

Journalistic Statesmanship Protecting the Press in Weimar Germany and Abroad*

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In August 1927, delegations from 38 countries gathered in Geneva for a world conference that has now fallen into obscurity: the Conference of Press Experts at the League of Nations. Although the conference has attracted little historical attention, Germans at least assigned it great significance at the time. In one of its first major conferences at the League, Germany engineered a compromise on what the *New York Times* deemed ‘the most important item on the agenda’: the protection of news.¹ The conference president, Lord Burnham, head of the British National Press Association, noted in his closing speech that this issue was ‘more warmly debated than any before the Conference’. Thus Burnham found it ‘a real triumph for journalistic statesmanship that a unanimous agreement was reached on a subject of such vital importance’.²

While mechanisms such as printing privileges and censorship had controlled the publication of news, there was no specific legal framework to protect news.³ Newspapers commonly copied news from others without legal implications or consequences. In the interwar period, however, a confluence of political, legal and technological circumstances piqued the

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¹ Wythe Williams, ‘Experts Divided on News Protection’, *New York Times* (26 Aug. 1927), p. 2.

² League of Nations Archive (henceforth LNA) Conf.E.P.13, Geneva, 29 Aug. 1927, p. 9. The conference has only appeared in Anique van Ginneken, *Historical Dictionary of the League of Nations* (Lanham, Md., 2006), p. 154 and Birgit Lange-Enzmann, *Medienpolitik des Völkerbundes* (Constance, 1991), pp. 69-87.

³ Media law as only emerged as a discipline in its own right in the early 1980s. Oliver Castendyk, ‘Das Medienrecht als eigenständiges Rechtsgebiet’, in Artur-Axel Wandtke and Kirsten-Inger Wöhrn (eds.), *Medienrecht: Praxishandbuch* (Berlin, 2008), pp. 121-38.

interest of both news organisations and German government ministries in protecting news. Historians have tended to examine the press as a national phenomenon. Yet, debates on protecting news highlight not only the press's international constitution, but also how journalists used international conferences both to achieve consensus amongst themselves and to force legislative action from national governments. For the German government, meanwhile, the legal protection of news became an instrument both to control the press at home and to achieve prestige and influence abroad.

The semi-official news agency in Imperial Germany and the Weimar Republic, Wolff's Telegraphisches Bureau (WTB or Wolff), already held a monopoly on the dissemination of governmental news. Yet, the advent of spoken radio in the 1920s along with the growth of a domestic rival made Wolff an ardent advocate of legislative reform. Successive German governments had also displayed little interest until the Conference of Press Experts offered an opportune moment to raise Germany's international profile. After entering the League of Nations in October 1926, Germany engaged heavily in many aspects of the League. Indeed, Matthias Schulz's identification of 1927 as the start of the 'hot phase' of economic cooperative diplomacy can equally apply to arenas like mandates, minorities and the press.⁴ Yet, the Conference of Press Experts offered Germans more than just the chance to be good internationalists. It presented an opportunity to shape the nature of international law. Germany aimed to reject the League's attempts to introduce international legislation on protecting news and to advocate for an international resolution instead. The German compromise resolution foresaw full protection for news prior to its publication, but allowed national governments to regulate news after publication.

⁴ Matthias Schulz, *Deutschland, der Völkerbund und die Frage der europäischen Wirtschaftsordnung, 1925-1933* (Hamburg, 1997). For minorities, see Carole Fink, *Defending the Rights of Others: The Great Powers, the Jews, and International Minority Protection, 1878-1938* (Cambridge, 2004). For mandates, see Susan Pedersen, 'The Meaning of the Mandates System: An Argument', *Geschichte und Gesellschaft*, 32, 4 (2006), pp. 560-82.

This would leave space for Germany to promulgate a national law to protect news that the German government and press hoped would function as a model for other countries.

Over and above its importance for international law, the press presented different problems than mandates or minorities. First, the press was a business. Business interests played a key role both in League negotiations and subsequent domestic debates. Second, news as a flow of ideas and words differed greatly from the people at stake in minorities and mandates debates. Debates over the national law to protect news would also become a litmus test for relations between the government and the press. Third, the Conference of Press Experts occurred alongside nearly simultaneous efforts to regulate the physical space in which news transmissions increasingly occurred: the air.

The development of wireless technology helped news to become a particular touchstone for both newsmakers and government officials.⁵ Indeed, the Conference of Press Experts occurred just a few weeks before the Washington Conference to regulate the allocation of radio spectrum. Wireless technology held both promise and peril for distributing news, depending upon one's point of view. Subject to the strength of one's radio receiver, unauthorized listeners could pick up wireless news without paying the news disseminator; they could also eavesdrop illicitly on confidential broadcasts. Both news providers and the Weimar government viewed wireless as a potential problem for profitability and controlling the population respectively. Others saw wireless radio's ability to cross boundaries and reach any receiver in a given radius as a means to undermine global cable structures and to reassert Germany's place in global news supply. The intersection

⁵ Except Michael Friedewald, other studies have concentrated on public spoken radio. Michael Friedewald, 'The Beginnings of Radio Communication in Germany, 1897-1918', *Journal of Radio Studies*, 7, 2 (2000), pp. 441-63. On radio, see Karl Christian Führer, 'A Medium of Modernity? Broadcasting in Weimar Germany, 1923-1932', *Journal of Modern History*, 67 (1997), pp. 722-53; Kate Lacey, *Feminine Frequencies: Gender, German Radio, and the Public Sphere, 1923-1945* (Ann Arbor, 1996); Winfried Lerg, 'Funk und Presse 1919 bis 1924. Aus der Vorgeschichte des deutschen Rundfunks', *Rundfunk und Fernsehen*, 13, 2 (1965), pp. 152-66.

between wireless technology and visions for its use heightened awareness of the problem of protecting news.⁶ It would also contribute to greater international willingness to discuss protection at the Conference of Press Experts.

This article thus uses the Conference of Press Experts to analyse the intersection of the history of media, law and technology.⁷ Kees Gipsen and Eva Giloi have examined German attitudes to copyright and patent legislation, connecting them principally to domestic politics and technology.⁸ Meanwhile, historians such as Corey Ross have examined the domestic ramifications of Germany's 'wider shift to a modern media democracy under the impact of military defeat'.⁹ Other scholars have worked comparatively on British, French and German journalism during the *Kaiserreich* or German and American journalism over a longer time period.¹⁰ This article, by contrast, provides an international perspective on German attitudes towards the press during the Weimar Republic, showing that German approaches to news, technology and law developed from the intersection between national and global concerns.

The protection of news shows both the importance of international circumstances for spurring domestic legislation as well as the interaction between the new technology of radio, the

⁶ See David Edgerton, 'From Innovation to Use: Ten Eclectic Theses on the Historiography of Technology', *History and Technology*, 16, 2 (1999), pp. 111-36.

⁷ For a critique of work on German media history, see Corey Ross, 'Writing the Media into History: Recent Works on the History of Mass Communications in Germany', *German History*, 26, 2 (2008), pp. 299-313. On German media, see Corey Ross, *Media and the Making of Modern Germany: Mass Communications, Society and Politics from the Empire to the Third Reich* (Oxford, 2008).

⁸ Kees Gipsen, *Poems in Steel: National Socialism and the Politics of Inventing from Weimar to Bonn* (New York, 2002); Eva Giloi, 'Copyrighting the Kaiser: Publicity, Piracy, and the Right to Wilhelm II's Image', *Central European History*, 45, 3 (2012), pp. 407-51.

⁹ Corey Ross, 'Mass Politics and the Techniques of Leadership: The Promise and Perils of Propaganda in Weimar Germany', *German History*, 24, 2 (2006), p. 185. See also Bernhard Fulda, *Press and Politics in the Weimar Republic* (Oxford, 2009).

