The Politics of Voluntary Restraint: The Evolution of Print Media Codes of Ethics in Britain and New Zealand

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A thesis

submitted in fulfilment

of the requirements for the Degree

of

Master of Arts in Journalism

in the

University of Canterbury

by

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University of Canterbury

2001

ABSTRACT

This thesis presents a comparative study of the evolution of print media codes of ethics in Britain and New Zealand. Through exploring how ethics codes have come to be employed by the print media as self-regulatory structures, the study contributes to an understanding of how press policy has evolved over the twentieth century in the two countries. By providing an illustration of the pressures and processes underpinning the adoption of ethics codes by the print media, the study also offers an insight into the role and functions of codes, and their efficacy as self-regulatory tools.

The thesis explores the concept of 'voluntary restraint' in order to establish a theoretical framework from which to assess and compare the evolution of ethics codes by the British and New Zealand print media. The manner in which the principles of voluntary restraint have manifested themselves in the respective regulatory histories of the print media in Britain and New Zealand is analysed. Parallels are identified concerning the nature of internal reform of self-regulation out of which codes of ethics have emerged as self-regulatory structures.

It is concluded that in both Britain and New Zealand, the evolution of codes of ethics reflects a divergence with the principles of voluntary restraint, which is also evident in the content of the emergent codes themselves. Thus, a re-thinking of the concept of journalistic accountability is advanced as a basis from which ethics codes as self-regulatory structures might be reformed and reapplied in the spirit of voluntary restraint for the future.

ACKNOWLEDGEMENTS

First and foremost, I wish to express my gratitude to Jim Tully not only for his supervision and assistance with this project, but also for his faith and encouragement which has made the experience a positive one.

For their provision of information I appreciate the efforts of Sarah Hard (INL), Graeme Jenkins (NZPC), Tony Wilton (EMPU) and Bill Southworth (NZJTO). I am especially grateful to Warren Page and Jack Kelleher for their willingness to share their experiences in New Zealand journalism with me.

For financial support, I gratefully acknowledge the Centre for Research of Europe for the tuition fees scholarship (with thanks to Mohammed Musa who suggested I apply for it), and the University of Canterbury's provision of a Masters' Research Award.

I dedicate this thesis firstly to Jason in recognition of his efforts to make the completion of this thesis as smooth as possible a journey for me - for making my priorities his priorities, and also to Jessie who at potential 'low points' helped to put everything in perspective.

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Acronyms and Abbreviations

ADM	Annual Delegate Meeting
AJA	Australian Journalists' Association
APC	Australian Press Council
ASNE	American Society of Newspaper Editors
BPC	British Press Council
BSA	Broadcasting Standards Authority
ECA	Employment Contracts Act
EPMU	Engineering, Printing and Manufacturing Union
EU	European Union
IFJ	International Federation of Journalists
INL	Independent Newspapers Limited
IoJ	Institute of Journalists
ITC	Independent Television Commission
JAGPRO	Journalists and Graphic Process Union
LGMOI	Local Government Meetings Official Information Act
MEAA	Media, Entertainment and Arts Alliance
MGN	Mirror Group Newspapers
MMC	Monopolies and Mergers Commission
NPA	Newspaper Proprietors' Association
	Newspaper Publishers' Association
NJU	Northern Journalists' Union

NUJ	National Union of Journalists
NZJA	New Zealand Journalists' Association
NZJTO	New Zealand Journalists' Training Organisation
NZJU	New Zealand Journalists' Union
NZPC	New Zealand Press Council
NZPD	New Zealand Parliamentary Debates
NZPPTA	New Zealand Post Primary Teachers' Association
OIA	Official Information Act
PCC	Press Complaints Commission
PEP	Political and Economic Planning
PPMU	Printing, Packaging and Media Union
PRM	Professional Responsibility Model
RNZ	Radio New Zealand
SOE	State Owned Enterprise
SPJ	Society of Professional Journalists
TVNZ	Television New Zealand
WPC	Wellington Publishing Company

INTRODUCTION

> A code of ethics is a kind of public 'diary of conscience', a written record of the character of a profession. Like an individual's character, it is formed by the subtle and not-so-subtle pressures of governmental influence, personal integrity and societal demands. The code of ethics, then, is the sum total, or aggregate public statement, of that profession's sense of responsibility.[1]

The question 'why study the development of journalistic codes of ethics?' is answered in part by the above statement, which hints at the multi-faceted nature of their origins. In some cases, codes of ethics may evolve in response to society's expectations of their media. In others, journalistic codes of ethics may be developed in the interests of those to whom they apply. Indeed, journalistic codes may be formed as a means of reaching a consensus between a variety of different sets of concerns or interests, both internal and external to journalism. The particular pressures and processes motivating the development of ethics codes will undoubtedly affect the form they take, the manner in which they are applied, and the functions they serve. The following seeks to determine the relative validity of these hypotheses through a comparative study of the evolution of print media codes of ethics in Britain and New Zealand.[2]

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[1] Gross, G. 1966, p. 362-63. Appendix to *The Responsibility of the Press*, pp. 362-408. New York: Fleet Publishing Corporation.

[2] The term "code of ethics" is often used to refer specifically to codes that consist of sets of ethical principles referring to quite general areas of conduct. Clauses in such codes are typically framed using modal verbs such as "shall/ shall not". Codes of ethics are often distinguished from codes of conduct, and codes of practice. The term "code of conduct" is said to denote codes that are more specific in the principles they contain, whereas codes of practice are said to carry both ethical principles as well as behavioural rules governing the way in which professional duties are to be carried out (see Harris, N. G. E. 1989, pp. 5-6. *Professional Codes of Conduct in the United Kingdom: A Directory*. London: Mansell Publishing Ltd.) However, the three terms are often used in various (and often-overlapping) senses, as well as interchangeably (Skene, L. 1996, p. 327, note 1. 'A legal perspective on codes of ethics'. In Coady, M. and S. Bloch (eds.). *Codes of Ethics and the Professions*, pp. 111-129. Victoria: Melbourne University Press). When referring to codes non-specifically, this latter approach is taken in the present study.

A conceptual framework for the study of journalism codes of ethics

A principal significance of codes of ethics is that they may pose as an attempt to resolve the tension between the often-competing notions of media freedom and media responsibility. This would appear to apply particularly to the print media in western democracies. Historically, the principles of press freedom have meant that the print media has escaped statutory regulation of its practices and output. The traditional 'fourth estate' function ascribed to the press to perform not only as a watchdog on government but also to provide a check watchdog on the other estates of government has been widely employed to justify press freedom.[3] While today there are laws of general application that affect the print media, the relative degree of freedom they enjoy has come to imply that it will be used 'responsibly'. The existence of ethics codes developed by the print media, then, may be seen as illustrative of an implicit bargain struck between journalists and society, between freedom and responsibility, autonomy and accountability.[4] This idea lies at the heart of the normative theory of 'social responsibility', which is the principal theoretical base of this study.

Ethics codes as key 'policy documents' of the print media

Self-regulation implies that society has placed the onus on journalists to collectively establish a self-regulatory framework within which they will operate. Operated in this context, codes of ethics are an alternative regulatory mechanism to statute as a means of regulating journalists' professional standards. Ethics codes can thus provide a means of demonstrating that self-regulation is both feasible and plausible. However, the ultimate question that has surfaced in the experiences of several countries is whether codes of ethics can in practice function as satisfactory self-regulatory mechanisms. This question is explored as a central theme of this thesis through an assessment of the evolution of print media codes of ethics in Britain and New Zealand.

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[3] O'Neill, J. 1992, p. 21. 'Journalism in the market place'. In Belsey, A., and R. Chadwick. *Ethical Issues in Journalism and the Media*, pp. 15-32. London: Routledge.

[4] Tully, J. 1992a, p. 143. 'Media ethics...Holding onto high ground'. In Comrie, M., and J. McGregor (eds.). *Whose News?*, pp. 143- 152. Palmerston North: Dunmore Press.

The transition towards journalistic codes of ethics in the Anglo-American and European contexts

The proliferation of codes of ethics in western journalism can be partially attributed to the emergence of an ideology about the role and responsibilities of the press codified in Theodore Peterson's social responsibility theory. The theory emerged in the US during the 1940s out of the social, economic, and technological changes that were affecting American journalism and, indeed, the public's perception thereof.[5] According to the theory, self-regulatory regimes utilising codes of ethics are a principal means of reconciling freedom and responsibility. The relationship between the theory and codes of ethics is discussed in more detail in chapter one, which theorises the concept of voluntary restraint in order to establish a frame of reference from which to assess and compare the evolution of print media ethics codes in Britain and New Zealand.

While social responsibility theory evolved in the latter half of the twentieth century in the United States, manifestations of its main theoretical tenets existed before this time both inside the US as well as elsewhere. In Europe, there were self-regulatory press councils operating as early as 1912. This was the year that a press council was developed in Norway,[6] which later issued a number of guidelines to direct the conduct of journalists before adopting a formal code some years later.[7] In Sweden, press regulation first became an issue in 1916, when a press council (instituted as the 'Press Fair Practices Board') was formed jointly by the country's publishers and journalists.[8]

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[5] Peterson, T. 1963. 'The Social Responsibility Theory'. In Siebert, F. S., T. Peterson, and W. Schramm. *Four Theories of the Press*, pp. 73-103. Urbana: University of Illinois Press.

[6] Morgan, K. 1989, p. 138. 'A view from abroad: The experience of the voluntary Press Council'. In Dennis, E. E., D. M. Gilmour, and T. Glasser (eds.). *Media Freedom and Accountability*, pp. 135-151. USA: Greenwood Press Inc.

[7] Jones, J. C. 1980, p. 28. *Mass Media Codes of Ethics and Councils: A Comparative International Study on Professional Standards*. Paris: UNESCO Reports and Papers on Mass Communication.

[8] Robertson, G., and A. Nichol. 1992, p. 521. *Media Law* (3rd edn.). UK: Longman Group UK Ltd.; and Frost, C. 2000, p. 173. *Media Ethics and Media Regulation*. Harlow: Pearson Education Ltd.

Early journalism codes in the US

While the Scandinavian countries pioneered the use of self-regulatory regimes based on the press council model, it was in the United States that the first journalistic codes of ethics were developed. The Kansas Editorial Association issued a code of practice in 1910,[9] with several state-wide codes appearing during the 1920s.[10] At its first meeting in 1923, the American Society of Newspaper Editors (ASNE) developed its 'Canons of Journalism',[11] which called on newspapers to "practice responsibility to the general welfare, sincerity, truthfulness, impartiality, fair play, decency, and respect for the individual's privacy".[12] The ASNE code was borrowed by the Society of Professional Journalists (SPJ) in 1926 before the SPJ developed its own code of ethics in 1973.[13] These developments undoubtedly contributed to the evolution of the social responsibility theory, with its emphasis on the role of ethics codes as a means of promoting professionalism within the press.

Of the move towards the adoption of ethics codes in journalism, Theodore Peterson explained that

> ... faith diminished in the optimistic notion that a virtually absolute freedom and the nature of man*[sic]* carried built-in corrections for the press. A rather considerable fraction of articulate Americans began to demand certain standards of performance from the press ... Chiefly of their own volition, publishers began to link responsibility with freedom. They formulated codes of ethical behaviour, and they operated their media with some concern for the public good.[14]

However, many of the broadcasting codes of ethics to emerge in the US shortly afterward were borne out of a significantly different context. With reference to the 1930 movie code, the 1936 radio code, and the code developed for television in

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[9] Christians, C. 1989, p. 36. 'Self-regulation: A critical role for codes of ethics'. In Dennis, E. E., D. M. Gilmour, and T. Glasser (eds.). *Media Freedom and Accountability*, pp. 35-54. USA: Greenwood Press Inc.; and Bertrand, C. J. 1998, p. 119. 'Media quality control in the USA and Europe'. In Stephenson, H. and M. Bromley (eds.). *Sex, Lies and Democracy: The Press and the Public*, pp. 111-123. Essex: Addison Wesley Longman Ltd.

[10] Christians, C., op. cit., p. 36; and Frost, C., op. cit., p. 173.

[11] Peterson, T. 1963, op. cit., p. 86; Christians, C., op. cit., p. 36; and Snoddy, R. 1992, p. 165. *The Good, the Bad and the Unacceptable: The Hard News about the British Press*. London: Faber and Faber.

[12] Peterson, T. 1963, op. cit., p. 86. The ASNE code has since been renamed 'Statement of Principles'. Peterson (1963, op. cit., p. 83) suggests that the ASNE Canons of Journalism "departed less markedly from the libertarian tradition" than some of the codes to appear later on, particularly the early broadcasting codes, which evolved from a statutory context.

[13]The Press Wise Trust. 2000a. World-wide codes of journalistic ethics. 16 May 2000. Online: Press Wise. Available: http://www.presswise.org.uk/ethics.htm. 2 June 2000.

[14] Peterson, T. 1963, op. cit., p. 77.

1952, Peterson explained that these were "... drawn up against a background of public hostility to the media and to forestall government regulation...".[15] Furthermore, unlike the print media codes, the two latter broadcasting codes had a statutory overlay, drawn up by an industry "required by government to perform in the public interest".[16] According to Peterson, the broadcasting codes to appear before the 1947 Hutchins Commission, which provided the basis for the social responsibility theory, were "a different picture to several of the newspaper codes" in the US, and were in fact criticised by the Hutchins Commission.[17] They were drawn up by employees, rather than employers, as the commission had evidently preferred; they were not enforced, and merely set minimum standards of acceptability, not responsibility; and they were often without sanction.[18] Interestingly, such criticisms are commonly made about current journalistic codes of ethics both internal and external to the US context, and are not unique to broadcasting codes as this thesis illustrates.

Following an overview of the social responsibility theory of press self-regulation and perspectives on the status of journalism as 'a profession', chapter one overviews the main criticisms of journalistic codes and their capacity as self-regulatory mechanisms. In doing so, a theoretical framework from which to assess the development and application of ethics codes in practice is constructed as the 'theory of voluntary restraint'. Part one of this thesis is also concerned with exploring how the principles of voluntary restraint have manifested themselves in the regulatory structures of British and New Zealand print media. To determine this, chapter two presents an overview of the regulatory history of the British press with which the New Zealand experience is compared in chapter three. Chapters two and three aim to offer a picture of how press policy has evolved in each of the two countries over the twentieth century, with a particular focus on the evolution of self-regulatory structures in the two countries. The overall intention of these two chapters is to establish an historical context from which the evolution of press codes in each country might be understood, assessed, and compared.

Part two of this thesis is comprised of chapters four and five, which are directly concerned with the development of print media ethics codes in the two

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[15] ibid., p. 86.
[16] ibid., p. 86.
[17] ibid., p. 86.
[18] ibid., pp. 86-7.

countries. Part two aims to highlight the main pressures and processes underpinning each of the two experiences, and how they compare with one another. The codes of ethics to have emerged from within formal systems of press self-regulation are focussed upon in these chapters. However, attention is also paid to the journalistic codes developed on the 'periphery' of the formal self-regulatory systems in Britain and New Zealand in order to offer a wider picture of the 'politics of voluntary restraint' illustrated in the evolution of print media codes of ethics over the last century.

An underlying theme of part two of the thesis is the degree to which the development of ethics codes reflects the principles of the social responsibility theory as they relate to ethics codes. This issue is directly addressed in part three of this thesis. The interface between the theory and practice of 'voluntary restraint' is explored in chapter six. Chapter six assesses the extent to which the evolution of ethics codes in Britain and New Zealand reflects the normative principles of social responsibility theory as they relate to the concept of voluntary restraint.

A content analysis of the emergent codes concludes the study. Chapter seven argues that the pressures underlying the evolution of the codes are reflected in the content of the resultant texts. In doing so, conclusions are drawn about the efficacy of codes of ethics as mechanisms for journalistic accountability and effective self-regulation, and thus for the future of such a regulatory framework for the print media in Britain and New Zealand. Such issues are consolidated in the conclusion to this thesis. An additional underlying theme developed throughout the thesis is the degree to which the evolution of codes in the UK and New Zealand follows in the tradition of early ethics codes to emerge out of both the US and European contexts.

