinced that top secret documents had been leaked which would no doubt endanger the country’s security, and thus the magazine was accused of treason on the night of October 26th, 1962, followed quickly by the arrest of Augstein, the occupation of the *Der Spiegel* offices as well as the entry and searching of the magazine editor’s homes.[[3]](#footnote-3) As for the writer of the article in question, Conrad Ahlers; he was on vacation in Spain at the time and was quickly picked up from his hotel in the middle of the night after a phone call from Strauss to the German military cache in Spain; a move that proved to be quite illegal and would lead to the dismissal of Strauss from his post, but did not hurt him long term as he was later elected as Federal Minister of Finance and Minister President of Bavaria. All of these actions opened up the wounds of Germany’s coloured past. Terms like ‘Gestapo’ and ‘police state’ swirled throughout the media, bringing up questions of the true character of West Germany’s democratic policies.

Within a week of the arrests, Federal Minister of Justice Wolfgang Stammberger, a member of Adenauer’s coalition government, offered his resignation; Stammberger wanted to know why he and the *Land* (state) Interior Ministers, responsible for police, had not been informed of the impending action against *Der Spiegel*, and justifiably so. Shortly thereafter, the entire Free Democratic Party (FDP) leadership threatened to withdraw completely from the coalition.[[4]](#footnote-4) These resignations were taken very seriously by Adenauer but he felt that as long as he held support from his own party, the Christian Democrats (CDU), he would be able to control the parliament. Unfortunately for him, that was not the case. The Bonn government seemed to wilt in the face of such tough questions as, ‘If secrets had indeed been leaked, then who was to blame? What would the punishment be?’[[5]](#footnote-5) The opposition party was all too keen on joining in on the questioning; one member of the Social Democratic Party (SPD) asked Strauss what SS rank the Defence Minister had occupied during the Third Reich.[[6]](#footnote-6) This remark stemmed from what *Der Spiegel* as well as the Communist East had contended on numerous occasions, that the Bonn government of the West was run by former NSDAP members in disguise. [[7]](#footnote-7)

In the East until late 1989, the structure of East Germany’s press was similar to those existing in many communist countries and had remained more or less unchanged during the post-war years. Because the East German constitution permitted the ruling Socialist Unity Party (SED) to determine the practical implementation of & “socialist journalism”, it had complete control over all forms of mass communication.[[8]](#footnote-8) Jane Curry called the East German form of censorship a:

...directive mode in which party and government directions - given explicitly through the various press committees and agencies to journalists and editors, or implicitly through general Party statements and the overall political atmosphere in which journalists work - were effective enough to allow the media to be produced with no formal, external prepublication censorship.”[[9]](#footnote-9)

The media outlets were stringently controlled by the SED and received instructions from the department of “Agitations and Propaganda” about what and when certain issues had to be covered. This comparison is interesting when you consider that each nation’s main political platform is that they are polar opposites of one another: in the East, a socialist and proletariat regime; in the West, the democratic and just practises that highlighted the success of the Allies.

On November 8th, 1962, Strauss, after previously denying any participation in having Ahlers arrested in Spain, admitted to the *Bundestag* the he had in fact made the phone call to the German military cache on the night of October 27th to have Ahlers arrested.[[10]](#footnote-10) By previously lying to the *Bundestag,* Adenauer had more than enough just cause to dismiss his Minister of Defence but he elected not to, opening the door for all the CDU ministers to resign on November 20th; except of course for Strauss. Because of the resignations Adenauer was able to form a new cabinet and remove Strauss from his office without actually dismissing him.[[11]](#footnote-11) However, after approaching the SPD to form a coalition government and being rejected, Adenauer had to agree to step down as Chancellor in the autumn of 1963, the main condition of the FDP for entry into a coalition. [[12]](#footnote-12)