¹⁰ Frank Bösch, *Öffentliche Geheimnisse: Skandale, Politik und Medien in Deutschland und Großbritannien 1880-1914* (Munich, 2009); Dominik Geppert, *Pressekriege: Öffentlichkeit und Diplomatie in den deutsch-britischen Beziehungen (1896-1912)* (Munich, 2007); Daniel Gossel, *Medien und Politik in Deutschland und den USA. Kontrolle, Konflikt und Kooperation vom 18. bis zum frühen 20. Jahrhundert* (Stuttgart, 2010); Jörg Requate, *Journalismus als Beruf: Entstehung und Entwicklung des Journalistenberufs im 19. Jahrhundert: Deutschland im internationalen Vergleich* (Göttingen, 1995).

media and the law. In fact, government bureaucrats and the media could only cooperate effectively when news was an international concern. This article will first trace the history of news protection from the 1850s up to the Conference of Press Experts in 1927. It will then analyse how the German delegation imposed its point of view on the Conference of Press Experts before examining domestic attempts to promulgate legislation. When domestic discussion of legislation began after the conference, consensus swiftly fell apart.

I. Protecting News before the Conference of Press Experts

It is not immediately obvious how to protect news legally, if at all; much of the contention surrounding the subject has emerged from divergent understandings of news itself and thus how to order it within the legal system. Prior to the Conference of Press Experts, attempts to protect news had followed two main legal avenues both domestically and internationally: copyright and industrial property.

Copyright initially seemed the most promising route. In 1855, the editors of fourteen prominent German newspapers along with Wolff petitioned the Federal Convention (*Bundesversammlung*) to request better protection for news. The petition bemoaned the negative financial consequences of telegraphy, claiming that newspapers now spent significant sums on telegrams. Smaller newspapers swiftly copied these telegrams, undermining larger newspapers' financial gains from telegraphic newsgathering. The newspapers claimed that journalism was a branch of literary property and asked the *Bundesversammlung* to forbid the reproduction of news telegrams for 24 hours after publication. Yet the *Bundesversammlung* never even discussed the matter. States, including Prussia, rejected the idea because they differentiated between protecting the form of a work and its content. Copyright protected a work's form; newspapers merely wanted

to protect content.¹¹ While the new technology of telegraphy had forced newspapers and Wolff to reconsider their finances, most state governments saw no need to change regulations.

Internationally, the German government became actively involved in attempts to copyright news during the 1880s. Prussia had introduced a ten-year protection of literary works in 1837 that was assumed and extended by unified Germany after 1871. In 1886, the first international conferences on copyright resulted in the Berne Convention, which still governs international copyright.¹² It explicitly covered creative works and forms of expression, but excluded ‘news matter or current topics (*faits divers*)’. In September 1908, at the Berlin conference to revise the Berne Convention, German representatives suggested that news should only be printed with the source listed. The request followed recent government reform of German art and literature copyright laws in 1901 and 1907 respectively.¹³ The other conference participants rejected the proposal, as copyright was intended for artistic and inherently creative products.¹⁴ The Berlin conference thus solidified the distinction between creative articles printed in newspapers (*Feuilleton*) and news items as non-creative information. The German government included this interpretation in the 1910 version of its copyright law. The option of international copyright remained closed after 1918, as Article 306 of the Versailles Treaty restored trade, artistic and literary property rights as in the Berne Convention.¹⁵

Others tried to pursue protection through the laws of unfair competition and, internationally, the Convention on Industrial Property. If competitors stole a physical object with news printed upon it, then the injured party could theoretically prosecute the action as theft. This

¹¹ Elmar Wadle, *Geistiges Eigentum. Bausteine zur Rechtsgeschichte*, 2 vols., vol. 2 (Weinheim, 1996), pp. 307-18.

¹² See Isabella Löhr, *Die Globalisierung geistiger Eigentumsrechte: Neue Strukturen internationaler Zusammenarbeit 1886-1952* (Göttingen, 2010); Sam Ricketson and Jane Ginsburg, *International Copyright and Neighbouring Rights: The Berne Convention and Beyond* (2nd rev. edn, Oxford, 2005; 1st edn, 1987), part I.

¹³ §18 of these laws regulated news.

¹⁴ *Actes de la Conférence réunie à Berlin du 14 octobre au 14 novembre 1908* (Berne, 1908), p. 45.

¹⁵ The Rome conference to revise the Berne Convention in 1928 reconfirmed the exclusion of news from copyright.

had occurred in a trial in the Berlin criminal district court in 1900. A small news agency, Louis Hirsch's Telegraphisches Büro, had apparently bribed Wolff's messengers to forward important items for free. The court found that the messengers had stolen the dispatches, which were 'foreign, moveable objects that belonged to Wolff's Telegraphisches Bureau'.¹⁶ The court also deemed the messengers to have contravened their implicit and stated duties as Wolff's employees. Any paper that constantly copied from others and claimed that these were original telegrams might thus violate laws of unfair competition. If they obtained the news through an employee's indiscretion and published it first, they could also be prosecuted for betrayal of business secrets under the law against unfair competition.¹⁷

Internationally, Germany cooperated with other countries to explore classifying news as industrial property and subsuming it into laws on trademarks and patterns. The first international conference for the protection of industrial property occurred in Paris in 1883 with a subsequent revision in 1911.¹⁸ In 1925, however, the international conference on the protection of industrial property at The Hague rejected the Serb-Croat-Slovene delegation's proposal for complete protection of news producers against unfair competition by extending the provisions of Article 10*bis*.¹⁹ Inserting news into extant international conventions appeared to be a dead end.

Domestically, government officials, such as Kurt Häntzschel of the Interior Ministry, believed that news differed too much from patterns or trademarks to fit into industrial property

¹⁶ Bundesarchiv Militärarchiv Freiburg (henceforth BArch MA) RM3/9777, *WTB v. Hirsch* (1900), p. 191. On the two agencies, though without this case, see Dieter Basse, *Wolff's Telegraphisches Bureau 1849 bis 1933: Agenturpublizistik zwischen Politik und Wirtschaft* (Munich, 1991); Christine Wunderlich, 'Telegraphische Nachrichtenbüros in Deutschland bis zum Ersten Weltkrieg', in Jürgen Wilke (ed.), *Telegraphenbüros und Nachrichtenagenturen in Deutschland: Untersuchungen zu ihrer Geschichte* (Munich, 1991), pp. 24-31.

¹⁷ §17-20, Gesetz gegen den unlauteren Wettbewerb, 7 June 1909 and §826 Bürgerliches Gesetzbuch. See Kurt Häntzschel, *Das deutsche Preßrecht* (Berlin, 1928), pp. 76-8.

¹⁸ See Margrit Seckelmann, 'From the Paris Convention (1883) to the TRIPS Agreement (1994): The History of the International Patent Agreements as a History of Propertisation?', *Comparativ*, 21, 2 (2011), pp. 46-63.

¹⁹ News agencies continued to pursue this avenue again from 1932, though to no avail. Archives Nationales, Paris (henceforth AN) 5AR/484.

law. This only applied to the material objects of news, such as printouts, and could not regulate news when telephoned or disseminated wirelessly. Moreover, news items were not just objects, but rather ‘intellectual work of a non-material nature’, argued Häntzschel, and thus needed their own special law.²⁰

Even before 1925, news agencies had realized that The Hague conference would probably refuse to protect news. Hence the conference of European news agencies in June 1924 sent an inquiry to the League of Nations about international machinery to protect news.²¹ After a proposal from the Chilean delegate in 1925, the League assembly resolved to convene a conference of press experts on matters ranging from journalists’ visas to newspaper transportation.²² Prior to the conference itself in August 1927, multiple preparatory committees met to discuss the main agenda items, including the protection of news.