Early journalism codes in Europe

Just as journalism codes began appearing in the US before the social responsibility theory was formulated, codes were also being operated in Europe before this time, most commonly by journalists' trade unions. As Bertrand notes, "[e]verywhere in Europe the journalists' unions have manifested an interest in ethics...", where organising conferences and workshops on journalism ethics helping to create press councils and publishing codes of practice were a significance part of

the early activities of several journalists' unions in Europe.[19] Trade unions of journalists were singularly responsible for developing the first journalistic codes in France, Finland, and Sweden for instance,[20] while those in Norway and Sweden were developed by unions of working journalists in conjunction with associations of publishers and editors.[21]

That journalism trade unions were largely responsible for the early initiatives to publish ethics codes indicates that concerns about professional and ethical issues for journalists existed alongside those traditionally associated with trade unions of an industrial nature at a relatively early stage in the journalism trade union movement in Europe. The first European code for journalists was developed by the French National Union of Journalists (*Syndicat National des Journalistes*) in 1918.[22] Other early codes arose out of the joint efforts of journalism unions and publishers' associations, which were devised to give moral guidance to journalists and to reassure the public that transgressions would be punished, included the code developed in Sweden in 1923.[23] Finnish journalists produced a code of ethics the following year.[24] Norway's first press code was developed in 1936,[25] the same year that the British National Union of Journalists (NUJ) developed a code of conduct, which is discussed further in chapter four below.

Changes in the content and application of journalism codes

Frost highlights that the journalism codes developed before the post-war period were quite brief and prescriptive, usually consisting of a few paragraphs of basic moral principles.[26] It was not until the post-war period, which witnessed the growth of television and radio broadcasting, that journalistic codes of ethics came to be seen as more important. Advances in technology and modes of work, which brought unprecedented ethical issues for journalists, combined with increasing public interest in the practices of the media, may account for the widespread tendency during

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[19] Bertrand, C. J., op. cit., p. 115.
[20] Laitila, T. 1995, p. 528. 'Journalistic Codes of Ethics in Europe'. In *European Journal of Communication*, vol. 10, no. 4, pp. 527-544. London: Sage.
[21] Bertrand, C. J., op. cit., p. 115.
[22] Texter, C. 1998, p. 49. 'An overview of the current debate on press regulation in France'. In Stephenson, H., and M. Bromley (eds.) *Sex, Lies and Democracy: The Press and the Public*, pp. 49-60. Essex: Addison Wesley Longman Ltd.
[23] Frost, C., op. cit., p. 116.
[24] Laitila, T., op. cit., p. 530.
[25] ibid., p. 530.
[26] Frost, C., op. cit., p. 97.

the twentieth century for codes to become more substantial documents in terms of their content and length. As Harris points outs,

> Although some codes have been introduced in direct response to cases of malpractice, many have been adopted because it is thought that with increasingly complex modes of work and with growing public scrutiny of professional behaviour, some set of guidelines will assist members to identify their duty. It is not that people acted unprofessionally before there were codes; what we get is a codification of existing good practice.[27]

The post-war period witnessed a growth of professional codes for both print and broadcast journalists, many of which are operated today. While the codes of practice for both broadcasting and print media journalists tend to be based around the same sets of moral principles relating to how material is to be gathered and how it is to be used, their current application is often very different.[28] In most developed countries, there is much greater governmental control over broadcasting than of the press.[29] Britain and New Zealand are two examples where broadcasters have a statutory obligation set out by each country's respective broadcasting acts to both develop and operate broadcasting codes, as chapter two highlights.[30]

Thus, codes for broadcasters today are likely to evolve from within a markedly different context from that of the press, for whom codes are developed as a self-regulatory device in a non-statutory context, and as mechanisms for the 'voluntary self-restraint' of journalists. However, while the codes of the print media do not have a statutory overlay, this is not to say that they do not evolve in a context bereft of government influence, as this thesis aims to illustrate.

Codes of ethics for the print media tend to be more prolific than broadcasting codes particularly in countries where the development of broadcasting codes is not

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[27] Harris, N. G. E. 1992, p. 109. 'Codes of Conduct for journalists'. In Belsey, A. and R. Chadwick (eds.). *Ethical Issues in Journalism and the Media*, pp. 62-76. London: Routledge. A notable illustration of the way codes have evolved in terms of their size is the current BBC Producers Guidelines, which is over two hundred pages long, thus standing at the opposite end of the spectrum to most existing codes in terms of their relative length.

[28] Frost, C., op. cit., p. 97.

[29] Harris, N. G. E., op. cit., p. 63.

[30] A further development is the existence of codes that cover both broadcast and newspaper journalists. Such codes include, for instance, the code of ethics of the Australian Journalists Association (AJA), now part of the Media Entertainment and Arts Alliance (MEAA), which adopted a code in 1943. The code of ethics of the New Zealand Journalists' Association (discussed in chapter five), which extended its membership to broadcast journalists as broadcasting evolved in New Zealand, is another illustration of this trend. A foreseeable trend for the future is the development of online journalism code of ethics, which are currently being considered in Europe (see Press Complaints Commission. 2001a. Report of the Code Committee 2000. Online: The PCC. Available: http://www.pcc.org.uk/2000/code_committee _report.asp. 15 February 2001).

required by statute. This also tends to be the case where a country's press industry has a number of informal or subsidiary regulatory bodies operating at the periphery of a formal self-regulatory regime (for instance, professional associations of journalists) which formulate their own codes for their members. Both the reasons for the development of codes, as well as the content of codes will undoubtedly depend on the particular body that draws them up, as this thesis illustrates. Thus, the idea of journalistic codes of ethics as 'multi-faceted' in both their form and origins appears to hold true, as this brief overview of the development of early journalism codes of ethics has indicated. This hypothesis is explored in more depth throughout the remainder of this thesis in the context of print media codes in Britain and New Zealand.

While the codes of ethics for journalists (like those of other occupational groups) may be characterised as 'multi-faceted', there are undoubtedly factors that render journalism codes unique. Just as the development of ethics codes may be prompted by certain pressures both internal and external to journalism, other pressures may also affect their application. The broader climate of practice in which the practice of journalism takes place in a contemporary context has led some to question the viability of the development and application of an ethics code 'voluntarily'. That neither the development, nor the application of journalistic codes of ethics takes place in isolation is a further underlying theme of this thesis.

Codes of ethics and the applicability of social responsibility theory in the current context: A issue for further assessment

On the surface at least, the widespread trend within western journalism towards the adoption of ethics codes may suggest that elements of the social responsibility theory have found practical expression. However, the underlying processes and pressures driving their development need to be examined in order to confirm such a notion. The concepts of 'voluntary restraint' and 'internal reform' underpin the prescriptions of social responsibility theory as to how ethics codes ought to be developed and applied. It may not necessarily follow from the adoption of ethics codes that they have been adopted as the 'professionalising strategies' advanced by the social responsibility theory. Indeed, as McQuail observes of the trend towards the adoption of ethics codes in western journalism: "[this] phenomenon reflects the general process of professionalization of journalism, but it also reflects the wish of the

media industry to protect itself from criticism, and especially from the threat of external intervention and reduced autonomy".[31] This contention provides a hypothesis from which to assess the pressures and processes driving the evolution of print media codes of ethics in Britain and New Zealand.

Objectives, Scope and Methodology

The 1980s and 1990s witnessed an increase in research on the topic of journalism codes of ethics. Such works range from Kaarle Nordenstreng's 1984 study of world-wide journalism codes within the scope of the Mass Media Declaration of UNESCO,[32] to Tiina Laitila's 1995 research into ethics codes of the European media, which sought to locate their common themes and proposed functions.[33] There have been studies narrower in their scope which have focussed on the history of a particular code of ethics; notably, the code of ethics of the former Australian Journalists' Association (AJA), which is now operated by the journalists' section of the Media, Entertainment, and Arts Alliance (MEAA). Research undertaken by such individuals as Martin Hirst,[34] Paul Chadwick,[35] and David Bowman,[36] among others, has meant that the background, evolution, and content of the Australian code is now relatively well documented. While the present study draws on such approaches to the study of journalism codes of ethics, there are some differences in the scope of the study as well as in terms of the perspective from which the study of codes is approached.

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[31] McQuail, D. 2000, p. 151. *McQuail's Mass Communication Theory* (4th edn.). London: Sage Publications.

[32] Nordenstreng, K. 1984. The Mass Media Declaration of UNESCO. New Jersey: Ablex Publishing Corporation. Nordenstreng's book contains a chapter on journalistic ethics codes, which assesses the extent to which the themes of professional codes for journalists in UN countries relate to 'international obligations' of peace and security, war propaganda, racial equality and other such issues embodied in the Mass Media Declaration of UNESCO. Other studies similar in their scope and objectives include Bruun, L., 1979. *Professional Codes in Journalism.* Prague: International Organization of Journalists; and Jones, J. C., op. cit.

[33] Laitila, T., op. cit. 1995. Laitila's (1995) publication was based on her MA research conducted at the University of Tampare, Sweden, and looks to McQuail's 'Lines of Accountability' to assess the functions of European codes of ethics, to locate patterns based on the body from which codes originated. The overriding aim of the exercise was to determine, on the basis of common themes noted of European codes, the viability of a generic 'European code of ethics' for journalists.

[34] Hirst, M. 1997. 'MEAA Code of Ethics for journalists: An historical and theoretical overview'. In *Media International Australia*, February 1997, no. 83, pp. 63-77.

[35] Chadwick, P. 1994. 'Creating codes: Journalism self-regulation. In Schultz, J. (ed.). *Not Just Another Business: Journalists, Citizens and the Media*, 167-182. New South Wales: Pluto Press Australia Ltd; and Chadwick, P. 1996. 'Ethics and journalism'. In Coady, M. and S. Bloch (eds.). *Codes of Ethics and the Professions*, pp. 244-266. Victoria: Melbourne University Press.

[36] Bowman, D. 1990. 'The AJA Code'. In Henningham, J. (ed.). *Issues in Australian Journalism*, pp. 49-68. Melbourne: Longman Cheshire Pty Ltd.

With the exception of some of these latter works on the AJA code, the majority of existing research into journalism codes has offered little more than to acknowledge their existence.[37] Indeed, a great deal has been left uncovered as to the role of ethics codes within the scope of media policy in the country a particular code is utilised, both on a national, and an international level. The 'press policy approach' taken here is concordant with a central aim of the study in determining the historical factors and processes that have led to the emergence of ethics codes by the print media in a non-statutory regulatory environment. The study aims to explore the development of codes in the broader context of how press self-regulation has evolved in its ethical structures and guidelines, which is more readily allowed by focussing on just two countries given the time constraints on the completion of this research.

Taken in sum, previous research on journalistic codes highlights the desirability of an analysis of journalistic ethics codes that reflects an explicit theoretical context from they which might be considered. This is the intention of the present study, which utilises the normative media theory of social responsibility as its main frame of reference. The theory is particularly relevant in the present study because the principles of the social responsibility are seen to be most applicable to the print media in a contemporary context.[38] This is in contrast to broadcast journalism codes, which have a statutory element to which the print sector is not subject, as chapter two overviews.

There has been relatively more documented about the evolution of press regulation in Britain than in most other countries worldwide. This being the case, little has been documented about the evolution of ethics codes specifically, which the present study seeks to elaborate on in comparison to the New Zealand case.[39] The New Zealand system of press self-regulation was modeled on that of Britain, reflecting the historical relationship between the two countries as chapter three explains further. However, because of the different geographical, social, political, and

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[37] At the risk of construing this trend as necessarily deficient, much has seemingly been left unexplored as to the ways in which such codes may have come to play a greater role in journalistic regulation. Certainly, this has been largely due to the given objectives of the studies concerned, where providing an inventory of journalistic codes, without examining their history and application in depth, has undoubtedly been sufficient to fulfill these.

[38] McQuail, D. 1987. *Mass Communication Theory: An Introduction* (2nd edn.). London: Sage Publications. In fact, critics have pointed out that the theory does not apply very well to any other media form than the print media (McQuail, D. 2000, op. cit., p. 155).

[39] There is a relative lack of research into New Zealand journalism more generally, which the present study seeks to remedy in part, in relation to New Zealand print media codes of ethics.

economic contexts in which the print media of each of the two respective countries operate, a hypothesis might be formulated that press regulation has evolved differently nonetheless, which this thesis aims to explore.

Specific questions that this thesis explores include whether the subsequent development of the New Zealand print media over the twentieth century in terms of its ethical structures and guidelines may be seen to emulate British trends. In addition, do their respective developments regarding codes of ethics reflect the theoretical ideals of social responsibility theory? Do they reflect overseas trends observed in the past, and what factors might have contributed to any divergences? These are some of the principal questions that are addressed in this thesis in a comparative study of the evolution of print media codes of ethics in Britain and New Zealand. This study aims to reconstruct the relevant historical processes, and the pressures brought to bear on the print media in Britain and New Zealand respectively in order to piece together a comprehensive account of why and how print media codes of ethics emerged and have evolved over the twentieth century. The respective histories and dynamics therein are presented with a comparative orientation in order to highlight the similarities and differences between the two experiences.

Upon embarking on the study, it was anticipated that the primary instrument of data collection would be interviews and written correspondence with industry figures involved in the processes with which this study is concerned. Historical documents and other primary sources including journalism union records and publications and those of the print industry watchdogs in the two countries would be employed to supplement this data. However, the relative lack of secondary sources documenting the history of the print media in New Zealand in the development of ethical structures and guidelines meant that the collection of primary sources by way of interviews with New Zealand print industry figures was critical to the study. Existing accounts of Britain's history of press standards regulation would be employed and substantiated by written and electronic correspondence, along with interviews conducted via telephone. Indeed, such an approach to the research element of the thesis appeared to be the most feasible given the locality in which the research was conducted, among other factors. However, the study departed from the intended research procedure due to some unpredicted difficulties experienced in its implementation. Thus, the limitations of the ensuing study must be acknowledged.

Limitations of the study: The ironies of research into journalism?

Throughout the duration of this study, it became apparent that such data obtaining methods based on inviting the perspectives of industry figures would not produce the depth of information initially sought. A disappointing lack of response to requests for information, or to schedule personal or telephone interviews not only meant that existing written records had to become the main information source, but also highlighted some interesting ironies in the context of journalism research. Firstly, that the persistence apparently favoured within journalism of journalists in their information seeking capacities from sources outside of the industry is evidently not, with some exceptions,[40] held in the same esteem when the roles are reversed, nor is the expectation within journalism of 'accessibility to information upon request'. These difficulties have meant that in spite of the fact that numerous efforts have been made to obtain industry responses to, and perspectives on the contentions made in this thesis, there is a limited 'right of reply' reflected in this study to the British and New Zealand press industries. Unfortunately, these difficulties encountered in researching this thesis have impinged on the depth of and scope of the study, thus comprising a significant limitation of the research.

[40] Those individuals who assisted in the provision of information and material are cited in the acknowledgements above.

PART ONE

Conceptualising 'voluntary restraint'

CHAPTER ONE

Theorising the role and functions of journalistic codes of ethics

> Why would anyone want a code of ethics? What purposes can a code serve? Is its point simply to get people to behave in certain ways? To acquire certain traits of character? Both, or something else as well? Is the purpose of a code less to improve conduct than to promote good public relations?[1]

This chapter overviews the theoretical perspectives relating to codes of ethics in order to conceptualise the notion of 'voluntary restraint' in the context of journalism. Firstly, the relationship between journalistic codes of practice and social responsibility theory is explored to highlight the role that the theory ascribes to codes in a framework of self-regulation. Following this, understandings of the term 'professionalism' in the context of journalism are examined in laying out a framework from which the development of code of ethics might be further assessed. Views on the role and significance of ethics codes in a system of self-regulation for journalists are canvassed in order to provide a context from which to approach an evaluation of the efficacy of journalistic codes of practice in maintaining such a regulatory framework. Finally, some of the arguments as to the nature of ethics codes as a means of fulfilling such a function are explored in order to address the questions posed above. Through exploring the concept of voluntary restraint, this chapter thus provides a theoretical framework from which to understand the evolution of press self-regulation in Britain and New Zealand as the focus of chapters two and three.