Adenauer was unrelenting when it came to claiming Augstein was involved in treason for the lowest of motives; greed. “On the one hand he profited from treason; and I find that awful!”[[13]](#footnote-13) While Adenauer had managed to avoid a complete political collapse, his reputation had been severely tarnished throughout the affair however due to his agreement to resign in the near future; he was able to maintain power for another year. While Strauss virtually ended his reign as Federal Minister of Defense with that early morning phone call to Spain, he did avoid legal punishment. In later court cases it was proven that he had acted in a manner that he felt was well within the law and that was good enough to avoid punishment outside of his career. After the old government fell, Kai-Uwe Hassel (CDU) left his post as Prime Minister of Schleswig-Holstein and replaced Strauss as the new Defence Minister.[[14]](#footnote-14)

On November 26th the police ended their occupation of the Spiegel offices by which time some twenty million documents had been searched, many of which were confiscated.[[15]](#footnote-15) The end of the occupation of *Der Spiegel* did not result in the release of Ahlers, Augstein and three others however; that was postponed until February 7th, 1963. The public demands, coupled with the support of the media catapulted this incident into a category that was new to German politics, accountability for over-stepping power boundaries.[[16]](#footnote-16)

The media played a critical role in gaining international recognition for the political debacle. It was the same Western German media that allowed the Eastern citizens a look at unrestricted information which was near impossible to get from the media within the GDR. Until 1989, all 39 daily newspapers in East Germany were owned and managed by political or other organizations, such as party committees and organizations approved by the authorities. The SED published over 6.6 million daily newspapers compared to roughly 800,000 by the 4 other political block-parties. Regardless of the tight restraint held on newspapers, East Germany’s populace ranked amongst the highest according to a UNESCO survey. In number of newspapers sold for every 1,000 inhabitants, the GDR was one of the highest placed countries in the world. Each family took on average 1.5 daily newspapers and 1.4 weekly papers.[[17]](#footnote-17) Reasons for this have been credited to the people needing to be politically aware in the climate of the Cold war as well as buying multiple papers in an effort to snuff out one-sided news.

Despite the fact that East Germans were frequent newspaper readers, the official press was scarcely used as a source of objective and trustworthy information. The mass media of the GDR provided an “official” but distorted look at reality - and East Germans were well aware of this. The ability for East German residents to access unobstructed information through Western German media outlets undercut the efforts by the SED and basically made their censorship attempts ostensibly futile. However, the Western population was fighting tooth and nail to continue its unabridged, truthful media services.

The public pressure that ensued shortly after the occupation of the *Der Spiegel* offices and the arrests that coincided with them, proved to be a powerful weapon for the accused. The generation that followed after the war and fall of the Third Reich was encouraged to travel and enjoy their leisure time more freely. The transition from discipline and hard work to the degree of self-denial, to an age of enjoyment, travel, leisure and a sense of normalcy were just a few of the ways this generation detached themselves from their parents. These changes were used to undermine the harsh reality of the post-war years. No longer critical to the next generation, they increasingly saw the lifestyles of their parents as overly strict and unacceptable, opening up the door for more liberal thinking, student protests and more social and political awareness. While the majority of the nation was well aware of the crisis and what was happening their active participation was limited to student demonstrations, petitions, a loose union of artists, writers, and intellectuals known as *Gruppe 47*, and of course every other media outletthat truly expanded the issue. The group defended Augstein incontrovertibly, releasing a manifesto expressing their loyalty to magazine owner and demanding the resignation of Strauss, [[18]](#footnote-18) as well as stating that “In a time when warfare is outmoded and inconceivable, it is not only the right; it is an ethical duty, to reveal so-called state secrets.[[19]](#footnote-19)

Karl Bracher, a historian of contemporary Germany as well as a political scientist teaching in Bonn, wrote that the affair caused ‘inestimable damage’ to educating the West German society on politics and democracy; going even further in stating that,

“The danger is not the eternal fixation on the horrors of the Hitler dictatorship, but the persistence of an authoritarian ideology of the state, one that degrades the citizen to the status of a subject and subordinates the principles of democracy to military defence and the defence of the order.”[[20]](#footnote-20)