The conference occurred at an auspicious time for both the German press and the German government. For the German press, particularly news agencies, developments within the news business had made protection much more urgent. Even some at the League were sceptical about news agencies’ motives. Acting director of the legal section, McKinnon Wood, wrote that it was ‘difficult to resist the impression that the press agencies are agitating on the international field, not because the question which they raise is really an international question, but because they do not know how to promote their ideas in the field of national legislation’.²³ Implicitly, at least, Wolff’s director, Heinrich Mantler, agreed. Domestic competition had become a major concern, given the

²⁰ Kurt Häntzschel, ‘Der Rechtsschutz des Nachrichtenwesens. Auf falschem Wege?’, *Deutsche Presse*, 17, 12/13 (26 Mar. 1927), p. 94. On Häntzschel, see Jürgen Wilke, ‘Im Dienst von Pressefreiheit und Rundfunkordnung. Zur Erinnerung an Kurt Häntzschel aus Anlaß seines hundertsten Geburtstages’, *Publizistik*, 34 (1989), pp. 7-28.

²¹ LNA R1343, document 53289. Almost all European news agencies formed an interwar cartel. See Heidi Tworek, ‘The Creation of European News: News Agency Cooperation in Interwar Europe’, *Journalism Studies*, 14, 5 (2013).

²² On other issues at the conference, see Lange-Enzmann, *Medienpolitik des Völkerbundes*, pp. 69-87. The Conference of Press Experts was part of a larger meeting of the Committee on Communication and Transit.

²³ LNA C.A.P.10(2), document 53348, report by McKinnon Wood, 29 Nov. 1926, p. 15.

ascent of Alfred Hugenberg's right-wing news agency, Telegraphen-Union (Telegraph Union). Along with his newspaper empire, the media magnate and industrialist Hugenberg had taken over a small news agency, Telegraph Union, which, by the late 1920s, rivalled Wolff in scope and scale within Germany. Unsuccessful during World War I due to government censorship, Telegraph Union's fortunes rose rapidly after 1918. By 1928, 1600 newspapers subscribed to Telegraph Union, including the prestigious *Vossische Zeitung*, weakening Wolff's news distribution monopoly.²⁴ Mantler no doubt welcomed the conference as a chance to undermine Telegraph Union.

The new technology of wireless heightened Wolff's worries. Before wireless became widespread in the 1920s, the courts and German government felt that the law of theft had sufficed as a regulatory mechanism: news could only be transmitted from point to point through post, telephone or telegraph and the civil servants operating these were bound by laws of secrecy. Wireless, however, was a point-to-many technology that reached numerous recipients simultaneously; the sender could not control who received the news. Georg Bernhard, chief editor of *Vossische Zeitung* from 1920 to 1930, gave the following example to illustrate the urgent necessity of new regulation. Any owner of a licensed wireless receiver was entitled to listen to broadcasts, including those from news agencies to newspapers. If someone heard an interesting news item on a broadcast and repeated it in conversation, this was not theft. Yet this item could easily reach someone who could use it commercially without paying the original broadcaster. This was especially problematic for news agencies. Journalists and newspaper publishers, according to Bernhard, were relatively relaxed about reproduction, because their reputation as the first paper to

²⁴André Uzulis, *Nachrichtenagenturen im Nationalsozialismus: Propagandainstrumente und Mittel der Presselenkung* (Frankfurt/Main, 1995), p. 30. On Telegraph Union, see Martin Neitemeier, 'Die Telegraphen-Union', in Wilke, *Telegraphenbüros und Nachrichtenagenturen in Deutschland*, pp. 87-134.

supply scoops would ensure high sales; news agencies disseminated their news simultaneously to thousands of newspaper subscribers.²⁵ It would destroy their business if their customers just paid a 2 RM monthly fee for a radio subscription, rather than the hefty Wolff's subscription price.

The kernel of the problem lay in wireless' speed and lack of encryption. The German government had allowed Wolff and Telegraph Union to disseminate their news wirelessly to subscribers and to supply news to public radio from 1924. Since then, news theft had exploded to 'a previously unimaginable volume'.²⁶ The Postal Ministry had tried to protect this news from listeners' eager ears from the start: the news services were officially protected by telegraph secrecy and purchasers of wireless receivers agreed not to receive, write down or use news that was not labelled 'for all'.²⁷ Contravention initially had no legal consequences other than losing the receiver. From January 1928, the law on telecommunication installations provided further protection, but news theft continued unabated. Indeed, in 1928, the government mainly justified its draft law to protect news by referencing radio receivers: as it was impossible to supervise all receivers, a law to protect the printed product, news, seemed the sole method to prevent unfair competition.²⁸

While regulation became an existential issue for Wolff, the German government only took an interest upon learning of the League's intention to handle the issue at its Conference of Press Experts. As late as mid-1926, the Press Department in the Foreign Office felt no need to participate in the conference, as it dealt with 'purely technical questions'.²⁹ Yet, when it became clear that the

²⁵ Bundesarchiv Berlin-Lichterfelde (henceforth BArch) R43I/2463, p. 49. On journalists' concerns about wireless news, see Heribert Prantl, *Die journalistische Information zwischen Ausschlussrecht und Gemeinfreiheit: Eine Studie zum sogenannten Nachrichtenschutz, zum mittelbaren Schutz der journalistischen Information durch §1 UWG und zum Exklusivvertrag über journalistische Informationen* (Bielefeld, 1983), pp. 46-54.

²⁶ Häntzschel, *Das deutsche Preßrecht*, p. 78.

²⁷ German summary of current copyright laws and press rates. LNA R1347, document 56556.

²⁸ BArch R43I/2463, April 1928, p. 77.

²⁹ Politisches Archiv des Auswärtigen Amtes, Berlin (henceforth PA AA) R121178, p. 5.

conference offered opportunities to shape international law and press relations, the Foreign Office and Interior Ministry became more invested in early 1927.

The German government saw the conference as a chance to reconfigure broader approaches to international law at the League of Nations. The Foreign Office served as the general coordinator of German policy towards the League. The special department for the League of Nations was created in February 1923 and placed in the Foreign Office. With Gustav Stresemann as foreign minister, the Foreign Office consolidated its status as the locus of League policy.³⁰ The Foreign Office generally assessed the League's utility almost solely from the standpoint of Germany's position in the international system.³¹ Simultaneously, discussions on wireless and the press offered very specific opportunities for the German government. Conferences on the global radio spectrum in the 1920s had shown that wireless was a global issue that included even marginal or excluded players at the League of Nations. The American radio industry, in particular, pushed an international policy that favoured multi-national corporations. Just two months after the Conference of Press Experts, the Washington Conference would affirm the American system of apportioning spectrum by usage, rather than to individual nations as the Europeans had wanted.³² Wireless seemed to constitute an apparently technical matter which nations like the United States and Germany could use to assert their own visions of global communications and international law.

³⁰ Joachim Wintzer, *Deutschland und der Völkerbund 1918-1926* (Paderborn, 2006), pp. 28ff.

³¹ *ibid.*, p. 566. Older interpretations of Germany's attitude to the League claimed that Germany had always aimed to revise the Versailles treaty. See Walter Truckenbrodt, *Deutschland und der Völkerbund, die Behandlung reichsdeutscher Angelegenheiten im Völkerbundsrat von 1920-1939* (Essen, 1941); Christoph Kimmich, *Germany and the League of Nations* (Chicago, 1976). In the 1980s, historians began to provide a more nuanced interpretation, e.g. Peter Krüger, *Die Außenpolitik der Republik von Weimar* (Darmstadt, 1985).

³² James Schwoch, 'The American Radio Industry and International Communications Conferences, 1919-1927', *Historical Journal of Film, Radio and Television* 7, 3 (1987), pp. 289-309.

In line with the Foreign Office's coordinated approach to all questions at the League, the Conference of Press Experts made news very much an international question. An international conference seemed the ideal location for Germany to demonstrate not only its willingness to participate in intellectual cooperation, but also to carve out more national room for manoeuvre through gaining consent to an international resolution rather than regulation.

II. The Conference of Press Experts

After several preparatory meetings in 1926, the conference convened in August 1927 for nearly a week of heated debate. The fourth plenary session debated the draft resolution on property in news with great vigour. The League of Nations preparatory committee's proposal had stated that: 'news involves information of any kind, the value of which depends on its novelty and not on the form in which it is presented.'³³ The proposal separated news into different categories of governmental, published and unpublished news. Published and unpublished news would be protected through property rights, while official governmental news would remain unprotected and could be distributed freely.