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[1] Lichtenberg, J. 1996, p. 27. 'What are codes of ethics for?' In Coady, M. and S. Bloch (eds.). *Codes of Ethics and the Professions*, pp. 13-27. Victoria: Melbourne University Press.

1.1 Social Responsibility Theory: Historical roots and contemporary manifestations

It was in 1947 that the Commission on Freedom of the Press called for 'social responsibility' to be practised by the American press. The 1947 Hutchins report, as it is widely known, provided the main theoretical foundations for the later social responsibility theory, setting new paradigms about the role of the press. The background to the establishment of the Hutchins Commission was the process of the commercialisation of the press. With its roots in the nineteenth century, this was a phenomenon allowed by an increase in the potential for mass production, distribution and advertising coupled with a growth in literacy.[2] These processes paved the way for growth of the 'new journalism',[3] bringing criticism of both the level of concentrated ownership and a perceived decline in standards of press performance.[4] According to the Hutchins Commission, to address these problems was to reconsider the prevailing conception of 'press freedom'.

The nature of 'press freedom': Libertarian and social responsibility theories compared

The 1947 Hutchins Commission observed "...an antithesis between the current conception of the freedom of the press and the accountability of the press. Accountability...is not necessarily a subtraction from liberty...the affirmative factor of freedom, freedom for, may be enhanced".[5] This is what Glasser refers to as a 'positive' conception of 'press freedom', which holds that "... freedom and responsibility stand side by side — distinct yet inseparable".[6] This was a departure from the prevailing libertarian conception of 'press freedom' by which freedom and responsibility stood on opposite ends of the continuum.[7] It followed that there was a

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[2] McQuail, D. 1994, p. 123. *Mass Communication Theory: An Introduction* (3rd edn.). London: Sage Publications.

[3] See, generally, McNair, B. 1996. *News and Journalism in the UK: A Textbook*, (2nd edn). London: Routledge; and Negrine, R. 1989. *Politics and the Mass Media in Britain.* London: Routledge. The development of the commercial mass press is further discussed in the context of Britain in the next chapter.

[4] Commission on Freedom of the Press. 1947, p. 17. *A Free and Responsible Press: A General Report on Mass Communication.* Chicago: The University of Chicago Press.

[5] ibid., p. 130.

[6] Glasser, T. 1986, p. 93. 'Press responsibility and First Amendment values'. In Elliot, D. *Responsible Journalism*, pp. 81-98. USA: Sage Publications Inc.

[7] ibid., p. 93.

need to "reconcile notions of freedom and independence with obligation".[8] As Theodore Peterson (who later codified the social responsibility theory) explained, "... [f]reedom carries concomitant obligations...".[9]

Thus, while the Hutchins Commission reaffirmed the principle of press freedom as freedom from state intervention, it added to this a positive conception of freedom:

> ... [P]ress freedom means freedom from and also freedom for ... A free press is free from compulsions from whatever source, governmental, social, external or internal ... A free press is free for the expression of opinion ... It is free for the achievement of those goals of press service on which its own ideals and the requirements of the community combine ... The free press must be free to all who have something worth saying to the public since the essential object for which a free press is valued is that ideas deserving a public hearing shall have a public hearing.[10]

The obligations of the media by social responsibility theory

According to social responsibility theory, there are standards of press performance that should be followed in recognition of its role in political and social life.[11] Peterson set out the responsibilities of the media as follows: to provide 'a truthful, comprehensive, and intelligent account of the day's events in a context which gives them meaning', to serve as 'a forum for the exchange of comment and criticism', and to function as 'common carriers of information representative of all-important viewpoints not merely those with which the publisher or operator agrees'. The theory holds that the press should also offer 'a representative picture of the constituent groups of society', and should be responsible for 'the presentation and clarification of the goals and values of society'.[12]

The social responsibility theory reflected an overall dissatisfaction with both the libertarian interpretation of the role of the press in society,[13] and the notion of the market as a regulator of journalistic performance and standards of practice.[14] By libertarian theory, the actions and performance of the press are "... regulated by

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[8] McQuail, D. 1987, op. cit., p. 116.
[9] Peterson, T. 1963, op. cit., p. 74.
[10] Commission on Freedom of the Press, op. cit., p. 129.
[11] McQuail, D. 1987, op cit., p. 116; and McQuail, D. 1994, op. cit., p. 124. Interestingly, while the Hutchins Commission critiqued many of the information-gathering practices of the commercial press, these 'responsibilities' centre upon the dissemination of news and information.
[12] Peterson, T. 1963, op. cit., pp. 87-91.
[13] ibid., p. 74.
[14] Curran, J. and J. Seaton. 1997, p. 285. *Power without Responsibility: The Press and Broadcasting in Britain* (5th edn.). London: Routledge.

market processes [whereby] these processes ensure...that the press is free, diverse and representative".[15] Regardless of the standards of press performance, "its performance was *per se* in the public interest".[16] As Peterson later explained, "... nothing in libertarian theory established the public's right to information or required the publisher to assume moral responsibilities".[17]

The 'price' of press freedom

The Hutchins Commission urged the press to adopt a 'professional spirit', and to "accept responsibility for the services rendered by the profession as a whole".[18] Placing the onus on the press to collectively ensure that high standards of performance are maintained, the commission explained that

> ... the main positive energy for the improvement of press achievement must come from the issuers. Although the standards of press performance arise as much from the public situation and need as from the conscious goals of the press, these standards must be administered by the press itself...and for the correction of abuses the maxim holds that self-correction is better than outside correction, so long as self-correction holds out a reasonable and realistic hope, as distinct from lip-service to piously framed paper codes.[19]

The social responsibility theory denounced the libertarian idea that 'impediments to press freedom', both in the interference in the press at the structural and professional level, were necessarily a violation of the "natural right of free expression and search for truth".[20] According to social responsibility theory, demonstrable 'abuses' of press freedom come with a price. The freedom to operate independently of government is not an inalienable right. If 'social responsibility' is not attained thus, then fiscal or legal intervention can be justified with the end of serving a public good.[21]

As Peterson justified this position: "The citizen has a moral right to information and an urgent need for it. If the press does not fulfil his*[sic]* requirements, then both the community and the government should protect ... [the public's

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[15] ibid., p. 285.
[16] Peterson, T. 1966, p. 35. 'Social Responsibility: Theory and Practice'. In Gross, G. (ed.) *The Responsibility of the Press*, pp. 33-48. New York: Fleet Publishing Corporation.
[17] Peterson, T. 1963, op. cit., p. 73.
[18] Commission on Freedom of the Press, op. cit., p. 92.
[19] ibid., pp. 126-7.
[20] Peterson, T. 1966, op. cit., p. 38.
[21] McQuail, D. 1987, op. cit., p. 118.

interests].[22] According to the theory, such intervention may not in itself contravene freedom, but rather could promote it:

> Without intruding on press activities, government may act to improve the conditions under which they take place so that the public interest is better served – as by making distribution more universal and equable, removing hindrances to the free flow of ideas ... legal restraints and preventions are not to be excluded as aids for checking the more patent abuses of the press ... such legal measures are not in their nature subtractions from freedom but are means of increasing freedom, through removing impediments to the practice and repute of the honest press.[23]

These principles are captured by what Tully refers to as an 'implicit bargain' between the print media and society,[24] which underpins the self-regulatory framework of the contemporary western press today.

The mechanisms for voluntary restraint and upholding the 'social responsibility contract'

In reconciling notions of freedom with responsibility, and autonomy with accountability, social responsibility theory advocated the development of professionalism and higher standards of performance within a context of self-regulation. Codes of ethics, as among the 'professionalising strategies' envisaged by the theory, are thus often seen as a means of setting out the 'social responsibilities' of the media with the standards of performance required to attain them. The print media in a number of countries have illustrated 'social responsibility' through codes of conduct, which are often the cornerstone of self-regulatory regimes formalised through the establishment by the press of the types of media councils advocated by the theory. As Peterson observed, "by the very fact of adopting these codes, the media have linked freedom with responsibility".[25]

However, this is not to suggest that such a transition has been without obstacles. In fact, the Hutchins Commission anticipated the most fundamental of these. The potential impediments to the adoption of a 'professional spirit' in the press were located by the commission in the tension between the roles of the newspaper as a business enterprise and as a 'public trust': "The press, like most other human enterprises, operates under a double set of standards of its own – its business

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[22] Peterson, T. 1963, op. cit., p. 101.
[23] Commission on Freedom of the Press, op. cit., p. 127.
[24] Tully, J. 1992a, op. cit., p. 143.
[25] Peterson, T. 1966, op. cit., p. 42.

standards and its professional standards of quality and public interest".[26] Rather than negating the existence of one set of standards in favour of the other, as the libertarian would appear to do, this tension needed to be acknowledged and addressed. A fundamental change in attitude was thus necessary from the prevailing situation where "self-judgement and self-criticism of the press by the press was external to the day's business".[27] That the promotion of 'social responsibility' in the press is influenced by the broader context in which the practice of journalism takes place irrespective of an overlay of ethics codes informed by the theory's principles is an issue explored throughout the remainder of this thesis. The long-standing debate over the status of journalism as 'a profession' is illuminating.

1.2 'Professionalism', journalism, and codes of ethics

Used in the context of journalism in the manner of the Hutchins Commission, the notion of 'professionalism' is not readily disassociated from the terms 'responsibility', 'ethics', and 'code of practice'. Indeed, Belsey observes that "ethics and professionalism are often seen as co-requisites", where codes of ethics can be seen as something of a 'physical embodiment' of these terms.[28] Yet in spite of the fact that even prior to the Hutchins Commission "journalism was one of the first occupations to have codes and is still a source of new ones",[29] some commentators dispute the notion that journalism can be classed as a 'profession'.

Part of the contention is rooted in the long-standing debate over whether newspaper journalism in fact constitutes 'a trade', 'a craft', 'a vocation', 'an industry', or something else more applicable than the term 'profession'. A comment made in 1938 in the context of the UK press illustrates the underlying tension about the status of journalism as 'a profession'.

> ... [T]he public may ask what entitles newspaper owners to turn the printing and the selling of news—which is a social service—into a private business or industry. What proofs of mental capacity or moral integrity have they to give before they are allowed to profit by ministering to public curiosity? If the truthful answer be 'None, except commercial success,' serious conclusions may be drawn. If, on the other hand, the answer be that newspaper owners feel

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[26] Hocking, W. E. 1947, p. 181. *Freedom of the Press: A Framework of Principle. A Report from the Commission on Freedom of the Press.* Illinois; The University of Chicago, Illinois.
[27] ibid., p. 181.
[28] Belsey, A. 1998, p. 8. , 'Journalism and ethics: Can they co-exist?' In Kieran, M. (ed.). *Media Ethics*, pp. 1-14 London: Routledge.
[29] Harris, N. G. E., op. cit., p. 62.

> bound to manage their industry with some sense of public trusteeship, complicated issues arise. No newspaper can long be produced without the help of its editorial staff, or journalists ... The news they gather and the comment they write has to be sold to the public, usually under stress of competition. As news-getters and news-sellers, journalists may hardly seem entitled to claim a higher status than that of any cheapjack whose vociferations draw pence from passers-by. Yet the functions they actually discharge give them a public standing above that of men*[sic]* whose only aim is to catch the eye or ear of their fellow men*[sic]* ... Journalists, as the basis of the 'newspaper industry', hold a special position because its raw material is really the public mind and it trades chiefly in 'moral values'...[30]

The issues raised in this extract go to the heart of what Keeble refers to as the 'ethical contradictions of the newspaper industry',[31] which in many ways underlies the conflict between the libertarian and social responsibility theories concerning the role of the press. At the root of this complexity is the tension between the position of journalism at the centre of a profit-oriented industry responsible for the creation of a commodity to be sold, and the role of journalism as a profession with social functions and moral responsibilities. The difficulty in resolving these conflicting interpretations as to what exactly it is that the practice of journalism constitutes is compounded by the characteristics sociologists have widely utilised to demarcate 'the professions'.[32]

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[30] Wickham Steed, H. 1938, pp. 11-15. *The Press.* London: Penguin Books Ltd.

[31] Keeble, R. 1998, p.24. *The Newspapers Handbook.* London: Routledge.

[32] The sociological literature on professions and professionalism embodies two principal schools of thought. Without entering into a detailed discussion of these, the main distinction between Functionalists and Power theorists is their respective conceptions of the role and significance of the professions in society. The former perspective "... sees professionalism as a bargain struck between society and occupations, where the knowledge and education necessary to perform complex occupations act as resources exchanged for the power and privilege associated with high professionalism" (Newton, L. 1998, p. 262. 'The origin of professionalism: Sociological conclusions and ethical implications'. In Stichler, R. N., and R. Hauptman (eds.). *Ethics, Information and Technology*, pp. 261-272. USA: McFarlane and Company Inc.). Of professional codes of ethics, functionalists assert that "... the professional code is the institutionalized manifestation of the 'service idea' ... by means of the code, the practitioners and profession police themselves, and this self-policing is an essential clause in the 'bargain' struck between profession and society" (ibid., p. 263). On the other hand, power theorists contend that "... the category of professionalism is a semi-mythic construct, fashioned by the embers of an occupational group for the purpose of obtaining social and economic advantages who then successfully persuade the rest of society to accept their construct and honour their claim for special protection and privileges" (ibid., p. 262). From this perspective, "[p]rofessionalization is thus an attempt to translate one order of scarce resources – specialized knowledge and skills – into another – social and economic rewards" (Larson, M. 1977:xvii. *The Rise of Professionalism: A Sociological Analysis.* Berkeley: University of California Press). For power theorists, "[c]odes are just a part of the professional 'ideology' ... designed for public relations and justification for the status and privilege which professions assume vis-à-vis more lowly occupations, devices used to dupe both the government and the public into thinking that the occupation is a worthy recipient of professionalism's autonomy and prestige" (Newton, L., op. cit., p. 263). These perspectives on professionalism and codes of ethics are noteworthy because they are reminiscent of debates concerning the functions of journalistic codes of ethics, as the latter part of this chapter illustrates.

Traditionally conceived of, a 'profession' is seen to embody certain characteristics. Journalism, however, is typically seen to fall short of the majority of these.[33] Basing his assessment on the traditional criteria widely used by sociologists to delineate the 'professions', Merrill concludes that in answer to the question 'is journalism a profession?'

> Obviously it is not, although it has some of a profession's characteristics. There is no direct relationship between the journalist and his*[sic]* client. There is, in journalism, no minimum entrance requirements ... no journalist is licensed, thereby giving the 'profession' some kind of control over him*[sic]*. There are no professional standards commonly agreed upon, and followed by journalists. Journalists do not share in common a 'high degree of generalized and systematic knowledge'. Journalists do not claim for themselves the exclusive right to practice the arts (all borrowed from other disciplines) of their trade. And finally, journalists ... do not form a 'homogeneous community'.[34]

From this perspective, journalism does not appear to constitute a 'profession'. However, it would appear that the point of contention here lies fundamentally in a conflict between interpretations of the notion of 'professionalism' itself. As several theorists have pointed out, the sociological criteria traditionally employed to demarcate 'the professions' not only serves to exclude journalism, but also many other occupations that have some valid claim to professional status.[35] Therefore, it might be seen that just as the traditional professions (law and medicine being the most frequently employed examples) have evolved over time with implications for the extent to which they demonstrate these criteria, so too has the notion and the possible understandings, of professionalism itself. As Schultz explains,

> [a]lthough journalists may not fit into the carefully developed sociological definitions of what it takes to be a professional, it may well be that journalism in this regard, as in others, resists categorisation. Their self-definition is professional and that is the crucial position.[36]

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[33] For further discussion of this contention, see Henningham, J. 1990. 'Is journalism a profession?' In Henningham, J. (ed.). *Issues in Australian Journalism.* Melbourne: Longman Cheshire Pty. Ltd.