Bracher brought up a very interesting point; it was not as if people were comparing the Adenauer government to Hitler’s Third Reich or even the Walter Ulbricht led GDR; they were however questioning the validity of the democratic government; a government that had been established thirteen years earlier and until this point had yet to face a major political crisis within its borders. In the minds of the West German people, they had said good-bye to authoritarian ideology and to the threat of censorship. They believed that the country as a whole had grown and matured as a nation to the point where abuse of power by the government would not be tolerated. The immense solidarity campaigning around the support of *Der Spiegel* included the press, radio, and television, all of which spoke of a crisis of the rule of law. Should laws be bent or broken simply because a government or certain members of that administration had a personal grudge? The people said no, and it was their voice that led to the Free Democrats resigning. It was that same voice that nearly ended Adenauer’s Chancellorship in November 1962 rather than a year later. While it was the intellectuals that were the ones who took the forefront of the protests, it is believed that they were supported by the rest of the community who understood the ramifications and slippery slope that accompanied the misuse of power.

The Federal Constitutional Court (*Bundesgerichtshof),* the court of first and last instance in cases of this nature, heard from both sides and dismissed the case determining that the article may have held state secrets but the prosecution lacked the evidence to prove that the defendants were aware that they were committing a betrayal to the country.[[21]](#footnote-21) The fact that the prosecution could not specifically prove that Augstein and Ahlers were aware of their potentially treasonous acts propelled them into a place of acting out of naiveté versus malicious intentions. Whether this was true or not, the simple fact was that Strauss’ actions in apprehending Ahlers from Spain put a dark cloud over a crisis that was already quite ominous. The Court’s official response stated that, “The provisions, construed in conformity with the Constitution, are not unconstitutional even insofar as they include the revelation of state secrets by press publications.”[[22]](#footnote-22) The judges had felt that a violation of the guarantee of freedom of the press had occurred, stating that:

“The importance of the disclosed facts etc., for the potential enemy as well as for the forming of political judgments by the people must be considered in the individual case; the dangers to the security of the country that may arise from publication must be balanced against the need to be informed of the important occurrences even in the area of defence policies.”[[23]](#footnote-23)

The violations that had occurred throughout this affair were challenged and overturned through judicial means. Within the GDR however, the SED made the mistake of trying to maintain press censorship even when it became obvious that open debates might have actually helped the party in gaining some popular support. The insistence on a lopsided political reality, together with the fact that journalists began to hesitate using traditional news channels and news sources to obtain information during the political upheaval in the GDR, quickly increased the Dysfunction of the communist press in a changing East German society.[[24]](#footnote-24)

The pressures of state security as well as the Cold War were evident throughout the Spiegel Affair, and there was good grounds for believing that the judges involved in this case were apprehensive about a public trial’s harmful effect on the nation’s security.[[25]](#footnote-25) The Judges were in agreement that treason by newspapers must be treated in an entirely different manner from that of ordinary treason, the very nature of the business was informing the citizens of information about their country, even when that news did not make the government look very good. This was a huge step for the rights of the press and for all citizens in West Germany. The decision by the court supplied the nation with a legal precedence in which to fall back on and help in curbing future governments from misusing their powers.

The Adenauer era came to a definitive end on October 15th, 1963, and after fourteen years, the first Chancellor of the Federal Republic of Germany stepped down, unwillingly I might add, making way for his former Minister of Economics, Ludwig Erhard, who was elected the very next day. Throughout the entire affair, the eighty-five year old Adenauer remained consistent in stating that he believed Augstein had committed treasonous acts against the state and that he himself played no part in the efforts to bring Ahlers back from Spain. Years later however, when Strauss was asked if ‘the old man’ had known of his call to the military cache in Spain, Strauss responded, “know of it, he demanded I call!”[[26]](#footnote-26) For a complicated issue, it is only fitting that the result be as equally complex, freedom of the press held its power, but not without dealing with some suffering along the way. Overall, the comparisons with the East and Ulbricht’s lead GDR with regards to freedom of the press are weak in hindsight, but for those living through it, the similarities, even as small as they were, equalled too much. Those living in the FRG had been told they would be a leader in democratic policies and any wavering whatsoever was unacceptable.

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