The greatest proponents of this approach were not even citizens of a League member nation. The League had extended an invitation to American news agencies, which they eagerly accepted. In particular, Kent Cooper, general manager of the Associated Press (AP), the leading American news agency, argued that America's decade of experience with property-rights legislation had illustrated that the concept was highly workable and had 'contributed to the prosperity of all newspapers and news agencies in the US'.³⁴ A Supreme Court case of 1917, *AP v. INS*, had found that there were 'quasi-intellectual property rights' in news; newspapers could

³³ LNA Conf. E.P. P.V.4, fourth plenary session of the Conference of Press Experts, 25 Aug. 1927, p. 7.

³⁴ *ibid.*, p. 3.

not copy one another without adding to the content. Cooper sought to internationalize that legislation to stop his competitors from copying news from abroad.³⁵ He fully supported the proposal to protect published and unpublished news through property rights. This would ensure that the collectors of news were rewarded for the fruits of their labour and not undercut by underhanded competitors. The resolution decreed that within a number of hours after receipt, a news item would become public property and could be reproduced openly. Furthermore, Cooper wholeheartedly agreed that there should be no property rights in official news. The British and French news agencies, Reuters and Agence Havas, supported Cooper.

But the British and American delegations did not present a unified front. While Reuters supported Cooper, Sir George Riddell, the British representative of newspaper owners, denounced news agencies as sticking together and being ‘out to get the better of the rest of the world’.³⁶ Riddell also derided the American position as ‘humorous’, given that the United States had not yet ratified the Berne Convention and was not even a member of the League of Nations. In the strongest rejection, Moses Koenigsberg, president of the American news agency, International News Service (INS), defined news as ‘the process of civilization’, believing that ‘it could no more be arrested than steam from an engine’.³⁷ Hence it required no protection. He feared that the draft might create monopolies and suppress news, endangering newspapers and thereby democracy itself.

³⁵ Jonathan Silberstein-Loeb, *Tangled Wires: The Making of Global News, 1848-1947* (Cambridge, UK, forthcoming), ch. 7; Jonathan Silberstein-Loeb, ‘Exclusivity and Cooperation in the Supply of News: The Example of the Associated Press, 1893-1945’, *Journal of Policy History*, 24, 3 (2012), pp. 466-98. On American and British approaches, see Heidi Tworek, ‘Protecting the Press in an Interconnected World’, in Richard John and Jonathan Silberstein-Loeb (eds.), *Making News: Historical Perspectives on the Political Economy of the Press in Great Britain and the United States since 1688* (Oxford, forthcoming [2014]).

³⁶ LNA Conf. E.P. P.V.4, fourth plenary session of the Conference of Press Experts, 25 Aug. 1927, p. 12.

³⁷ *ibid.*, p. 35.

Finally, the German delegation spoke. The delegation was a veritable powerhouse of German media figures, including Wolff's director Heinrich Mantler, Kurt Häntzschel and Georg Bernhard, chief editor of *Vossische Zeitung*. Mantler stated that the German delegation was 'hoping to see, at last a positive result in the protection of news' because this was 'one of the most important points, if not the most important point, of the agenda'.³⁸ Indeed, the Germans had only prepared in depth for this agenda item. First, the German delegation argued that current laws left it unclear whether stealing news equated to theft of a material object. Second, the Germans rejected the concept of property rights in news. Rather, they believed that rights existed regarding the creation and distribution of reports. As the preparatory committee's draft entailed too many legal difficulties in administering global regulation, the German delegation proposed their narrower resolution 15 as a compromise. Like the draft, their resolution divided news into three categories: unpublished, published and official. The resolution protected unpublished news until publication and acknowledged property rights in this instance; upon publication, however, each country had such different legal traditions that there could be no international agreement.

Resolution 15 was then put to a general debate. Most delegations concurred that no international agreement could or should penetrate that far into national laws. After a few minor clarifications, participants accepted the German resolution as the basis for subsequent debates.³⁹ After further discussion during the fifth plenary session the next day, the conference agreed unanimously on the new resolution. Kent Cooper remained silent, apparently accepting that his proposal for global property rights in news after publication had been soundly defeated.

Of all delegations involved, Germany had proved most eager to shape the conference's outcome and to engage in journalistic statesmanship. For the Interior Ministry, the conference

³⁸ *ibid.*, p. 40.

³⁹ BArch R3001/3808, report by German delegate, von Kancke, n.d., pp. 27ff.

presented the perfect opportunity for a ‘moral victory in the arena of international intellectual cooperation’.⁴⁰ While ‘moral victories’ sometimes connote weakness, discourse about ‘moral victories’ meant more than just whitewashing failures. Moral victories mattered both internationally and domestically in Weimar Germany. International circumstances after the Treaty of Versailles had compounded feelings of domestic impotence and international conferences provided a means of redress. German delegates at international conferences of journalists used similar vocabulary to describe their behaviour. A Wolff representative at a conference for the International Federation of Journalists (IFJ) in 1926 noted that a German delegate had refrained from accepting the post of president to retain ‘moral superiority’.⁴¹ As Kurt Häntzschel headed the International Commission on Press Law for the IFJ, however, the press offered a particularly fruitful place for German intervention. A ‘moral victory’ in legal diplomacy at the League signified the government’s attempt to influence the international order, while gaining prestige for German cooperation.

At home, the idea of moral victory drew on domestic discourses in arenas that successive governments had struggled to address. Fears and prophecies of the collapse of moral standards abounded throughout the revolutionary period following World War I. Worries about the breakdown of order continued to plague the Republic and developed inversely to the government’s capacity to counter perceived immorality; ‘the juxtaposition of moral panic and political impotence’ proved a dangerous legacy from World War I for Weimar democracy.⁴² Journalists’ rhetoric of their role in German society also drew on ideas of morality to argue for their societal importance. In 1922, the Reich Association for the German Press (*Reichsverband der deutschen*

⁴⁰ BArch R43I/2463, March 1927, p. 7.

⁴¹ PA AA R121178, Edgar Stern-Rubarth, p. 4.

⁴² Richard Bessel, *Germany after the First World War* (Oxford, 1993), p. 253.

Presse) had declared that journalists should be seen as ‘a moral institute [*moralische Anstalt*]’ in the Schillerian sense.⁴³ Referencing Schiller’s ‘The Theatre considered as a Moral Institute’, wherein he had argued that the theatre educates people morally by demonstrating mankind’s virtues and vices, the *Reichsverband* sought to portray journalists as the educators and elevators of the people. For Schiller, the theatre was a school of practical wisdom, creating emotion and ultimately a feeling of humanity in viewers.⁴⁴ Journalism too, argued the *Reichsverband* implicitly, could create those emotions. Still, the promulgation of the *Schmutz- und Schundgesetz* in December 1926 indicated that the German government had rather less faith in the press’ ability to educate and protect German citizens, particularly children.⁴⁵ Visions of a leading German role at the Conference of Press Experts drew on both ideas about the importance of morality in journalism and the government’s hopes for restoration of order internationally and domestically.

The German delegation’s actions were the culmination of extensive research, planning and coordination between multiple ministries. The Press Department, located in the Foreign Office, had keenly followed discussions of news protection between international news agencies and international associations such as the IFJ.⁴⁶ The Press Department created the draft domestic law and conference resolution, working closely with the Interior Ministry and requesting Wolff’s feedback. Wolff called the draft a ‘viable basis’ for discussion as it addressed illegal receipt of wireless news and sought to clarify when newspapers could reprint news.⁴⁷ These issues were

⁴³ BArch R1501/114195, 4 May 1922, p. 60. On journalistic associations, see Rudolf Stöber, *Pressefreiheit und Verbandsinteresse: Die Rechtspolitik des ‘Reichsverbands der deutschen Presse’ und des ‘Vereins Deutscher Zeitungs-Verleger’ während der Weimarer Republik* (Berlin, 1992).