[34] Merrill, J. C. 1988, p. 40. 'The professionalization of journalism'. In Callahan, J. C. (ed.). *Ethical Issues in Professional Life*, pp. 39-43. New York: Oxford University Press.

[35] Belsey, A. 1998, op. cit. In addition, a number of arguments have been raised to counter such claims that these characteristics do not apply to journalism. For instance, it has been contended that 'the provision of a public service' constitutes the specialised knowledge involved in the practice of journalism (see Dennis, E.1996. *Media Debates: Issues in Mass* Communication (2nd edn.). New York: Longman.)

[36] Schultz, J. 1994, p. 36. 'The paradox of professionalism'. In Schultz, J. (ed.). *Not Just Another Business: Journalists, Citizens and the Media.* New South Wales: Pluto Press Australia Ltd.

Rather than focussing solely on the organisational and structural characteristics of an occupational group, some media ethicists have preferred to take a broader view of the notion of professionalism.[37] Belsey and Chadwick suggest that the concept is a great deal less clear-cut and static:

> The nature of professionalism is both vague and flexible ... What is important is not a precise definition of a profession, which is bound to be too restricted to apply to the variety of groups that have some fair claim to be professional these days, but rather the *quality* of the conduct of members of these groups whether it be in medicine or journalism, so long as it has a potential for good or harm. What is important is that the activity that wishes to call itself professional be conducted on an ethical basis and that its practitioners be accountable for their actions.[38]

This understanding of 'professionalism' thus focuses not on the particular structural characteristics of an occupation. Rather, 'professionalism' is constituted by the occupational group's established standards of performance, and the visible accountability mechanisms it has in place to denote an "explicit concern for ethical standards in the conduct of professionals".[39] This approach emphasises the 'performance for public good' requisite of a profession,[40] and thus the label 'profession' is more or less irrelevant from this perspective. The value of this broader approach would appear to lie in that it allows for a more comprehensive understanding of the role the social responsibility theory allocates to codes of ethics as among the 'professionalising strategies' of journalism.[41]

As Belsey and Chadwick observe, "... it is the proliferation of such codes among occupational groups that is used to justify the claim to professional status".[42] Journalism codes of ethics, then, may be seen to reflect a commitment to

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[37] In addition, even traditional sociologists of the professions have contended that 'a profession' may not necessarily manifest all such characteristics and still be looked upon thus (see Larson, M., op. cit., p. 49).

[38] Belsey, A., and R. Chadwick. 1992a, p. 12. 'Ethics and the politics of the media: The quest for quality'. In Belsey, A. and R. Chadwick (eds.). *Ethical Issues in Journalism and the Media*, pp. 1-14. London: Routledge. (Italics in original text.)

[39] ibid. p. xi.

[40] Fullinwider, R. 1996, p. 72. 'Professional codes and moral understanding'. In Coady, M. and S. Bloch (eds.). *Codes of Ethics and the Professions*, pp. 72-87. Victoria: Melbourne University Press.

[41] As the 1947 Hutchins Commission wrote, "A profession is a group organized to perform a public service...The group seeks to perform its service and to maintain the standards of the service even though more money could be made in ways that would endanger the quality of the work...The difficulties in the way of the formal organization of the press into a profession are perhaps insurmountable. But, keeping in mind the inescapable individual responsibility, society should see to it that every effort is made to develop a more institutionalized or communal responsibility" (Commission on Freedom of the Press, op. cit., p. 76-78).

[42] Belsey, A., and R. Chadwick. 1992a, op. cit., p. 8.

professionalism in this broader sense as a means to promote high standards of conduct and public service. In addition, codes of ethics within a framework of self-regulation may be seen to reflect the efforts to balance the independence and autonomy often associated with professionalism with accountability to the public. This understanding further supports the interpretation of the notion of professionalism advocated by social responsibility theory, as outlined above.

Those who argue against the professionalisation of journalism tend to be preoccupied with its perceived lack of specific structural and organisational characteristics, and thus undervalue what a broader approach might advocate as the process of professionalisation in journalism. For instance, as Merrill argues of the US context, the professionalisation of journalism is "undesirable ... what keeps our journalism vigorous and diversified (and to some 'irresponsible') is the very fact that it is not a profession".[43] Based on the structural requirements of a profession, in this case, the licensing or registration of journalists to practice, this argument is also flawed because it relies on libertarian ideas of 'press freedom'. In doing so, it appears to miss a crucial point. While certainly, a central argument against the licensing of journalists is based around the necessity of press freedom in a democracy,[44] ensuring that journalists are free from external restriction and restraint is not the only concern. From the broader perspective offered above, it is conceivable that where journalistic accountability and high ethical standards are the end and professionalisation the means, the professionalisation of journalism certainly is 'desirable' if, of course, it helps to attain the overall goal of responsible journalism. Therefore, the more valuable understandings of the concepts of 'profession' and 'professionalism' are those reflected in the social responsibility theory, and elucidated by the broader approach above. From this perspective, the significance of ethics codes within a framework of self-regulation cannot be understated.

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[43] Merrill, J. C., op. cit., p. 41.

[44] Cunningham, R. P. 1989, p. 59. 'Self-regulation: Reflections of an insider'. In Dennis, E. E., D. M. Gilmour, and T. Glasser (eds.). *Media Freedom and Accountability*, pp. 55-60. USA: Greenwood Press Inc. See also Belsey, A and R. Chadwick. 1992a, op. cit., p. 9; and Harris, N. G. E., 1992, op. cit., p. 68.

1.3 The role of ethics codes in a self-regulatory system

The notion of 'professional autonomy' as the self-policing ideal of professionals, is not seen to apply directly to journalism where, as Chadwick points out, individual journalists "[a]s employees ... are often directed in their practices [by their employers]".[45] On the other hand, a system of press self-regulation might be considered to exhibit a 'collective autonomy', whereby the print media collectively set standards of journalistic performance and monitor them internally.[46] In doing so, the print media thus illustrate an attempt to assimilate 'professional autonomy' with 'professional responsibility'. As Christians maintains, as means of balancing media freedom and responsibility, autonomy and accountability, "[s]elf-regulation offers one pathway out of the conundrum ... codes of ethics are normally placed within the aegis of self-regulation, as a visible institutional indicator that the press takes its internal constraints seriously".[47]

A system of voluntary self-regulation informed by codes of behaviour can thus pose as a compromise between those who believe in a free press and those who believe that it should be responsible.[48] This is to the extent that independent self-regulation via a code of behaviour has the potential to promote the democratic ideals of press freedom, as well as protecting the public from irresponsible or unethical journalism. Ethics codes operated in a system of self-regulation can allow public evaluation of journalistic performance.[49] In doing so, they have the potential to promote journalistic accountability. In addition, such a system would appear to have advantages over other systems of regulation, namely government-imposed restraints to the extent that self-regulatory codes are internally promulgated and policed. As Fullinwider surmises, "we would expect the self-imposed rules of a profession to command greater consent and to reflect more directly the internal values to the

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[45] Chadwick, P. 1996, op. cit., p. 246.

[46] Indeed, Kultgen identifies two types of 'professional autonomy'; collective autonomy, and individual autonomy, (Kultgen, J. 1988, p. 84. *Ethics and Professionalism.* USA: University of Pennsylvania Press). In cases where journalists collectively self-regulate, they may be seen to fit into the former of these two categories.

[46] Harris, N. G. E. 1994, p. 104. 'Professional codes and Kantian duties'. In Chadwick, R. (ed.). *Ethics and the Professions*, pp. 104-115. Aldershot: Ashgate Publishing Ltd.

[47] Christians, C. op. cit., pp. 35-36.

[48] A similar point was made in the context of media councils by Morgan, K., op. cit., p. 136.

[49] Tully, J. 1994, p. 133. 'The Public Face of Privacy'. In Ballard, P. (ed.). *Power and Responsibility: Broadcasters Striking a Balance*, pp. 130-136. Wellington: The Broadcasting Standards Authority.

profession itself."[50] Thus, in theory, self-regulation via codes of ethics may pose as the preferable, and more effective, option for the regulation of professional standards for both journalists and the society in which they work.

However, while self-regulation may be seen to benefit journalists in allowing a greater degree of freedom with which to carry out their news-gathering activities, effective self-regulation must be demonstrated to legitimate its existence and continuation to the public. As Tully points out, "[s]elf-regulation is not an inalienable right. When journalists are perceived to be practicing in an irresponsible or unacceptable manner, calls for regulation are inevitable and legislation providing for some measure of control is proposed".[51] The following section canvasses the theoretical arguments as to whether codes of ethics have the potential to serve as effective self-regulatory tools.

1.4 Codes of ethics as a vehicle for effective self-regulation: A review of perspectives

The functions of ethics codes: 'Professionalism' or 'Public relations'?

As indicated above, the adoption of codes of ethics within journalism may be seen to have a symbolic value, signifying a concern with professionalism and ethical standards. As Belsey and Chadwick reinforce this proposition:

> [The adoption of codes] ... joins journalism with other occupations that have promulgated codes of practice and is one of the moves which demonstrate an aspiration to move beyond mere occupation to professional status. Adherence to a code brings journalists together as professionals recognizing common aims and interests and acknowledging responsibilities to the public. [It shows] ... a collective public commitment to acknowledged ethical principles and standards ... announcing to both professionals and the public that there is a commitment to quality and the standards of behavior necessary to achieve quality.[52]

This argument not only suggests that codes may function as a 'professionalising strategy' in journalism, it also highlights that a code may function as a means of declaring their responsibilities along with the standards of performance required to

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[50] Fullinwider, R., op. cit., p. 80.
[51] Tully, J. 1994, op. cit., p. 132.
[52] Belsey, A., and R. Chadwick. 1995, p. 467. 'Ethics as a vehicle for media quality'. In *European Journal of Communication*, vol. 10, no. 4, pp. 461-473. London: Sage.

achieve them to the public. From this perspective, then, codes perform an important function as instruments for journalistic accountability.[53]

However, those who argue against the value of written codes tend to claim that, contrary to the promotion of 'socially responsible' practice, codes function as little more than a 'public relations' exercise.[54] From this perspective, codes fulfil more of an ideological function than a practical one; they are designed to pose as 'evidence' of the ability to self-regulate in a negative sense. In other words, they are not fundamentally devised in order to promote the maintenance of high ethical standards and accountability to the public, but to protect the autonomy of the profession. It thus follows that there is little or no genuine commitment to the precepts proclaiming 'social responsibility' that the content of codes tends to constitute. This is a limited type of accountability at best. As Kultgen contends:

> Strictures in codes relating to dignified conduct appear to have more of a public relations function than a moral one: They aim to make professionals good advertisements for the profession ... Such efforts are designed not only to instill trust in the public, they also enable members of a profession to say (and think), we must be ethical – just look at our code.[55]

Code of ethics then, are a means to stave off threats of government intervention in the regulation of journalistic standards. As Harris argues: "[where] the professional body has been criticized for failing to control the actions of maverick members [devising a code] may help to counter those seeking to have self-regulation replaced by statutory control".[56] This points to the reactive (rather than pro-active) manner in which journalistic codes are seen to be adopted; that they tend to emerge amid threats of statutory control, rather than in the 'spirit of professionalism' as a genuine, (internally-inspired) effort to promote responsibility and accountability.

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[53] Klaidman and Beauchamp point to three principal understandings of the term 'accountability'; moral, legal, and financial accountability that are relevant to a discussion of codes of ethics for journalists. 'Moral accountability' can be seen to encompass moral standards like fairness, truthfulness, and the protection of a source's identity. Values related to moral accountability tend to be those covered in ethics codes, as is the sense of accountability that this thesis is predominantly concerned with. The second sense may be described as the legal liability of journalists with the possibility of lawsuits against those in a position of responsibility such as the media. The third sense, financial accountability, comes in here also. Journalists can be sued for libel or defamation and can be faced with expensive lawsuits, particularly concerning celebrities seeking redress (Klaidman, S., and Beauchamp, T. L., 1987, pp. 213-214. *The Virtuous Journalist*, New York: Oxford University Press).

[54] See Kultgen, J. 1998. 'The ideological use of professional codes'. In Stichler, R. N., and R. Hauptman (eds.). *Ethics, Information and Technology*, pp. 273-290. USA: McFarlane and Company Inc.

[55] Kultgen, J. 1988, op. cit., p. 214.

[56] Harris, N. G. E. 1994, p. 104. 'Professional codes and Kantian duties'. In Chadwick, R. (ed.). *Ethics and the Professions*, pp. 104-115. Aldershot: Ashgate Publishing Ltd.

Does this mean that the role that social responsibility theory envisages for journalistic codes of ethics within a system of self-regulation is merely an ideal?

The 'adherence factor': Does a code need an enforcement mechanism?

Some commentators believe that the extent to which journalistic codes can be considered merely a "mantle of self-protection", to employ Christians' phrase,[57] lies in whether or not they are demonstrably adhered to. The mere existence of a code, or the claims from within the profession that codes serve to regulate its members, does not, of course, necessarily entail that a code's precepts are in fact honoured in practice. This view is reinforced by Coady: "The fact that professions are recognizing in their codes of ethics their responsibilities to the community will not reassure some who see codes of ethics as mere windowdressing ...".[58] As Harris extrapolates:

> It should be remembered ... that the existence of a code is not itself a guarantee of greater [public] protection, for its requirements may be ignored; if so, far from protecting them, the list of fine-sounding clauses that make up a code may lull a credulous public into placing a trust in members of a profession to an extent that is quite unwarranted.[59]

In the case of journalism, such 'unwarranted trust' would appear to have significant implications where, particularly in the case of news journalism, public trust in the news product and the credibility of the methods used in obtaining it, are paramount. Therefore, if codes are indeed to "... give the public a basis on which to judge the journalism they consume",[60] should there not be an established channel through which members of the public can air their dissatisfactions about journalistic performance based on the standards a code sets out? The existence of such a channel, which is often a central purpose of self-regulatory bodies within the print media, might be seen not only to promote more effectively the practice of ethical journalism. In offering public participation in the code's adherence, such a channel may also embody a 'democratic element' to a code's administration.

Moreover, if a self-regulatory body monitors a code, this can be seen to further the democratic ideals of the media more generally. This is in terms of the notion that a 'free press', which operates independently of state-imposed controls, is a requisite of

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[57] Christians, C., op. cit., p. 45.
[58] Coady, M. 1996, p. 48. 'The moral domain of professionals'. In Coady, M. and S. Bloch (eds.). *Codes of Ethics and the Professions*, pp. 28-51. Victoria: Melbourne University Press.
[59] Harris, N. G. E. 1992, op. cit., p. 66.
[60] Tully, J. 1994, op. cit., p. 133.

a free society and a healthy democracy. The freedom thus granted journalists may even have positive implications for the recipients of their work. Indeed, if codes are in fact adhered to they may function both to protect the industry, as well as the public, thus posing as "a viable alternative to government regulation".[61] Lichtenberg, too, is optimistic about the ability of codes to promote effective self-regulation. She asserts that "[a] code of ethics may be both possible and effective, just as a system of law is...codes of ethics, like laws, can fulfill the function of publicly expressing a group's commitment to some moral standard".[62]

At the same time, Harris explains that the self-regulation of a code's adherence can have deficiencies:

> It is the limited powers that most professional bodies have to enforce their codes which throws into question the public benefit of having codes of conduct, at least of the non-statutory kind. If breaches go unpublished, if the complaints procedure produces no more than verbal criticism from the body that deals with them against whom they are made, then what protection will the public gain from the existence of a code?[63]

If codes of practice are in fact to function as a viable alternative to legislation for the public, then journalism which does not reach a certain high standard articulated in a code, it is argued, ought to be punished. It is perhaps on such grounds that some commentators have disputed the value of a code for journalists if it is not accompanied by sanctions, perhaps using a system of fines or other penalties determined by the body who administers a code. Fullinwider explains that codes with such sanctions have the potential to

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[61]Bowie, N. E. 1988, p. 421. 'Business codes of ethics: Window dressing or legitimate alternative to government regulation'. In Callahan, J. C. (ed.). *Ethical Issues in Professional Life*, pp. 421-424. New York: Oxford University Press.