⁴⁴ Friedrich Schiller, ‘Die Schaubühne als eine moralische Anstalt betrachtet’, in *Schillers sämtliche Werke in zwölf Bänden*, 12 vols., vol. 10 (Stuttgart, 1838), pp. 68–81.

⁴⁵ On the law, see Detlev Peukert, ‘Der Schund- und Schmutzkampf als “Sozialpolitik der Seele” ’, in Herman Haarmann, Walter Huder, and Klaus Siebenhaar (eds.), *Das war ein Vorspiel nur ...’ Bücherverbrennung Deutschland 1933: Voraussetzungen und Folgen* (Berlin, 1983), pp. 51-63.

⁴⁶ Reports in PA AA R121174, R121175, R121178.

⁴⁷ PA AA R121098, letter from Wolff to Interior Ministry, 2 Aug. 1927.

vitally important, as they might prevent newspapers from printing items for free that had cost Wolff time and money to procure.

Yet Wolff's concerns about loss of revenue barely featured on the German government's agenda. At a meeting between various ministries and the Press Department a few weeks before the conference, the ministries consulted about tactics. They focused on preventing resolutions that might lead to international law on news, but noted that Germany had to be careful not to attack the matter single-handedly.⁴⁸ It would need allies to support its plans as it re-entered the international arena. For the Foreign Office, the conference fulfilled a dual role. On the one hand, it enabled Germany to announce its re-entry into international conferences and law. On the other hand, akin to German action within the minority treaty and mandate systems, the conference provided Germany with the chance to create more autonomy for itself by acting as the ultimate international player.⁴⁹ A report on the conference concluded triumphantly that the Germans had 'succeeded in leaving German legislation the freedom to decide'.⁵⁰

Debates about legal diplomacy were particularly charged in Germany. Article Four of the Weimar Constitution had stated that international laws were binding in Germany, though the article barely featured in court cases. As Peter Caldwell has shown, however, debates over Article Four raised significant questions about the Weimar Republic's sovereignty and its relationship to the international legal order.⁵¹ Indeed, Martti Koskenniemi has claimed that 'nowhere was the

⁴⁸ BArch R43I/2463, meeting between Interior, Economics, Postal, and Justice Ministries, and Press Department, 10 Aug. 1927.

⁴⁹ For minority treaties, see Fink, *Defending the Rights*, passim. For the mandate system, see Susan Pedersen, 'Getting out of Iraq - in 1932: The League of Nations and the Road to Normative Statehood', *American Historical Review*, 115, 4 (2010), pp. 975-1000.

⁵⁰ BArch R3001/3808, report by von Kancke, n.d., p. 25.

⁵¹ Peter Caldwell, 'Sovereignty, Constitutionalism, and the Myth of the State: Article Four of the Weimar Constitution', in Leonard V. Kaplan and Rudy Koshar (eds.), *The Weimar Moment: Liberalism, Political Theology, and Law* (Lanham, Md., 2012), ch. 16.

challenge to international law posed more strongly than in Germany.’⁵² While officials at the Conference of Press Experts never referenced Article Four directly, their attempt to implement an international resolution formed a practical counterpart to legal scholars’ and politicians’ rejection of Article Four.

The German delegation worked behind the scenes before the conference so that it could take more of a back seat at the conference itself. The Interior Ministry in particular advocated that the German representatives should ‘hold themselves back, but not act fundamentally hostile’ to ensure German inclusion in further League debates on protecting news.⁵³ The delegation had thus used the train journey to Geneva to secure agreement from the International Union of Journalists and the Association of Accredited Journalists.⁵⁴ Indeed, the German delegation argued that so many other participants had signed its resolution that it could no longer be considered a German proposal at all. This false modesty explains why English-language papers of record like the *London Times* and *New York Times* omitted Germany’s role.⁵⁵ While neither paper mentioned Germany explicitly, the Germans would find greater praise within the smaller world of League diplomacy just as satisfying.

The head of the Information Section, Frenchman Pierre Comert, commented that ‘this type of leading German participation had never appeared before in an international question’, while Sir

⁵² Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law, 1870-1960* (Cambridge, UK, 2002), p. 181.

⁵³ BArch R3001/3808, 10 Aug. 1927, p. 22.

⁵⁴ BArch R3001/3808, report by von Kancke, n.d., pp. 24-33.

⁵⁵ *The Times* called the unanimous agreement the conference’s ‘crowning achievement’. ‘Press Conference at Geneva’, *The Times* (27 Aug. 1927), p. 9. The *New York Times* concentrated on the American role in making property rights in news ‘a universal concept’. ‘Ownership Doctrine Prevails’, *New York Times* (27 Aug. 1927), p. 13. The German trade press reported extensively on the conference: ‘Internationale Pressekonferenz in Genf’, *Zeitungs-Verlag*, 28, 35 (1927), col. 2045-50; ‘Die Konferenz der Pressesachverständigen in Genf vom 24. bis 29. August 1927’, *Zeitungs-Verlag*, 28, 36 (9 Sept. 1927), col. 2097-101; ‘Der Völkerbundsrat und die Genfer Pressekonferenz’, *Zeitungs-Verlag*, 28, 36 (9 Sept. 1927), col. 2107-8; Edgar Stern-Rubarth, ‘Die Weltpressekonferenz des Völkerbundes’, *Deutsche Presse*, 17, 37 (1927), pp. 485-7.

Eric Drummond, secretary-general of the League of Nations, congratulated a German delegate at the conference's final official banquet on Germany's success.⁵⁶ The Press Department official at the conference, Kurt Häntzschel, later attributed German success to the delegation's coordinated efforts in contrast to British and American infighting and bickering. Back home in Germany, Georg Bernhard reported to Comert, the conference 'has found a surprisingly great resonance' and 'everyone is generally satisfied with its results'.⁵⁷ Mantler stated that Germany must act now on its strategic advantage and enact a national law as soon as possible to capitalize on the prestige gained at the conference.

At the League of Nations Assembly just over a week later, Gustav Stresemann swiftly drew on Germany's new political capital. After the Conference of Press Experts' president, Lord Burnham, praised the cooperation between the British, French, Americans and Germans, Stresemann took the stand. He called the conference 'one of the most meaningful events', for the press had shown that it shared 'a great common aim with statesmen: world reconciliation [*Weltversöhnung*]'. Moreover, the conference's composition had approximately mirrored that of the League itself and its working methods seemed a model for the League's future work, as it had shown that seeking compromise could 'often represent a very useful advancement of desired solutions'.⁵⁸ Of course, Stresemann omitted what many in the room would have known: Germany had negotiated the compromise on the most important agenda item. Implicitly, Stresemann began his contribution to the Assembly by advocating for German methods in international negotiations. The very next day, Stresemann followed up on his implicit praise for the model of German

⁵⁶ BAArch R3001/3808, p. 25.

⁵⁷ LNA R1355, dossier 63259, document 63609. Bernhard to Comert, 7 Nov. 1927.

⁵⁸ 'Der Völkerbundsrat und die Genfer Pressekonferenz', *Zeitungs-Verlag*, 28, 36 (9 Sept. 1927), col. 2107-8.

involvement. In arguing for disarmament, Stresemann began to portray Germany as the ‘pioneer in everything that pertained to peace’, as the *New York Times* put it.⁵⁹

The final resolution accepted by the League of Nations Council in December 1927 divided news into published, unpublished and official governmental news. As the German draft had foreseen, unpublished news was fully protected, while each country should deal with its own published news. Finally, government news was not covered by property rights but should be available to all.⁶⁰ The responsibility for legislation lay with national governments; the League had merely facilitated general agreement on the necessity to consider the matter. The Council refrained from suggesting further actions and merely asked national governments to contact it with ideas in the future.⁶¹ German officials and the press thus turned their attention to the domestic draft and began to discover whether they could really cooperate so fruitfully without the immediate prospect of the international stage.

III. Protecting the Press at Home

The national law drafted in 1927 sought to regulate news as a product unto itself. It foresaw that news would be protected for a certain number of hours after publication. The Foreign Office and Interior Ministry hoped that the promulgation of a national law would serve as a model for other countries. The German ministries’ methods of drafting laws illuminate why the Foreign Office implicitly assumed that a national law could hold international weight. Generally, when the Foreign Office or Interior Ministry wished to draft a press law, they asked German diplomats to send copies of laws on that subject in their country of residence.⁶² After the preparatory meeting for the conference attended by news agencies in August 1926, the Press Department gathered

⁵⁹ ‘Germany Accepts World Arbitration’, *New York Times* (10 Sept. 1927), p. 4.

⁶⁰ LNA C443. Conf E.P.12. (1). Sept. 1927.

⁶¹ LNA R1351, dossier 62964, minutes of the third meeting of the 48th session of the council, 7 Dec. 1927, p. 3.

⁶² The foreign laws are gathered in PA AA R121098.

copies of foreign laws on the press from 29 countries.⁶³ Bureaucrats then began drafting. German law did not necessarily copy other countries, though drafting often referenced them. Bureaucrats assumed that German law would feature in other national discussions, promoting Germany's legislative innovation for years to come. Conversely, international regulation would have made future national legislation superfluous.

The first draft of a national law was composed in April 1927 as part of the German government's preparation for the conference. This law initially protected just news from abroad and stipulated that no one could republish an item of foreign news for 12 hours after its initial publication.⁶⁴ By April 1928, the Interior Ministry proposed a significantly redrafted version of the 'law to protect communication' (*Gesetz zum Schutze des Nachrichtenwesens*). The law protected 'mixed news of factual content and news of the day' (*vermischte Nachrichten tatsächlichen Inhalts und Tagesneuigkeiten*).⁶⁵ The law used the exact phrasing for news that had been excluded from copyright law; it now applied to domestic news too. It required newspapers to name their source for these items for 24 hours after publication. The phrasing made clear that the law trod new judicial territory. It neither invalidated the copyright laws of 1901 and 1907 (simultaneously under revision in the late 1920s) nor laws of unfair competition. Rather, it protected news that seemed to have no legal home.⁶⁶

The draft explicitly mentioned the technology that had caused much of the legal ruckus in the first place: radio. News disseminated exclusively through public radio was deemed equivalent

⁶³ PA AA R121098. Australia was the first place to legislate copyright in news telegrams in Victoria in 1871; this was only adopted in a few places. Lionel Bently, 'The Electric Telegraph and the Struggle over Copyright in News in Australia, Great Britain and India', in Brad Sherman and Leanne Wiseman (eds.), *Copyright and the Challenge of the New* (Alphen aan den Rijn, 2012), pp. 43-76. While the German draft foresaw protecting news for a limited time after publication, unlike in Australia, it did not use copyright law.

⁶⁴ BArch R43I/2463, Gesetz zum Schutze des Nachrichtenwesens, April 1927, pp. 7-9.

⁶⁵ BArch R43I/2463, April 1928 draft, §1, p. 66.

⁶⁶ The law also protected stock exchange reports. BArch R43I/2463, meeting, 9 May, 1929, p. 132.

to pre-publication news for 12 hours after the broadcast.⁶⁷ Unlike laws in other countries promulgated before radio, the draft German law was the first to address radio explicitly. The German law now followed the Conference of Press Experts' division of news into pre-publication and post-publication. As pre-publication news automatically received protection, the draft law equated radio broadcasts with no publication at all.

The law thus followed a particular understanding of the division between the radio and the press. The emergence of radio had inspired pessimistic and optimistic prognoses for the press. While pessimistic views about the death of the press are rather more familiar, the optimists foresaw a successful division of labour between radio and the press. They saw radio as the 'pacemaker of the press' and believed that hearing news like politicians' speeches on the radio would pique public interest, actually creating more newspaper readers.⁶⁸ The draft law followed a similar principle. One of the law's main proponents, Kurt Häntzschel, devoted much time and effort to promoting the law both within government ministries and in trade journals. Häntzschel argued that the law protected the creation of news itself. News agencies supplied news simultaneously to radio and newspapers, although newspapers needed more time to edit and print news. Häntzschel supported radio's temporal advantage provided that newspapers had no right to reprint radio news broadcast. That would hurt news agency revenue and thus reduce their ability to collect news in the first place. Häntzschel believed that radio news was just an *amuse-bouche*. It could only 'prepare the public for more extensive press news with discerning commentary'.⁶⁹ Protecting the press would ensure that radio would never replace the critical functions of the press. Häntzschel thus portrayed the draft law as an indispensable means to protect the entire German *Meinungspresse*.

⁶⁷ BArch R43I/2463, April 1928 draft, §2, p. 67.

⁶⁸ Radiator, 'Der Rundfunk als Schrittmacher der Presse', *Deutsche Presse*, 19, 23 (1929), pp. 356-9.

⁶⁹ Kurt Häntzschel, 'Schutz der Rundfunknachricht vor unbefugter Verwertung', *Deutsche Presse*, 20, 34 (23 Aug. 1930), p. 458.

Indeed, the draft explicitly saw protection as a matter of both public and state interest. The justification for the law declared that ‘an effective, self-sufficient and independent German news service’ lay very much ‘in the public interest’. The law simultaneously prevented damage to ‘important state interests’ by securing news agency revenue. It would arrest the decline in news agency subscriptions and ensure the profitability that news agencies needed to ensure ‘the urgently desired further expansion of German communications, particularly abroad’.⁷⁰ A law to protect domestic news would ensure the commercial viability of rebuilding German news networks abroad.

Significant disagreements, however, hampered the legislation. The debates show how the press could break down along economic lines, rather than party allegiances, even in the late 1920s and early 1930s. Throughout the drafting process, government ministries consulted the leading news agencies and publishers’ association. To start with, the parties could not agree on how long to protect news. The April 1928 draft foresaw protection for 12 hours after a broadcast; after Telegraph Union objected in May 1929, this was extended to 18 hours. The new draft also required newspapers to print the source of a news item for 24 hours after its first publication. Government officials and press representatives even had trouble defining publication. Their different viewpoints relied upon their different positions in the news supply chain. A news agency, Telegraph Union, argued that publication had officially taken place the minute that a news item was sent to newspapers; after that, a news agency had no real commercial stake. Meanwhile, Häntzschel concentrated upon the public’s interests, arguing that publication had occurred when news reached the public. Finally, the representative from the Association of German Newspaper Publishers (*Verein Deutscher Zeitungsverleger*, VDZV) drew from his experiences in newspaper

⁷⁰ ‘Ein Gesetzentwurf zum Schutze des Pressenachrichtenwesens und über die Bildung von Pressesachverständigenkammern’, *Deutsche Presse*, 22, 23 (31 Aug. 1932), p. 268.

practice. He noted that the vicissitudes of newspaper publishing meant that newspapers did not always appear at exactly the same time. Thus it would be hard to determine in retrospect exactly when a certain number of hours since publication had actually passed on a particular day.⁷¹

The draft also became mired in more technical debates such as the definition of those protected. The draft from April 1928 had foreseen protection only for authors (*Verfasser*) of news items.⁷² Yet some government officials expressed concern about how to define authors. Did retired civil servants who supplied news count as professionals, for instance?⁷³ Later drafts changed the language to protect all ‘professional collectors of news’, as this also included freelance journalists.⁷⁴ These apparently technical issues touched upon wider issues at stake in government interactions with the press. A larger debate had raged since the late nineteenth century about whether journalists were professionals like doctors or lawyers.⁷⁵ Journalists required no licence to practise and a significant proportion worked as freelancers. Yet, the draft law seemed to assign certain protections and privileges that continued the Weimar Republic’s trend to legislate on matters of the press more frequently and significantly than at any time during the *Kaiserreich*. Legislation had become a means to attempt to control and shape the press, both through carrots like the law to protect news (and thus revenue) and sticks like the *Schmutz- und Schundgesetz*.

A similar argument about the profession’s status plagued discussions of the draft’s legal implementation. The Telegraph Union wanted transgressions to be prosecuted under criminal law. After newspapers’ experiences with increasing numbers of libel trials, the VDZV argued that this

⁷¹ BArch R43I/2463, meeting, 9 May 1929, pp. 134-5.