[62] Lichtenberg, J. 1996, op. cit., p. 15-27. In comparing a code of ethics to law, it is worthwhile to note that the law has been used as an argument against the value of written codes. Goodwin and Smith note that in the US context, some media attorneys have advised news organisations not to adopt ethics codes because of the potential that they are used as evidence against journalists in libel and privacy lawsuits to show that the accused reported did not follow the code. This caution has been expressed particularly in the context of specific codes (Goodwin, G., and Smith, R. F. 1994, pp. 37-38. *Groping for Ethics in Journalism*. Iowa: Iowa State University Press. (See also Christians, C., op. cit., p. 42). This argument has found its way abroad, including the New Zealand context, as noted in chapter five (p. 156, note 116). There have however, been arguments raised to the contrary. It has been contended that while a lawyer might point to a code in arguing that a reporter breached his/her requirements, this rarely scores points in the courts, and cannot be said to have influenced the verdict of such cases. Moreover, it is argued that codes of ethics are largely irrelevant to the question of liability in libel lawsuits, because of the existence of laws that are referred to in determining allegations of this nature (see Cunningham, R., op. cit., p. 58; and Sanford, B. W. 1994, p. 43. 'Codes and Law'. In *The Quill*, November/December 1994, vol. 82, no. 9, pp. 43).

[63] Harris, N. G. E. 1992, op. cit., p. 67.

> ... secure widespread adherence with its provisions. Punishments have deterrent effects ... Enforcement [also] has an expressive function. It signals to members that the terms of the code are, and are to be, taken seriously, that the code isn't mere window-dressing.[64]

However, others take issue with the notion of 'enforcing ethics', where the imposition of ethical principles contradicts the very notion of ethics; to act 'ethically' is to act autonomously and 'voluntarily. As Ladd maintains, "[a code] by its nature converts ethical issues into something else – matters of legal or other authoritative rules, perhaps, but certainly not ethics. Ethics can not be imposed from without".[65] In response to such an argument, Kultgen states that "[t]his is the notion that principles cease to be moral when they become laws. Though false, the notion itself may replace the sense of sharing common values with that of sharing common sanctions".[66] While this may be an issue more readily resolved than others, it highlights further difficulties with codes of ethics for journalists, namely, the procedures in place to ensure that they are adhered to.

However, some commentators are less concerned to see the voluntary adherence to codes replaced with more stringent enforcement mechanisms than are others. Fullinwider suggests that

> ... an overt, explicit enforcement mechanism is not strictly necessary to a code's being a code nor to it serving to guide conduct or stimulate moral self-understanding. We may imagine a profession in which a rich body of opinions and commentary has built up and in which established practitioners habitually obey the explicit standards of practice. Their conduct, in turn, exerts a pull on less established members to obey as well.[67]

While perhaps a valid point, voluntary adherence to codes may not be seen to be viable in practice, particularly given the context in which journalistic codes are to be applied.

Conflicting duties: Accountability to whom?

While concurring that "[a]ny code worth having is worth enforcing effectively",[68] Bowie illustrates how journalists often have to deal with external

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[64] Fullinwider, R., op. cit., pp. 86-87.
[65] Ladd, J. 1992, p. 123. 'The quest for a code of professional ethics: An intellectual and moral confusion'. In Rhode, D. and D. Luban. *Legal Ethics*, pp. 121-127. St Paul: Foundation Press.
[66] Kultgen, J. 1988, op. cit., p. 213.
[67] Fullinwider, R., op. cit., p. 87.
[68] Bowie, N. E., op. cit. p. 422.

pressures and constraints which may not make adherence to codes a simple task.[69] In addition, such constraints may in fact be seen to complicate the issue of a code's enforcement. The competitive nature of the climate of practice in which contemporary journalism tends to take place may result in ethical standards being seen as peripheral to other concerns. Underlying this issue is the notion of 'accountability', as well as the types of 'accountability' that might be located in the context of journalism. In listing the professional and ethical standards required of journalists, codes of ethics usually highlight, either explicitly or implicitly, the journalist's accountability to the public. But who else might a journalist be accountable to? What problems might this create for the adherence or, indeed, the recognition of an ethics code within the industry?

A difficulty for codes might be seen in the potential conflict between the journalist's accountability to the public, and the journalist's accountability to his/her employer to promote the media organisation's business interests in a way that conflicts with the requirements set out in a code of ethics.[70] This is what Bowman refers to as a 'clash of loyalties' dilemma for journalists. Often as a repercussion of the competitive pressures that abound in the contemporary press, Bowman observes that:

> [i]f the employer's requirements do happen to clash with the journalist's ethics [their own or those in a code] the journalists may have to choose between pleasing the chief who can make or break a career, and fulfilling a duty to the public. [71]

As Clem Lloyd, a former journalist, suggests: "[e]mployers rarely instruct a journalist specifically to do something unethical, they merely expect results and take no excuses".[72]

It may thus be seen that the competitive pressures on an individual journalist to produce a story may sometimes militate against adherence to a code and the standards of ethical conduct it requires. Journalists may often be under pressure from editors and indeed, proprietors, to behave in ways that stray beyond the ethical framework of a code in the course of their job. Rather than making their work easier, codes of ethics may be seen to create for the journalist additional sets of obligations that can not always be easily attended to or resolved.

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[69] ibid., p. 422.
[70] Klaidman, S., and Beauchamp, T. L., op. cit., 1987, p. 217.
[71] Bowman, D., op. cit., p. 53.
[72] Lloyd, C. J. 1985, p. 53. *Profession: Journalist: A History of the Australian Journalists' Association.* Sydney: Hale & Iremonger.

However, the validity of this argument against codes of ethics for journalists rests on whether potential solutions to this dilemma can be found. To this end, Fullinwider observes that "where a code is widely adhered to, a competitor can forego certain kinds of competition without thereby being put at a disadvantage".[73] Thus, the adoption of codes on an industry-wide basis may thus be viewed as a means to relieve the pressure on the individual journalist when faced with conflicting requirements; those of a code and those of his/her editor to be 'first' with a story. This might be promoted by the inclusion of a code of practice in the contracts of both journalists and editors can be seen as an additional means by which these difficulties might be addressed. In theory at least, introducing a 'binding code' on an industry-wide basis may have the potential to resolve a 'clash of loyalties' dilemma for the journalist. Such a system entails that both the journalist and his/her editor are obligated to see that the code's requirements are adhered to where adhering to a code does not put the media organisation concerned at a 'competitive disadvantage'. A journalist is able to defend the failure to 'come up with the goods' on the grounds that to do so would mean breaching the code.

Moreover, the incorporation of codes of conduct into the contracts of journalists and editors may be a potential solution to the problem of enforcing them effectively. Where codes are contained in the contracts of employment of journalists and editors, a breach becomes a disciplinary matter within the particular company. In such a system, a breach of a code could, as the ultimate sanction, be accompanied by dismissal from the job. If codes of ethics are to adequately function as mechanisms for the protection of the public and effective self-regulation, it may be seen that a system of enforcement that carries penalties for a breach of a code provides a more adequate means of doing so. [74]

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[73] Fullinwider, R., op. cit., p. 84.

[74] This is a development that can be noted of the British experience, among others, where most of the national newspapers now have the Press Complaints Commission's code written into the contracts of journalists and editors. This brings with it the (theoretical) requirement that not only journalists and editors are bound by the code by the terms of their employment, but also that the codes requirements must, at the very least, be acknowledged by the industry's proprietors. On the other hand, this measure leaves much power in the hand of the industry's owners and managers for the enforcement of the code that journalists are expected to abide by. If flagrant breaches are not reprimanded, and dismissal from ones job not a serious threat, but are instead something at which ones seniors recall fondly, as is reportedly sometimes been the case (Gilmour, M. 2001, p. 44. *Press Self-regulation in the UK – Comparisons to NZ.* Unpublished Research Paper prepared under the University of Canterbury Robert Bell Travelling Scholarship), then not only is the individual journalist' attitude towards the maintenance of ethical standards adversely affected, but the credibility of a self-regulatory system utilisng codes of ethics undermined.

Industry-wide versus internal codes of ethics

The scope of a code's application within a press industry might be seen as particularly relevant when considered in the context of the British press, where a single industry-wide code applies. The Press Complaints Commission (PCC), the UK print media's watchdog responsible for administering the code, has recently begun to demand that its code of practice be written into the contracts of editors and journalists. This may be a means of ensuring that the code is adhered to on an industry-wide basis. However, in recognizing the diverse range of newspapers that make up the British Press, as is discussed further in this thesis, it might be thus questioned whether this system is in fact a fair, and even a feasible one for journalists.

For example, should journalists working for the *Sun*, a mass circulation tabloid,[75] operate according to the same code as those working for the *Daily Telegraph* (which has quite a different readership)? In other words, do different readerships imply that there are different sets of ethical norms for each type of publication? This issue is particularly relevant in the British context, where as Tunstall points out, Britain is peculiar "... in the degree of polarization between its 'upmarket' and 'downmarket' national newspapers; any comprehensive system of

[75] It may be useful at this point to define the term 'tabloid' in the context of the British press. The origins of the term, and its current uses are explained by Weymouth and Lamizet: "[The tabloids represent an important aspect of the process of the commercialisation of the British press ... [t]he term 'tabloid' used in relation to the press has both a neutral and a pejorative sense: in the first it denotes a single, vertically folded newspaper ... allegedly easier to read on public transport than the doublefolded (vertical and horizontal) broadsheet. The second meaning is more contentious and overlaid with a social and attitudinal significance which, for many, has come to designate ... the purveying of sensationalism, voyeurism, trivia and xenophobia in the name of news reporting" (Weymouth, T., and B. Lamizet 1996, pp. 43-44. *Markets and Myths: Forces for change in the European media.* Essex: Addison Wesley Longman Ltd.) Rhoufari further explains that "[t]he term "tabloid" refers here to a certain section of the contemporary British press—embodied in titles such as the *Sun*, the *Mirror*, and their Sunday publications—whose defining characteristics seem to be, among others, a spectacular style of news coverage coupled with a heavy emphasis on sex, celebrities, and human-interest stories; a propensity to sense and exploit issues likely to stir nationalist feelings within the readership..." (Rhoufari, M. 2000, p.173-4. 'Talking about the Tabloids: Journalists' views', pp. 163-176. In Sparks, C. and J. Tulloch (eds.). 2000. *Tabloid Tales: Global debates over media standards.* USA: Rowman and Littlefield Publishers. Inc.). In addition, Rooney notes that "[t]he dominant motive of these red tops [as they are also referred to] is to attract high readership. To achieve this they must be accessible, so editorial matter is presented in emotive language in easy-to-consume formats, with large headlines and an extensive use of photographs, graphics, and colour. The drive for accessibility results in oversimplification of issues and a low density of information ... [the tabloids] prefer nonpolitical news and instead maximize entertainment over information. There is a clear collapse of boundaries between news and entertainment and news and advertising and an increasing obsession with celebrity and stardom" (Rooney, D. 2000, p 91. 'Thirty Years of Competition in the British Tabloid Press: The *Mirror* and the *Sun* 1968-1998'. In Sparks, C. and J. Tulloch (eds.). *Tabloid Tales: Global debates over media standards*, pp. 91-109. USA: Rowman and Littlefield Publishers. Inc.) A more indepth discussion of the term, its evolution and current usage in the context of the British press can be found in Sparks, C. 2000. 'Introduction: The panic over Tabloid news'. In Sparks, C. and J. Tulloch. *Tabloid Tales: Global Debates over Media Standards*, pp. 1-40. USA: Rowman and Littlefield Publishers, Inc.

content regulation has to encompass both the *News of the World* and the *Financial Times*".[76] Such questions would be likely to reflect the concerns of journalists in assessing the value of such a stringent enforcement scheme, particularly that of an industry-wide code. In this respect, it may be questioned whether a system whereby each individual journalism organisation has its own code and means of enforcement in place is preferable.

Tully explains the benefits of "... internal or in-house codes which reflect the editorial vision and philosophy of a particular news operation..." and their ability to provide a more effective regulatory function. He points out that "[t]hey can be written in more detail than industry-wide codes and enforcement can be direct through office sanctions and disciplinary procedures".[77] Through codifying the unwritten ethical norms of a particular workplace, an in-house code might pose as a more applicable and even credible ethical framework for journalists. In-house codes, which can be tailored to address the specific demands of a particular news organisation,[78] may offer the potential to be more effective in regulating behaviour with more incentive to comply with its precepts. Thus, they may in turn be a preferable means to protect the interests of the public in higher standards of journalism in offering effective enforcement when their precepts are not adhered to.

What effect does a code have in promoting ethical journalism in practice?

In spite of the arguments for and against codes as a means by which effective self-regulation might be sustained, other commentators pose further arguments against codes in terms of their general ability to influence journalistic conduct. Lichtenberg, for example, reiterates the familiar argument that, irrespective of whether enforced effectively or not, codes are ultimately pointless: "Good people know how to act and are motivated accordingly. Bad people will not be moved to comply with codes, except by harsh and certain sanctions...".[79] However, in pointing to the deficiencies of such an argument, as Lichtenberg herself notes, 'good' and 'bad' people are not so easily delineated as such a statement would appear to assume. Nor can ethical and unethical behaviour be readily ascribed to 'good' or 'bad' persons respectively.

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[76] Tunstall, J. 1996, pp. 391-392. *Newspaper Power: The New National Press in Britain.* New York: Oxford University Press.
[77] Tully, J. 1994, op. cit. pp. 133-134.
[78] ibid., p. 134.
[79] Lichtenberg, J. 1996, op cit., p. 17.

Moreover, even in spite of the increase in journalism training before entry into the profession today, it cannot be automatically assumed that journalists will be equipped to deal with every ethical dilemma they may encounter in practice. This would appear especially relevant where the types of external pressures overviewed above might often skew the boundaries of 'good' and 'bad' conduct, if indeed they were so clear-cut. As Belsey and Chadwick maintain: "[Codes can] offer guidance in areas that are going to be problematic in practice ... draw[ing] attention to the types of situations in which some care and reflection would be desirable".[80] Lichtenberg also concludes that:

> [a] code of ethics can increase the probability that people will think about [their actions or] ... make people see what they are doing in a new light ... a code of ethics, then, can force to conscience descriptions of what a person is doing that will at least make those of a typical sensibilities uncomfortable [about pursuing a route of unethical conduct][81]

These points would appear, at least in theory, to hold much validity in assessing the value of codes for journalists and thus the promotion of ethical standards. However, others are less convinced of the guidance that codes are able to offer to journalists and their ability to positively influence their behaviour. In particular, there is a concern held by some that codes do little more than reiterate "... merely obvious truths or prescriptions that everybody knows...".[82] Thus, far from promoting ethical conduct and indeed the 'public interest', codes are on the whole useless for both parties in terms of their content. Certainly, some codes might be considered thus. However, surely this does not warrant the dismissal of the potential value of codes that go beyond such vague or obvious prescriptions. Such an argument raises issues of the (actual and preferable) content of codes of ethics.