⁷² BArch R43I/2463, April 1928 draft, §2, p. 66.

⁷³ BArch R43I/2463, meeting, 9 May 1929, Regierungsrat Vögele, Württemberg, p. 130.

⁷⁴ ‘BArch R43I/2463, Letter from Interior Ministry, 5 Jan. 1929, p. 111. The issue of defining a journalist still rages today, as journalists are afforded particular rights such as the right to protect sources.

⁷⁵ For the professionalization of journalism, see Requate, *Journalismus*; James Retallack, *The German Right, 1860-1920: Political Limits of the Authoritarian Imagination* (Toronto, 2006), ch. 5.

would lead to ‘a flood of trials’ that it did not want.⁷⁶ Häntzschel agreed, but added a judicial justification for using civil law. Criminal law proceedings allowed journalists to invoke protections such as editorial secrecy. Civil law provided greater flexibility to call witnesses and uncover the details of a case.⁷⁷ The law would thus reconfigure the press’ place in the architecture of the judicial system, moving it further into the civil sphere.

The law also cemented concepts of the press as a complex profession, with mechanisms that lawyers and judges could not necessarily adjudicate. The law foresaw the creation of regulatory press chambers composed of experts from all branches of the press. The regulatory chambers would report on particular cases and suggest sums for damages. This constituted one of the most significant differences from laws drafted elsewhere. Other countries assigned regulation to the courts; the German suggestion of regulatory chambers indicated the importance of professional peers for regulation. Debates on this issue spiralled into a broader conflict over states versus federal rights, a constant source of tension in the Weimar Republic, where states’ strength often plagued the federal government. State representatives vehemently rejected a central regulatory chamber and advocated for state chambers.⁷⁸ While the Interior Ministry tried to argue for the necessity of centralised legal concepts and approaches throughout Germany, the states’ view prevailed in the final draft.

Over and above disputes about the law, journalists outside the consultation process began to question the law’s rationale entirely. There were two major causes for complaint: the law itself and its potential consequences. Some believed that current laws of copyright or unfair competition provided enough protection. One set of journalists argued that international conferences after the

⁷⁶ *ibid.*, p. 136. On libel trials, see Fulda, *Press and Politics*, chs. 2-3.

⁷⁷ Kurt Häntzschel, ‘Ein Gesetzentwurf zum Schutze des Pressenachrichtenwesens und über die Bildung von Pressesachverständigenkammern’, *Zeitungswissenschaft*, 7, 4 (15 Jul. 1932), p. 211.

⁷⁸ BArch R43I/2483, meeting, 9 May 1929, p. 137.

Conference of Press Experts had supported the extension of international copyright.⁷⁹ Another set argued that a domestic judgement by the Imperial Court of Justice in April 1930 had shown that the laws of unfair competition sufficed. The court had found that continual reprinting of news was against good morals (*contra bonos mores*). Thus transgressors could be prosecuted under the laws of unfair competition.⁸⁰ Legislative fatigue after the promulgation of multiple other laws over the past decade also started to kick in.⁸¹

Others believed that the law might adversely alter the press landscape by creating news monopolies. Protecting news would protect the major players in the news business, particularly news agencies and the few larger newspapers like *Kölnische Zeitung* or *Vossische Zeitung* with foreign correspondents. One journalist from the Ruhr argued in 1929 that current copyright law prevented news monopolies by ensuring that news on important events reached the ‘widest public’ of all German people.⁸²

Many of these worries hid an underlying suspicion of government intervention in the press that had only worsened in the Weimar Republic. Georg Bernhard complained in 1926 about the poor relationship between the government and the press. He believed that the government’s approach had ‘obliterated all individuality’ in the German press.⁸³ Reforms after World War I in the Foreign Office had created a Press Department headed by an official press chief in 1919.⁸⁴

⁷⁹ Ernst Feder, ‘Das Urheberrecht des Journalisten. Die Ergebnisse des Haager Internationalen Kongresses für vergleichendes Recht und der neue deutsche Entwurf’, *Deutsche PresseI*, 22, 24 (15 Sept. 1932), pp. 277-8; Ernst Feder, ‘Der internationale Journalistenkongreß in London’, *Deutsche Presse*, 22, 28 (15 Nov. 1932), pp. 327-8.

⁸⁰ Paul Spelsberg and Ludwig Elias, ‘Entsteht ein Anspruch bei Nachdruck von Tatsachenmeldungen?’, *Deutsche Presse*, 21, 8 (21 Feb. 1931), pp. 91-3.

⁸¹ Kurt Häntzschel, ‘Schutz der Rundfunknachricht vor unbefugter Verwertung’, *Deutsche Presse*, 20, 34 (23 Aug. 1930), p. 458. On the simultaneous redrafting of copyright law, see Rolf-M. Vogt, *Die urheberrechtlichen Reformdiskussionen während der Zeit der Weimarer Republik und des Nationalsozialismus* (Frankfurt/Main, 1994). The reformed law kept the clause on factual news verbatim, but now as §33, rather than §18.

⁸² Walter Quix-Mülheim, ‘Nachrichtenmonopol oder Journalistenschutz? Ein Beitrag zum deutschen Preßrecht’, *Deutsche Presse*, 19, 5 (1929), pp. 66-8.

⁸³ Georg Bernhard, ‘Regierung und Presse’, *Deutsche Presse*, 16, 29 (24 Jul. 1926), pp. 1-3.

⁸⁴ Peter Bauer, *Die Organisation der amtlichen Pressepolitik in der Weimarer Zeit (Vereinigte Presseabteilung der Reichsregierung und des Auswärtigen Amtes)* (Berlin, 1962).

During World War I, the government had started holding daily press conferences to inform journalists. These continued after the war. For Bernhard, these mechanisms had reduced the relationship between the press and the authorities into one between the authorities and its press offices. He argued that this had more drastic consequences than just uniformity. It had contributed to the press' general mistrust of government and had shown the government's fundamental misconceptions about how the press actually functioned. The government had simply failed to understand that only journalists could influence other journalists. Foreign newspapers asked German journalists for opinions rather than the government. But the government's press offices only disseminated news, rather than also educating the press about the government's goals. That had only ensured that journalists were not up to the task of informing the world about German policies. Bernhard saw this as more than just a failure of government press policy: it often had deeper roots that lay in the government's 'inability to conduct politics at all'.⁸⁵ For journalists, at least, press policy was a litmus test of government efficacy. While officials hoped that the draft law might win the press over or at least, control it a little, the continual wrangling indicated not only the press' concerns about their industry, but also their broader concerns about government.

Despite these domestic difficulties, German delegates continued to use the issue to improve Germany's international profile. At a conference for European news agencies in May 1929, Hermann Diez, co-director of Wolff with Mantler, reported on the German law and noted that this had created 'great regard' for Germany.⁸⁶ Diez's report suggests that he still considered domestic legislation a viable method to renew Germany's importance in global media.

Nevertheless, redrafting continued for so long that in April 1932, Mantler complained in frustration about the delays to the Interior Ministry. He had received continual questions about the

⁸⁵ Bernhard, 'Regierung und Presse'.

⁸⁶ PA AA R121176, 1 June 1929.

law during 1927-28, when other governments were also working on regulating news. Now, the delays had endangered Germany's legislative lead and the accompanying prestige.⁸⁷ The government finally disseminated a public draft of the law in mid-1932. Despite agreement from all participants on the draft, the Ministry postponed passing the matter to the *Reichstag* because of upcoming elections.⁸⁸ As with drafts of copyright reform occurring simultaneously, the law was never taken up again. The Nazis did not enact reforms suggested in the Weimar Republic, because they consciously rejected any regulation considered before 1933.⁸⁹ Alongside *Gleichschaltung*, a forced merger of Wolff and the Telegraph Union in December 1933/January 1934 had also created the Nazi news agency, Deutsches Nachrichtenbüro (DNB), which eliminated domestic competition in news supply. The DNB would claim in 1936 that Germany no longer required legislation: the new structure of the German press provided such effective protection that a law was superfluous.⁹⁰ Moreover, many of the technical issues caused by radio swiftly became obsolete. In the mid-1930s, the Nazis introduced the Hellschreiber, a wireless teleprinter. It was so successful that the Nazis stopped sending press news over radio in 1944.⁹¹ After World War II, West Germany's 1965 copyright law kept similar formulations and stipulations regarding news. Laws on unfair competition still offered redress as well, maintaining the two avenues that had existed prior to 1927. The relative concentration of the post-war West German press in comparison

⁸⁷ BArch R43I/2463, Mantler to Interior Ministry, April 1932, p. 153.