The content of codes: Their specificity and length

Bowie observes that " many criticize professional codes of ethics because they are too broad and amorphous".[83] Conceivably, rather than aiding journalists and offering useful guidelines for conduct and thereby protecting the public, broad codes may do little more than to create a conflict between the two parties in the resolution of

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[80] Belsey, A, and R. Chadwick. 1995, op. cit., p. 470.
[81] Lichtenberg, J. 1996, op. cit., p. 20.
[82] ibid., p. 13.
[83] Bowie, N. E., op. cit., p. 422.

public complaints about standards of performance. As Morgan suggests: "[t]he snag is that given these general, unexceptionable precepts that are not in question, each case still needs to be approached on its own set of merits, and both the editor and complainant are likely to claim that the ... code is on their side".[84] The problematic nature of broad codes is further acknowledged by Harris:

> A code which merely advocated ideal standards of behaviour for journalists, and made no link between those standards and what people actually do, would be considered irrelevant by most practicing journalists, and hence would be unlikely to influence their actions.[85]

However, other commentators see advantages in codes that are framed in general terms. The merits of such codes may be seen to lie in their flexibility, and scope for interpretation on a case by case basis; a seemingly commendable feature in view of the myriad and variety to be encountered by the journalists in practice. Assessing the potential benefits of generalised codes over the more detailed varieties, Harris observes that

> ... [s]hort codes consisting of a few broad principles can often be applied to new situations which could not have been envisaged by those drawing them up; detailed sets of guidelines, on the other hand, may need to be amended with changing circumstances, and since the revision of codes is a time-consuming task, anomalies might not be rectified in the short term.[86]

Other commentators disagree and favour codes that offer more by way of detail. Provided they are revised frequently to reflect the changing nature of practice so as to dispel any anomalies, more specific codes may offer more assistance to the journalist in resolving an ethical dilemma, thus promoting more effective self-regulation via the code. As Lichtenberg asserts: "... a useful code will be detailed and specific. For we need a code for precisely those situations which are not clear and do not fall out platitudinously".[87]

However, Harris warns of the potential drawbacks of more specific code s of ethics:

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[84] Morgan, K., op. cit., p. 149.
[85] Harris, N. G. E. 1992, op. cit., p. 75.
[86] ibid. The lack of revision of codes and the difficulties this brings is illustrated by the (now) EPMU code, discussed further in this thesis. This code went unrevised for over a decade, exhibiting an anomaly (still apparently overlooked) in espousing 'the public's right to information' as an overriding principle, yet cautioned journalists to respect the individual's privacy, as well as the confidentiality of sources.
[87] Lichtenberg, J. 1996, op. cit., p. 20.

> The trend towards the introduction of longer codes carries some dangers with it. It might seem that when a code contains more detailed specifications of what is deemed to be unethical, rather than just a few vague principles, this will increase the extent to which the code can offer protection to the public. However, one of the consequences of bringing out detailed sets of regulations is that it fosters a loophole-seeking attitude of mind. The result could be that journalists will come to treat as permissible anything that does not fit the precise specifications of unethical behaviour.[88]

While this may be a valid point in some cases, there are reasons to suggest that the problem of loopholes is not confined to the more specific codes. Broad codes, too, can be seen to pose the same problem because they tend to be vague and ill-defined; arguably, the more a code leaves out, the more loopholes or gaps it leaves open to be manipulated. On the other hand, it may be argued that the stricter the code is in its requirements the less room there is to manipulate them.

Furthermore, dismissing codes for journalists based on their inevitable loopholes implies a rather negative view of a journalist's willingness to behave ethically in following the prescriptions of a code of practice. Other commentators suggest that the question of broader versus specific codes is more far-reaching; far from attending to the ethical dilemmas of journalists and thereby promoting journalistic accountability, codes of ethics present an 'ethical dilemma' of their own:

> If any action at all can be justified by the [broad] codes, then the journalist cannot be truly accountable, since they can justify all their actions in retrospect. If, on the other hand, the code specifies what they cannot do in greater detail, it will simply leave gaps to be exploited and only token compliance will result.[89]

If journalists are seen to approach a code in such a way, perhaps the more important question here concerns a code's tone; that is, whether the code is framed around the actions that journalists should merely avoid, or whether it offers more positive advice for the resolution of an ethical dilemma.

Prescriptive or descriptive codes?

As Harris contends: "... many existing codes ... seem unnecessarily negative in their tone: they present lists of actions which are to be avoided, but say relatively little

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[88] Harris, N. G. E. 1992, op. cit., p. 67.

[89] Page, A. 1998, p. 131. 'Interpreting codes of conduct'. In Stephenson, H. and M. Bromley (eds.). *Sex, Lies and Democracy: The press and the public*, pp. 127-135. Essex: Addison Wesley Longman Ltd.

about what would constitute *good* practice and how it might be achieved".[90] Belsey also criticises the negatively of many codes. He observes that "codes of conduct tend to be negative, prohibiting unethical practices, rather than positively encouraging the raising of standards".[91] Where there may be a correlation between the way codes of ethics tend to 'speak' to journalists and thus how they are viewed, perhaps a lesson might be learnt herein. Indeed, the issue of a code's tone, as well as many of those raised above, suggests that rather than dismissing the potential value of codes for journalists altogether, that those who draw them up might take them into consideration for the future.

It would appear that the bottom line is, as Belsey and Chadwick put it "... however much effort is put into drawing clear lines in a code of conduct, it is the individual journalist who will come fact to face with very difficult ethical dilemmas, and have to make moral choices. No code can anticipate every situation".[92] Kultgen proposes a similar view of codes; one that emphasizes their inherent advantages whilst acknowledging their difficulties:

> Every code must be treated as a hypothesis to be tested and adapted while following it. No code can make decisions mechanical, but adherence to tested rules under ordinary circumstances reduces the occasions when one is obligated to think about alternatives and flounder through problematic consequences.[93]

In assessing the value of codes as mechanisms for the promotion of ethical journalism and public accountability, and as a means whereby journalistic freedom and social responsibility might be effectively reconciled, it is perhaps important that we look beyond their perceived weaknesses as they may appear at present. Indeed, awareness of the limitations of codes may result in their improvement in the future. Jaehnig supports this view, contending that the main value of ethics codes "lie[s] in their process of construction, when journalists debate the press's roles and responsibilities with their colleagues".[94]

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[90] Harris, N. G. E. 1992, op. cit., p. 79.
[91] Belsey, A. 1995, p. 9. 'Ethics, law and the quality of the media'. In *Introducing Applied Ethics*, pp. 89-103. USA: Blackwell Publishers Ltd.
[92] Belsey, A., and R., Chadwick. 1992, op. cit., p. 9.
[93] Kultgen, J., op. cit. 1988, p. 216-217.
[94] Jaehnig, W. 1998, p. 103. ' "Kith and Sin": Press accountability in the USA'. In Stephenson, H. and M. Bromley (eds.). *Sex, Lies and Democracy: The press and the public*, pp. 97-110. Essex: Addison Wesley Longman Ltd.

This discussion of the value of ethics codes as self-regulatory tools for the print media, and for ethical decision-making aids for individual journalists, has raised a number of questions for which conclusive answers are not readily apparent. In sum, however, this chapter has highlighted that questions have been raised about ability of codes of ethics to fulfil the functions envisaged by the social responsibility theory, which ascribes a crucial role to ethics codes within a system of press self-regulation. In particular, some commentators suggest that the adoption of ethics codes within journalism reflects less a move towards professionalism, and with it a commitment to 'socially responsible' practice as it does with advancing the self-interests of the industry in shielding threats of government intervention. To the extent that such theorising requires confirmation based on the actual uses and functions of ethics codes within journalism, the issues raised in this chapter form a hypothesis to be tested throughout the remainder of this thesis based on the experiences of the British and New Zealand print media. Thus, the present chapter has thus theorised the concept of voluntary restraint. The following two chapters illustrate how this concept has manifested itself in the practices of the British and New Zealand print media as the basis of their respective systems of press self-regulation.

CHAPTER TWO

An historical context: The regulatory history of the print media in Britain

> ... [T]he greatest dangers to the liberties the press possesses will come, if they do, not directly from a dictatorial government, but from public hostility resulting from the excesses of the press itself, and the temptation then arising for a government to take some controlling powers.[1]

The principles of 'voluntary restraint' are informed by a prevailing attitude in western democracies about the 'proper' relationship between the press and government. Embedded in this is a view that this relationship should be one of distance rather than direct interference.[2] Effective self-regulation is widely seen as the preferable means of maintaining such a relationship. However, there exists a corollary that when self-regulation is not perceived to be functioning effectively threats of statutory restraints arise and thus the limits to that freedom unfold. Indeed, while an apparent consensus about the nature of press freedom is reflected at the policy level of the UK press, its regulatory history highlights that there has been much underlying uncertainty and conflict.[3] This chapter illustrates the politics of voluntary restraint characteristic of the regulatory history of the UK press, with which the New Zealand experience is compared in chapter three.[4]

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[1] McCarthy, Sir T. 1980. Cited in Du Fresne, K. 1994, p. 26. Free Press, Free Society. Wellington: NPA. The terms "print media" and " the press", (in the narrower sense to denote specifically the printed press), are used interchangeably in what follows.

[2] The degree of control exerted on the press by British governments in the post-war period has been comparatively minimal compared, for instance, with the French press which has always had strong statutory control exerted upon it by the state on both a professional level with stringent privacy laws, and on a structural level with legislation designed to reduce excessive competition within the industry. A similar situation of legislative control exists for the press Italy, (Weymouth, T., and B. Lamizet, op. cit., p. 78-79).

[3] O'Malley, T. 2000, p. 297. 'A degree of uncertainty: Aspects of the debate over the regulation of the press in the UK since 1945'. In Berry, D. 2000, pp. 297-310. *Ethics and Media Culture: Practices and Representations*. Oxford: Focal Press.

[4] The history of press *self*-regulation of ethical and professional standards is the focus here. Mention of structural and economic regulation of the press is made, however, where this impinges on issues of standards regulation.

2.1 The nature of press freedom

An insight into the inviolability of press freedom in a given country is offered by the degree to which it is constitutionally protected. Both the UK and New Zealand lie in contrast to a country like the United States which consolidates the freedom of the American press through the First Amendment to the US Constitution 1791. In effect, this rules out the possibility of government interference and the imposition of controls restrictive to press freedom.[5] As Jaehnig observes, "... the First Amendment remains the defining element of the relationship between the press and government in the United States".[6]

The UK does not have a written constitution that specifically offers a guarantee of press freedom. While the recent implementation of the Human Rights Act 1998 gave freedom of expression constitutional status for the first time in the UK, this is not comparable to the degree of protection afforded to US journalists. [7] The New Zealand situation is not significantly different with the general right to freedom of expression acknowledged in the Bill of Rights Act 1990.[8] In comparison to the US situation then, the principles of press freedom may be seen to stand on shakier ground in both the UK and New Zealand.

In spite of the comparatively limited legislative protection of press freedom in the UK and New Zealand, both countries are devoid of a specific body of 'press law'. While affected by laws of general application in their information gathering and

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[5] Jaehnig, W., op. cit., p. 109.

[6] ibid., p. 99.

[7] Humphreys, P. J. 1996. *Mass Media and Media Policy in Western Europe*. Manchester: Manchester University Press. Overviewed below, the Council of Europe's European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention of Human Rights) was recently incorporated into UK domestic law via the Human Rights Act (1998) effective from October 2000. Article 10 of the Act recognises the right to freedom of expression, and with it, freedom of the press. However, for the greater part of the period surveyed in this chapter, British journalists have not been afforded formal written protection of freedom in domestic law. Moreover, some question the status of this protection in relation to the wider legislative framework within which UK journalists practice. (See Preston, P. 1998. '1998 world press freedom review: United Kingdom'. Online: International Press Institute: Available: http://www. freemedia.at/archive98/uk.htm. 30 March 2000).

[8] The Act is subject to the various provisions of other statutes, (Burrows, J. and U. Cheer. 1999, p. 461. "The New Zealand Bill of Rights Act 1990", pp. 461-467. *Media Law in New Zealand* (4th edn.). Auckland: Oxford University Press). In other words, it does not arbitrarily overrule conflicting laws and does not have the status of Supreme Court law, (Du Fresne, K. 1994, op. cit., p. 16). Like in the UK, the 1990 Act had been preceded by similar proposals. The first proposal for a Bill of Rights in New Zealand appeared in the National Party's 1960 election manifesto. After being dropped at the end of the parliamentary session, this effort was criticised as an 'election gimmick', (Clark, R. S., 1965. 'Bill of rights', in *Comment: A New Zealand Quarterly Review*, December 1965, vol. 7, no. 1, p. 3. Christchurch, New Zealand: Comment Publishing Company. (For further discussion, see Palmer, G. 1968. 'A Bill of rights for New Zealand'. In Keith, K. J. (ed.), 1968. *Essays on Human Rights*, pp. 106-131. Wellington: Sweet and Maxwell (NZ) ltd.).

publishing capacities,[9] there exists for the press an 'unwritten preference' for the self-regulation of professional standards. Self-regulation is now a long-standing privilege accorded to the press in most European countries, including the UK.[10] Along with its wider political and constitutional system, New Zealand has adopted the UK's tradition of a "policy of no policy on the press".[11]

2.2 The Regulatory Status of Broadcasting in the UK and NZ

Certainly, the degree of freedom afforded to the print media contrasts with their broadcasting counterparts. In both the UK and New Zealand, the regulatory history of broadcasting, since its inception, has been characterised by direct government attention both for reasons of a practical and political nature.[12] The 'scarcity of frequency' arguments, which during its formative years legitimated strict state control of the medium, have been unique to broadcasting in their application. In spite of the challenges to such arguments as broadcasting has evolved, UK and New Zealand broadcasters are currently regulated by a statutory regime under the Broadcasting Act 1996, and the Broadcasting Act 1989 respectively. In both cases, the regulation of programming standards via a statutory code of practice with a complaints procedure and enforcement machinery is overseen by a statutory watchdog. Burrows and Cheer refer to the regulation of broadcasting in New Zealand

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[9] For a discussion of UK legislation of this nature, see Robertson, G. 1978. 'Law for the Press'. In Curran, J. (ed.). 1978, pp. 203-228. *The British Press: A Manifesto.* London: Macmillan; Seaton, J. 1978. 'Government policy and the mass media'. In Curran, J. 1978, pp. 296-310. *The British Press: A Manifesto.* London: Macmillan; Seymour-Ure, C. 1991. *The British press and broadcasting since 1945.* Oxford: Blackwell; and Weymouth, T., and B. Lamizet, op. cit.; Hodgson, F. W. 1993. *Modern Newspaper Practice: A Primer on the Press* (3rd edn.). Oxford: Focal Press; and Stephenson, H. 1994. *Media freedom and Media regulation: An alternative White Paper.* London: Association of British editors, Guild of Editors, International Press Institute. Drafted by Hugh Stephenson. February 1994.

[10] Humphreys, P., op. cit., p. 60.

[11] Seymore-Ure, C., op. cit., p. 206.

[12] See Goodwin, P., 1999. 'The Role of the State'. In Stokes, J., and A. Reading. (eds.) *The Media in Britain: Currents Debates and Developments*, pp130-42. USA: St Martin's Press; Gibbons, T. 1998, pp. 66-71. *Regulating the Media* (2nd edn.). London: Sweet & Maxwell Ltd.; and Lichtenberg, J. 1990a. 'Introduction'. In Lichtenberg, J. (ed.). *Democracy and the Mass Media*, pp. 1-20. Cambridge: Cambridge University Press.

as a system of "induced self-regulation",[13] which characterises the UK model also.[14]

2.3 The origins of press self-regulation: Britain and New Zealand compared

By the turn of the twentieth century, a widespread ideological preference for a press free from government control had emerged in the UK.[15] The historical context from which this view emerged is illuminating. The pre-1900 regulatory history of the UK press has been characterised as one of restriction and restraint.[16] From the early eighteenth century until the mid-1800s,[17] the State exercised a variety of controlling measures over the press, notably the 'stamp tax' of 1712,[18] which were phased out by 1855.[19] The eventual demise of these overt censorship and controlling practices, or the 'taxes on knowledge' as they were referred to, underpinned the emergence of a commercially-oriented press during the nineteenth century. This marked the beginning of what was seen as the era of 'press freedom',[20] based upon libertarian ideas about press-government relations.[21] By the turn of the twentieth century, a view

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[13] Burrows, J., and U. Cheer, op. cit., p. 435.

[14] Compared with the New Zealand system of broadcasting standards regulation, the UK system is more complex with a range of regulatory roles being performed by separate statutory bodies. The Independent Television Commission, the Radio Authority, the British Broadcasting Corporation, and the Broadcasting Standards Commission (which superceded both the Broadcasting Complaints Commission and the Broadcasting Standards Council in 1997) all have a duty to produce codes of practice relating to the conduct of broadcasters and programming content (Frost, C., op. cit., p. 200). New Zealand has only one body that is responsible for the professional standards of broadcasters (both television and radio), namely the Broadcasting Standards Authority. Section 4 of the New Zealand Broadcasting Act (1989) sets out minimum standards of conduct. To facilitate adherence to these, section 21(1)e requires the Broadcasting Standards Authority to "*encourage the development and observance by broadcasters* of codes of practice", [italics added]. The UK counterpart is somewhat different in its emphasis. Section 108(1) of the UK Broadcasting Act (1996) states that "It shall be *the duty of the [Broadcasting Standards Commission] to draw up*, and from time to time review, a code giving guidance ... [on certain areas of performance] ... *in consultation with broadcasters.*" [Italics added].

[15] O'Malley, T. 1997, pp. 153-154. 'Labour and the 1947-9 Royal Commission on the Press'. In Bromley, M. and T. O'Malley (eds.). *A Journalism Reader*, pp. 126-158. London: Routledge.

[16] Koss, S. 1981. *The Rise and Fall of the Political Press in Britain: Volume One: The Nineteenth Century*. Great Britain: Hamilton House Ltd. See also Negrine, R., op. cit.; and Curran, J., and J. Seaton. 1997. *Power without Responsibility: The Press and Broadcasting in Britain* (5th edn.). London: Routledge.

[17] In the late eighteenth century, there was an emerging 'radical press' and the subsequent 'taxes on knowledge' introduced thereafter were designed to curb the influence of these publications. The 'unstamped press' were subject to numerous arrests between 1831-1835 on charges of defying the legislative controls (Golding, P. 1974, p. 25. *The Mass Media*. London: Longman Group Limited).

[18] Harris, W. 1943, p. 26. *The Daily Press*. London: Cambridge University Press.

[19] ibid., pp. 26-7. See also Koss, S. 1981, op. cit.p.1-3; McNair, B., op. cit., p. 160.

[20] Harris, W., op. cit., p. 28.

[21] Humphreys, P., op. cit., p. 25.

that the press should operate independently of direct State control was the dominant ideology as to the 'proper' press-government relations.[22]

The development of government-press relations in New Zealand prior to 1900 is similar to the British experience. The historical relationship between the two countries explains this parallel. Having derived from the mass press of nineteenth century Britain, the early development of the New Zealand press followed in the pattern of its ancestor with the style and content of newspapers modeled on their British namesakes.[23] However, as a younger counterpart, the New Zealand press was not subject to the same historical experience of direct state as the British press.[24] In its formative years, the transition of the New Zealand press from an overtly 'political press' and mouthpiece of governments, to a 'business press' represented by a mass circulation and profit-oriented enterprise, had similar implications for the conception of the press-government relations illustrated in Britain.[25] A comment made in the 1850s by the Attorney General, William Swainson, illustrates the prevailing attitude toward state control of the press in New Zealand:

> It has been thought more for the advantage of Her Majesty's subjects in these islands that there should be occasional excess on the part of the press rather than continual restraint, and that, so long as the people of New Zealand have no direct voice in the government of the country they should enjoy without limitation or restraint 'that true liberty that freeborn men *[sic]*, having to advise the public, might speak free'.[26]

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[22] O'Malley, T. 1997, op. cit., pp. 153-54. Although overt political affiliations in the British press continued into the 19th and 20th centuries, during which it remained commonplace for politicians to continue to own newspapers, governments did not exert direct controls over the press. Consequently, the relationship between press and government was of a less formal nature than it had previously been. (See O'Malley, T. 1998. 'Demanding Accountability: The press, the Royal Commissions and the pressure for reform 1945-1977'. In Stephenson, H., and M. Bromley (eds.). *Sex, Lies and Democracy: The Press and the Public*, pp. 84-96. Essex: Addison Wesley Longman Ltd).

[23] O'Neill, R.B. 1966, p. 668. 'The New Zealand Press'. In McLintock, A.H. *The Encyclopedia of New Zealand,* vol. 2, pp. 665-670. Wellington: GPO.

[24] The Printers and Newspapers Registration Bill of 1868 was an exception. The Bill proposed the compulsory registration of newspapers in a similar vein to the British 'stamp taxes'. Rather than being underpinned by entirely political motives, the enactment of this legislation in fact touched upon the tenets of social responsibility theory. The MP who introduced the Bill maintained that "[a]s the press is an engine of enormous power to which we have accorded absolute freedom, it is quite right that there should be a prompt responsibility on the part of those wielding the engine" (cited in Scholefield, G. H. 1958, p. 8. *Newspapers in New Zealand.* Wellington: A. H. and A. W. Reed.) This legislation was enacted and remained in force, with various amendments, right up until April 1995, when it was abolished by the Newspapers and Printers Act Repeal Act 1995 (section 2), (Brookers Statutes of New Zealand. Repealed Acts. Updated April 2000. Brookers Database CD-ROM).

[25] See Day, P. 1990. *The Making of the New Zealand Press: A Study of the Organizational and Political Concerns of New Zealand Newspaper Controllers, 1840-1880.* Wellington: Victoria University Press.

[26] cited in Scholefield, G. H. op. cit., p. 4.

In the British context, the change in ideology about the relationship between the state and the press saw a progression towards a view that anticipated the principles of the US social responsibility theory. This is illustrated in a comment made in 1938 by Henry Wickham Steed, a former journalist, and editor of *The Times*:

> Even when the press had gained freedom, responsible journalists felt bound to use discretion in publishing news and commenting on it. They set up a tacit censorship of their own ... The freedom of the Press, that is to say, the absence of arbitrary official restrictions upon the dissemination of news and comment upon news, is a pledge of public safety ... From this it follows that the measure of freedom which the Press is entitled to enjoy is subject to the welfare of the community as a whole, and cannot be determined solely by the private interests of newspapers or their owners ... Experience has shown that the abuses of freedom by irresponsible newspapers are best restrained by the certainty that other and more responsible newspapers, to say nothing of parliament, will also be free to denounce such abuses.[27]

However, this ideological progression was evidently neither a straightforward, nor a universally embraced one. As the following aims to illustrate, a conflict between libertarian ideas about press-government relations and the role and responsibilities of the press, and those reflected by the social responsibility theory has underscored the regulatory history of the British press over the twentieth century.

2.4 The history of self-regulation in Britain: 'Problems' and patterns

Unlike the remainder of the European press, the British press enjoyed an uninterrupted commercial progression beginning in the nineteenth century.[28] Consequently, by the 1930s the largely unregulated press was characterised by highly competitive market conditions.[29] An increase of invasions of privacy in newsgathering, and sensationalism and fabrication in publication, came with efforts to

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[27] Wickham Steed, H. 1938, p. 11. *The Press*. Great Britain: Penguin Books Ltd.

[28] Weymouth, T, and B. Lamizet, op. cit., p. 37. The period following the Second World War was one of major restructuring and political re-orientation for other Western European countries. In Britain, on the other hand, the process of 'tabloidisation', initially amplified by the demand for a 'people's paper', continued unhindered by external intervention in the post-war period. As Weymouth and Lamizet contend, "such a head-start on the rest of Europe should not be underestimated when accounting for the current state of the British press" in particular, Britain's unique 'tabloid phenomenon' (ibid., p. 44). This issue is discussed further in the following chapter in comparison to the New Zealand case.

[29] Humphreys, P., op. cit., p. 26. The circulation wars in the press were interrupted by the wider context of World War Two. However, the process of post-war concentration continued in response to new pressures, including the rising cost of newspaper production and cover prices, which resulted in further concentration through mergers and the development of chains in the industry (Golding, P., op. cit. pp. 27-28).

build newspaper circulation. As O'Malley contends, "[t]he price of Press Freedom in the twentieth century seemed to be a decline in ethical standards".[30] These processes brought with them challenges to the prevailing libertarian view of the role and responsibilities of the press.

The 1938 PEP Report: Is the press 'just another business'?

The 1938 Political and Economic Planning (PEP) report offers much insight into the developing ideology at the time.[31] The PEP report criticised the spread of certain journalistic practices, in particular intrusion into people's private lives and an emphasis on entertainment disproportionate to news and comment,[32] which were matters in need of 'urgent redress'.[33] Especially significant was the PEP's particular conception of 'press freedom', which underpinned its central recommendations:

> We consider that a greater consciousness of the social responsibilities of the Press is needed ... We also consider freedom of opinion so vital that any outside intervention is to be avoided wherever possible. The press must evolve on its own lines ... Nevertheless, the economic accident which links the function of reporting, interpreting, and commenting on news with the running of a large-scale, highly capitalised industry, is having some unfortunate results, and we doubt whether a Press subject to these conditions can fully satisfy democratic needs.[34]

While the PEP believed that existing market conditions militated against the freedom of the press to express opinions, intervention in the market was not advocated as a means of resolving such a difficulty. On the surface, this reflects an essentially libertarian view of the operation of the press. The report emphasised, however, the need for voluntary internal reform of the industry: "... [I]t is very much to be hoped that the Press will itself take measures as effective as any which the State could take, and thus anticipate any possible intervention".[35] According to the PEP, then, the press was not 'just another business'.

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[30] O'Malley, T. 2000, op. cit., p. 299

[31] Political and Economic Planning (PEP). 1938. *Report on the British Press*, April 1938, London: PEP. The PEP reported as an 'independent non-party group' comprised of individuals of various vocations on a variety of social and economic activities including the press. This is not to suggest that its Report reflects the views of British society at the time in their entirety, but rather indicates what the predominating attitudes may have been and, in particular, those attitudes with the potential to influence government policy initiatives.

[32] PEP, op. cit., p. 34.

[33] ibid., p. 283.

[34] ibid., p. 34.

[35] ibid., p. 283.

Indeed, the PEP report clearly anticipated the core elements of the US social responsibility theory, which interestingly, had yet to be coined. 'Social responsibility' was needed of the press, where the press itself rather than the state should ensure that this goal was attained. The PEP report thus proposed that the press industry establish a voluntary 'Press Tribunal' to oversee the conduct of the industry and to judge consumer complaints on the basis of a "working code of legitimate and illegitimate practice in newsgetting" built up from case decisions.[36] Not only did the PEP anticipate the social responsibility theory, but also the central recommendation of the series of government-sponsored inquiries into the British press that would later report during the twentieth century.

Changing conceptions of press freedom: The role of the NUJ in the 1947-49 Royal Commission

On October 30th, 1946, the House of Commons voted in favour of the establishment of the Royal Commission to inquire into the state of the British press.[37] As Koss pointed out, the problems identified of the press at this time were not new ones, but the willingness to invoke state assistance as a means of solving them marked something of a departure from the prevailing consensus.[38] The royal commission had been long awaited by Labour MPs, many of whom were affiliated to the British National Union of Journalists (NUJ).[39] In fact, the NUJ was instrumental in the processes that resulted in the first Royal Commission on the British press.[40]

Even before the PEP reported in 1938, the NUJ had expressed its disgust at the rise of unethical practises such as privacy intrusion, which it attributed to the increasingly competitive climate of practice. The NUJ was also concerned about the suppression and distortion of news for commercial reasons or politically partisan reasons, and the degree of proprietorial pressure imposed on editors and journalists.[41]

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[36] ibid., p. 37.
[37] Martin, K., op. cit., p. 19.
[38] Koss, S. 1981, op. cit. p. 614.
[39] O'Malley, T. 1997, op. cit., p. 129.
[40] Royal Commission on the Press 1947-49, Cmd. 7700. 1949, para. 386, p. 106. *Report.* London: HSMO; Bundock, C. J. 1957, pp.185-90 *The National Union of Journalists: A Jubilee History, 1907-1957.* Oxford: Oxford University Press for the National Union of Journalists. (See also Martin, K. 1947. *The Press the Public Wants.* London: The Hogarth Press; O'Malley, T. 1997, op. cit.; and Frost, C., op. cit.).
[41] Robertson, G., and A. Nichol, op. cit., p. 521.

Like the PEP, the NUJ criticised the level of concentration of ownership of the press where it undermined the potential for free expression of opinion.[42]

Having developed a code of conduct in 1936,[43] the NUJ's interest in establishing a governmental inquiry into the press was based on its desire to extend the ethical and professional standards embodied in its code on an industry-wide basis. Hence, the NUJ had been actively campaigning for the establishment of a comprehensive system of professional self-regulation since 1945.[44] The measures taken by the NUJ, which represented the interests of the country's working journalists, indicated that an alternative view of 'press freedom', was on the rise within the British press. As Martin observed of the NUJ's involvement in the first royal commission, "[i]t is important to notice that in 1946 working journalists, who

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[42] Bundock, C. J., op. cit., pp.185-86. Koss also noted a changing philosophy within the press itself, as indicated by the comment made by Wickham Steed reproduced above. Appearing in the *Economist* on September 11, 1943, a statement was made that "...too little attention was being paid to what the press itself must do, if it is to discharge fully its public responsibilities", thus recommending "select agencies to provide professional guidance in the hard and unending...struggle to maintain high standards in the fact of proprietorial pressures, financial conditions and the contemporary mistranslation of popularity to mean vulgarity" (cited in Koss, S. 1984, p. 614. *The Rise and Fall of the Political Press in Britain: Volume Two: The Twentieth Century*. United States: The University of North Carolina Press). These comments resemble the attitude of the NUJ, and it is possible that the 'anonymous author' cited in Koss was affiliated with the union.

[43] The NUJ's code of conduct is discussed further in chapter three.

[44] For further discussion, see Robertson, G. 1983. *The People against the Press: An enquiry into the Press Council*. London: Quartet Books; and Tulloch, J. 1998, p. 71. 'Managing the press in a medium-sized European power'. In Stephenson, H. and M. Bromley (eds.). *Sex, Lies and Democracy: The Press and the Public*, pp. 63-83. Essex: Addison Wesley Longman Ltd. The NUJ's rival body was the Institute of Journalists (IoJ), formerly the National Association of Journalists, (Bromley, M. 1997, p. 334. 'The End of Journalism?'. In Bromley, M. and T. O'Malley (eds.). *A Journalism Reader*, pp. 330-350. London: Routledge). The IoJ was a professional organisation incorporated by Royal Charter, which was, like the NUJ, also a registered trade union (Underwood, C. 1992. P. 646. 'Institute of Journalists'. In Griffith, D. (ed.). *The Encyclopedia of the British Press 1422-1992*, pp. 646-47. New York: St Martin's Press). Unlike the NUJ however, the IoJ's membership was not confined to working journalists, and was open to press proprietors also (Bromley, M., op. cit., p. 334). Seemingly contrary to the prevailing principle of voluntary internal reform, the IoJ took (unsuccessful) measures during the late 1930s to have a parliamentary Bill introduced to create a state register of journalists. This initiative was opposed by the NUJ who saw the notion of licensing journalists as contrary to freedom of expression (O'Malley, T. 1997, op. cit., p. 135). (Further arguments against the notion of the licensing of journalists were canvassed in the PEP report). In spite of their earlier differences, by 1967, the IoJ and the NUJ had planned to amalgamate, with the IOJ serving the professional interests, and the NUJ the trade union interests of the joint membership. (Levy, H. P. op. cit., p. 24. *The Press Council: History, procedure and cases*. London: Macmillan.). There was a feeling that the existence of two separate bodies was detrimental to the cause of the working journalist and an amalgamation may increase general recognition. (Bundock, C. J., op. cit.). This has been preceded by a succession of proposals prior to this time (in 1916-17, 1921, 1928, and 1945-8), which failed largely because the two bodies could not arrive at a consensus as to the incorporation of employers in the membership of a joint body. After a joint conference in 1971, however, this merger was terminated, and the two bodies resumed their separate activities individually (Underwood, C., op. cit., p. 647).

historically have had the most to do with the battle for the liberty of the press, seemed quite untroubled by any threat to that freedom".[45]

Alternative perspectives from within the press industry

However, not all sectors of the British press were as untroubled as the NUJ at the notion of 'government interference' in the press. In 1943, a former editor of *The Spectacle*, Wilson Harris conveyed the position of the industry's employers thus:

> [T]here is no ground for crediting the Government or its officials with any attempt to exercise undue or insidious influence over the Press...It is far better that restraints should be imposed by the journalistic profession itself. It has influential organs, the Newspaper Proprietors' Association, and the Newspaper Society, representing London and provincial proprietors respectively, and the Institute of Journalists and the National Union of Journalists representing working journalists of all grades. They have it in their power, the latter particularly, to set standards honourable to the profession, and to a considerable extent they are doing it.