⁸⁸ Wolff still sent a draft of the law to a conference of news agencies in mid-January 1933. AN 5AR/484.

⁸⁹ Simon Apel, 'Das Reichsgericht, das Urheberrecht und das Parteiprogramm der NSDAP', *Zeitschrift für das Juristische Studium*, 1 (2010), pp. 141-3.

⁹⁰ AN 5AR/469, Agences Alliées fifth ordinary assembly, Stockholm, Sweden, 17-20 Jun. 1936. On Nazi media, see Aristotle Kallis, *Nazi Propaganda and the Second World War* (Basingstoke, 2005); David Welch, *The Third Reich: Politics and Propaganda* (New York, 1989); Clemens Zimmermann, *Medien im Nationalsozialismus: Deutschland 1933-1945, Italien 1922-1943, Spanien 1936-1951* (Vienna, 2007).

⁹¹ Uzulis, *Nachrichtenagenturen im Nationalsozialismus*, pp. 211-4.

to the Weimar period and lack of serious competitors to the dpa news agency also removed any urgency to protect news until very recently.⁹²

Internationally, the issue soon lay dormant. At further conferences of press experts in Copenhagen in 1932 and Madrid in 1933, the protection of news barely featured. The conferences turned to issues of countering propaganda and falsehoods that appeared more pressing given the Sino-Japanese conflict over Manchuria in 1931 and the rise of fascist and authoritarian regimes in Central and Eastern Europe.⁹³ The German success in 1927 remained the high point of cooperation on protecting news in the interwar period. Indeed, it illustrates convincingly how Germany helped to co-construct the League of Nations as a ‘discursive arena and not an administrative system’ by advocating for League conferences as a space to proclaim international resolutions rather than regulations.⁹⁴

IV. The Meaning of News

What made legislation on news both so compelling and so difficult during the late 1920s and early 1930s? Kurt Häntzschel, one of the key protagonists, had long argued that news was unique. For Häntzschel, ‘the Janus face of the newspaper enterprise, the combination of economic with non-material interests’ meant that the press needed special judicial treatment.⁹⁵ For the German government, however, news was important not so much for its own sake, but because it allowed Germany the chance to reshape law on the international stage. The Conference of Press Experts had provided the German Foreign Office with an opportunity to demonstrate its international willingness to cooperate with others, while simultaneously seeking to redefine how

⁹² See Prantl, *Die journalistische Information*.

⁹³ See Heidi J. S. Tworek, ‘Peace through Truth? The Press and Moral Disarmament through the League of Nations’, *Medien & Zeit*, 24, 4 (2010), pp. 16-28.

⁹⁴ Pedersen, ‘The Meaning of the Mandates System’, p. 581. My point builds on Pedersen by showing how Germany actually helped to create this system.

⁹⁵ Häntzschel, ‘Der Gesetzentwurf zum Schutze des Pressenachrichtenwesens’, p. 210.

that cooperation should function. By pushing through an international resolution at the Conference of Press Experts, the German delegation created a space for more domestic legislative freedom. Germany thus avoided the constraints of international law (which its constitution bound it to obey), while promoting international cooperation for its own influence. Germany's achievement of a resolution created the moral victory to allow the government to legislate a practical victory domestically. This in turn was supposed to increase Germany's prestige in the international legal arena by providing a model for other nations in regulating news. This might at first seem to imply that the government cared little for the protection of news per se. Yet that takes too narrow a view of the function of property regulations. If we follow social anthropologists in viewing property as a network of social relations, then Germany's actions within the League of Nations indicate its ambitions to regain the status of a Great Power within the framework of international conferences and cooperation.⁹⁶ Law offered a form of 'soft power' that the German government hoped to translate into gains in its international status.⁹⁷

A confluence of circumstances produced a temporary cooperation between two groups often at odds during the Weimar Republic: the press and government officials. A desire to raise Germany's profile with the League helps to explain the Foreign Office and Interior Ministry's great interest in the Conference of Press Experts. Wolff's concern about protecting news stemmed from fears about domestic competition. For both groups, however, new technology was critical in spurring legal debates and concerns about the inefficacy of theft laws to regulate reproduction from wireless. Barbara Cloud has argued for the American context that news became a commodity upon the introduction of new technologies, especially the telegraph.⁹⁸ Still, new technology does not

⁹⁶ See C. M. Hann, *Property Relations: Renewing the Anthropological Tradition* (Cambridge, 1998).

⁹⁷ For the classic text on soft power, see Joseph Nye, *Soft Power: The Means to Success in World Politics* (New York, 2004).

⁹⁸ Barbara Cloud, 'News: Public Service or Profitable Property', *American Journalism*, 13 (1996), pp. 140-56.

automatically increase the commodification of the products that it disseminates. In his investigation of the telegraph's effect on copyright in news, Lionel Bently has pointed out that 'technological change does not map neatly on to legal change'.⁹⁹ Yet different technologies inspire different legal reactions. In the German case, wireless was more critical than the telegraph in inspiring reform, though the urgency of legislative efforts emerged from the confluence of particular national and international political circumstances.

Nevertheless, German bureaucrats and the media could not sustain their cooperation at home. In January 1928, all parties agreed that news needed greater protection.¹⁰⁰ Political debates about copyright legislation in the early 1900s had revolved just as much around control of the end product as around profits.¹⁰¹ In the late 1920s and early 1930s, government ministries tried to push through domestic legislation in an arena that they attempted to control more stringently, but that seemed to slip ever further out of their control. Despite overarching agreement on the importance of news, however, the national law foundered on the government's and journalists' inability to reach domestic consensus when the League no longer provided an impetus for collaboration. Finally, the Nazis followed the Weimar model of using law to control the press, though their unilateral reorganization of the press through creating the Reich Press Chamber and promulgating the Editors' Law in autumn 1933 rendered any further legal controls unnecessary in Nazi eyes.

An investigation of the contested legal definitions of news enables us, as Adrian Johns has suggested for artistic works, to untangle the complex interaction 'between creativity, communication, and commerce'.¹⁰² The issue of how to protect news (if at all) did not disappear after 1933 and has recently re-emerged as a highly contested issue in Germany. From 1 August

⁹⁹ Bently, 'The Electric Telegraph', p. 76.

¹⁰⁰ BArch R3001/3808, meeting, 9 Jan. 1928, pp. 40-2.

¹⁰¹ Giloi, 'Copyright the Kaiser'.

¹⁰² Adrian Johns, *Piracy: The Intellectual Property Wars from Gutenberg to Gates* (Chicago, 2009), p. 5.

2013, a new and controversial ancillary copyright law (*Leistungsschutzrecht*) permits German publishers to charge online news aggregators such as Google for reproducing their content; news aggregators are still allowed to use text in links or a very small number of words from an article for free. For the German government in the Weimar Republic too, news was an international question: not one of international regulation necessarily, but of international resolution. News was considered a product that should be regulated and whose power to purvey propaganda had already been amply demonstrated in German eyes during World War I. Regulating news under wireless could have been a moment to reshape legislation by providing a model for other countries. Yet conflicts over the details of protection meant that this *Vorsprung durch Technikgesetz* became lost in minutiae and bureaucratic baggage. Nevertheless, news had established itself as a concept worth fighting for and had shown that those who controlled its definition and boundaries controlled its profits and possibilities too.