Moreover, on the issue of industry-wide self-regulation, Harris maintained that:

> To frame a[n industry-wide] code would neither be easy nor desirable. Proposals have been made for the creation of a Court of Honour before which a journalist indicted for conduct unworthy of the profession would be judged by his peers...What is essential is that every journalist should have his*[sic]* own Court of Honour and pass his*[sic]* conduct in review before it daily...But that, of course, is useless if proprietors depress standards that their employees are trying to raise.[46]

These comments are worthy of considerable reproduction here because of the insight they offer into the alternative views within the press about both the notion of government interference in the press, and the idea for a self-regulatory body with an industry-wide code of behaviour. The difference of opinion between proprietorial interests and the NUJ have been attributed to the different interpretations put upon the notion of 'press freedom'.[47] A conflict between the views of 'press freedom' as the right to do what one chooses with one's own property, versus 'press freedom' constituted by editorial independence reflects the ideological split between libertarian ideas about the press on the one hand, and those of social responsibility on the other. This conflict between opposing understandings of 'press freedom' underscores the

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[45] Martin, K., op. cit., p. 20.
[46] Harris, W., op. cit., pp. 89-91.
[47] Martin, K., op. cit., p. 20.

history of press self-regulation in Britain, as the remainder of this chapter intends to highlight.

The stance of the 1947-49 Royal Commission on the Press: 'Press freedom' and 'voluntary restraint'

The first Royal Commission on the Press was convened in 1947, the same year that the Hutchins Commission reported in the United States, and represents the origins of press self-regulation in Britain. As Curran and Seaton note, before this time, it was not even thought proper for a government to investigate the conduct of the press.[48] However, the Atlee Government's establishment of the royal commission broke with this tradition, establishing a pattern which would become a familiar one in the development of press standards regulation in the UK over the twentieth century. To quote Koss, the history of press regulation in Britain has been "an unremitting story of crisis, closure, and complaint",[49] beginning with the report of the first royal commission on the press.

The 1949 report of the royal commission supported the NUJ's view as to the need for a single self-regulatory body for the British press:

> It is remarkable that although a number of organisations exist to represent sectional interests within the Press there is none representing the Press as a whole ... Indeed, the Press has taken fewer steps to safeguard its standards of performance than perhaps any other institution of comparable importance.[54]

As the Hutchins Commission had concluded of the US press, the first royal commission on the British press pronounced that the press was insufficiently self-critical. While recognising that certain aspects of press performance had been criticised within the industry itself, it was time for 'the profession itself to make the

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[48] Curran, J., and Seaton, J. op. cit., p. 300. This may explain the Labour government's reluctance to intervene by way of a formal inquiry into the press given that it took almost a decade for the 1938 PEP's call for 'urgent action' to be followed up.

[49] Koss, S. 1984, op. cit., p. 642.

[54] *Report of the Royal Commission on the Press,* (cmd. 7700). 1949, para. 618, p. 165. In other respects though, the first royal commission's report differed from the NUJ's view in that it found little cause for concern regarding the state of the industry at the time. Unlike the NUJ, the commission maintained that the industry was not dangerously monopolistic and the level of concentration of press power was "... not so great as to prejudice the free expression of opinion or the accurate presentation of news or contrary to the best interests of the public", (ibid., para. 672, p. 176).

condemnation effective'; the press needed to be 'properly critical of itself so as to maintain standards of integrity and responsibility'.[51]

The problems identified by the PEP in 1938 were at the core of the critique articulated by the first royal commission. Like the PEP, the 1949 royal commission also rejected interventionist approaches, advocating improvement through internal reform from within the press: "Free enterprise is a pre-requisite of a free press...[w]e prefer to seek the means of maintaining the free expression of opinion ... and, generally, a proper relationship between the press and society, primarily in the Press itself".[52] Accordingly, the commission recommended that a 'General Council of the Press' be established by the industry itself to promote voluntary reform.[53]

Drawing on the systems of self-regulation which were already in operation in a number of western European countries in the shape of national press councils,[54] the first Royal Commission's suggested objectives of the General Council were: "... [to] safeguard the freedom of the Press, to encourage the growth of the sense of public responsibility and public service amongst all engaged in the profession of journalism...".[55] The commission envisaged for the General Council a broad mandate. It would monitor newspaper ownership trends, and deal with the recruitment and training of journalists. In addition, it would

> ...by censuring undesirable types of conduct ... build up a code in accordance with the highest professional standards. In this connection, it should have the right to consider any complaints which it may receive about the conduct of the Press or any persons towards the Press, to deal with these complaints in whatever manner may seem to it practicable and appropriate...[56]

The Report of the 1947-49 Royal Commission on the Press was accepted by parliament and with it the principle of internal reform of the press, representing the

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[51] ibid., para. 664, p. 175.
[52] ibid., para. 683, p.177.
[53] ibid., para. 616, p. 164. The notion of 'voluntary internal reform' is fundamental in this regard. In fact, the continued emphasis of later government-sponsored inquiries into the press render the concept ironic where the majority of instances of internal reform of self-regulation were undertaken in response to external threats to press freedom.
[54] Humphreys, P., op. cit., p. 60; and Tunstall, J. 1983, p. 268. *The Media in Britain*. New York: Columbia University Press.
[55] Royal Commission on the Press. 1949, op. cit., para. 684, p.177.
[56] ibid., para. 684, p.178. In response to submissions received, the commission considered legal remedies to press intrusion into private lives, a possibility that was to become very familiar in Britain in the years to come. However, the first royal commission recommended against such a resolution maintaining that it would be "... extremely difficult to devise legislation which would deal with the mischief effectively and be capable of enforcement". (ibid., para.,643, p.170). (This point is considered further in note 178, p. 77). Instead, the royal commission anticipated that the non-statutory route via the General Council would be responsible for the maintenance of ethical standards.

origins of a transition away from traditional libertarian ideas towards those of social responsibility theory. The significance of the 1949 royal commission was twofold. Firstly, the Attlee Government's establishment of the commission itself marked a 'turning point' in the evolution of government-press relations in the UK,[57] as O'Malley explains:

> ... [T]he Commission was intended to set, and did set, an important constitutional precedent which broke with nineteenth century conceptions about the relationship between the press and government. It was this precedent which allowed future governments to initiate inquiries into the press and for arguments for government sponsored reform of the press to gain public standing.[58]

Secondly, the recommendations of the first royal commission reflected a developing consensus that the press should neither be subject to state control, nor left entirely to the unregulated forces of the market.[59] It showed that a government sponsored inquiry into the press could be established to encourage 'social responsibility' by providing both the impetus and mechanics for voluntary reform. Representing the first formal attempt in the UK to resolve the conflict between the belief in a press that was free from government control, and a press that was expected to be responsible,[60] the concept of voluntary internal reform was central to the recommendations made. As O'Malley illustrates this point:

> The Commission's Report and recommendations reflected the dominant nineteenth century view about the need to protect press freedom, whilst at the same time ... tapping into a much wider consensus when it recommended self-regulated, voluntary reform ... [and the] hope that the Commission would act as a catalyst for voluntary change.[61]

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[57] O'Malley, T. 1997, op. cit., p.155.

[58] ibid., p.153. During the sitting of the 1947-49 royal commission, a Committee on the law of Defamation reported in 1948. As noted above the issue of press intrusion into privacy was becoming a significant issue by this time and it had been suggested to the committee that the defamation law be extended to bring within its scope a civil wrong of invasion of privacy. It is interesting to note that the committee's conclusions on this matter were informed by similar principles to the first royal commission, as well as other inquiries that followed it. "We think that there are great difficulties in formulating an extended definition of criminal or civil libel which, while effective to restrain improper invasion of privacy, would not interfere with the due reporting of matters which are of public interest. It appears to us, however, that the difficulties which confront this committee should not form an obstacle to action by the press itself or prevent it from dealing with the problem as one of internal discipline". (Report of the Committee on the law of Defamation, 1948, para. 26, p. 10).

[59] Morgan, K., op. cit. p. 137.

[60] ibid., p. 137.

[61] O'Malley, T. 1997, op. cit., pp.149-50.

The First Post-war Royal Commission on the Press: The Industry's 'response'

However, if the first Royal Commission on the Press was intended to spur voluntary internal reform, it had little immediate effect. As Levy explains, the view of press freedom reflected in the 1949 report was questioned by sectors of the press:

> While the maintenance of professional standards and integrity was an aim which all [of the industry] could support, there was a general feeling that an attempt to achieve this end through a disciplinary body would inevitably result in repressive measures restrictive of the freedom of the Press. In the circumstances the Press was in no hurry to forge fetters for itself.[62]

Consequently, it took the threat of the Private Member's Bill to enact a statutory Press Council,[63] before the Newspaper Proprietors' Association (NPA), and the Newspaper Society (NS) collaborated with the NUJ to establish a non-statutory General Council in 1953.[64] However, the self-regulatory body that emerged was not that envisaged by the royal commission over four years earlier, and was criticised as an 'enfeebled' and 'watered-down' version of that proposed.[65] Similar criticisms were articulated by the second royal commission on the press a decade later.

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[62] Levy, H. P., op. cit., p. 9.

[63] The Press Council Bill, introduced by C. J. Simmons MP, had, by 1952, reached the second reading (Hodgson, F. W. op. cit., p. 163; Robertson and Nichols 1992, op. cit., p. 522). Furthermore, the reluctance of the press to establish the recommended voluntary version has been attributed to the implementation of draconian defamation legislation in 1952, (The Press Wise Trust. 1999a. Press Complaints Commission Procedures. 27 January 1999. Online: Press Wise. Available: http://www.presswise.org.uk/PCC.htm# Journalistic. 6 May 2000). Even after the General Council had been established, the parliamentary interest in a statutory body did not cease. In 1955 questions were directed to the Prime Minister in the Commons as to whether he favoured a statutory press council. Again, in 1956, there was another attempt to introduce a Bill to create a statutory body in place of the General Council, the members of which would be nominated by the Lord Chief Justice, and would have the power to license newspapers.

[64] Weymouth, T., and B. Lamizet, op. cit., p.49. The principal objective of the Press Council was to 'preserve the freedom of the British Press'. Its second and third objectives concerned the 'maintenance of high professional and commercial standards, and 'to consider complaints regarding the conduct of the press or persons toward the press' (Levy, H. P., op. cit., Appendix 1). Even after the General Council had been established, the parliamentary interest in a statutory body did not cease. In 1955, questions were directed to the Prime Minister in the Commons as to whether he favoured a statutory press council. Again, in 1956, there was another attempt to introduce a Bill to create a statutory body in place of the General Council, the members of which would be nominated by the Lord Chief Justice, and would have the power to license newspapers, (Frost, C., op. cit., p 181).

[65] Curran, J., and J. Seaton, op. cit., p. 295; and Tunstall, J. 1996, op. cit., p. 395.

The Royal Commission on the Press 1961-2

The second post-war inquiry into the British press was primarily called to investigate the structure and economics of the industry. [66] However, the operation of the system of self-regulation under the General Council of the Press received considerable attention. Noting the perception of the General Council as a 'weak' and 'lopsided' body,[67] the commission condemned its lack of lay membership. Also criticised was its failure to undertake the full range of activities envisaged by the previous royal commission. Significantly, the General Council had failed to adopt a code of practice.[68] The report of the 1962 royal commission embodied an implicit threat to the industry. It concluded that "... [i]f the Press is not willing to invest the

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[66] The first royal commission's speculation that there would be no further concentration of ownership was proved wrong with the subsequent disappearance of two major newspapers by this time. As Whale explains, the background to the establishment of the second royal commission was the removal of wartime restrictions in the 1950s that brought 'true competition' in both circulation and size of newspapers. This resulted in the death or absorption of a number of newspapers including the national paper the *Sunday Chronicle* (Whale, J. 1977, p. 38. *The Politics of the Media*. Manchester: Manchester University Press). However, like that which preceded it, the 1962 royal commission did not condone interference in the market, emphasising instead for further internal reform initiatives. There was, according to the commission, no acceptable or feasible way of regulating the structure and economics of the industry via statute. However, the commission did raise the possibility of a 'press amalgamations court', which would scrutinise mergers of daily or Sunday newspapers with an aggregate circulation of over 3 million using 'public interest' tests (Royal Commission on the Press 1961-62, Cmnd. 1811. 1962, para. 337-351, pp.105-111. *Report*. London: HMSO.RCP 1961 cm. 1811). It is noteworthy that it was consistently recommended (until the enactment of the 1965 Monopolies and Mergers Act) that the BPC should take the responsibility for reporting on changes in ownership trends (RPC 1926, para 326, p. 102). This legislation required mergers and takeovers in the newspaper industry that would result in a combined daily circulation of over half a million to be referred to the Monopolies and Mergers Commission (MMC) via the Secretary of State. (See Humphreys, P., op. cit., p. 97; O'Malley, T. 1998, op. cit., p. 86; and Snoddy, R. op. cit. 85-86). A number of anomalies have been cited about the application of this legislation in practice (now covered by the Fair Trading Act 1973). Concerning the promotion of social objectives in diversity of ownership, Koss notes that in spite of his already extensive Fleet Street holdings and circulation reach, Rupert Murdoch's acquisition of Times Newspapers Ltd. from the Thomson Organisation in 1980 was not subject to the Monopolies Commission (Koss, S. 1984, op. cit., p.671). Feintuck concurs that, in practice, the majority of important newspaper acquisitions have escaped MMC scrutiny (Feintuck, M., 1999, p. 95. *Media Regulation, Public Interest and the Law*. Edinburgh: Edinburg University Press). (For further discussion, see Weymouth. T., and Lamizet, B., op. cit., p.49; McNair, B. op. cit. pp.137-8). More recent legislative initiatives are illustrated by the Competition Bill introduced by the Labour Government in October 1997 (based on the principles of European Union competition law). It was anticipated that this too, would fail to address many anomalies of past statutes relating to newspaper takeovers (Feintuck, M., op. cit., p. 97), where the Bill did not drastically alter the existing provisions relating to newspaper mergers (Gibbons, T. op. cit., p. 208). Recent policy initiatives for the structural and economic regulation of the press in Britain are outlined at the end of chapter 3 (see p. 99, note 87).

[67] Humphreys, P., op. cit., p. 60.

[68] Royal Commission on the Press. 1962, op. cit., paras. 320-26, pp. 100-102; and Jones, J. C., op. cit., p. 35. As noted above, these included monitoring ownership trends as well as issues involving journalistic recruitment and training within the industry, as well as overseeing the ethical standards of the press.

council with the necessary authority and to contribute the necessary finance the case for a statutory body with definite powers ... is a clear one".[69]

The emergence of the Press Council and Government inquiries 1960-1975

Another threat of legislation had the desired effect of provoking action on behalf of the industry.[70] The General Council of the Press was duly superseded by the British Press Council (BPC) in 1963, reconstituted with a lay element and a chair from outside of the industry, with an increase in funding pledged by its constituent industry bodies.[71] Although the changes inspired by the second Royal Commission on the Press may have supported the prevailing ideal of internal reform, "... a deep-seated concern about the efficacy of voluntary regulation remained".[72]

As chapter four explains, although by 1966 the BPC had still failed to draw up a code of practice, it had received sufficient co-operation from within the press to devise two of its "Declarations of Principle". From both the context in which the declarations arose, and by the very nature of the documents themselves, they can be seen as an illustration of the reactive character of the industry's early internal reform initiatives, and the limitations of press self-regulation under the BPC.[73] This is partially explained by the competitive climate at the time. As Engel explains, "when newspapers are under less competitive pressure they can afford to be a bit more restrained".[74] During the period between 1964 and 1969, a period of mild competition created a climate where "good behaviour and profitability seemed to be compatible".[75]

In understanding the success of the BPC during this period, the relationship between key actors involved is also important. In 1964, Lord Devlin, a distinguished judge described as 'youthful and energetic' with "diplomatic skills [that were] widely

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[69] ibid., para. 325, p. 102. However, it is significant that the commission itself did not recommend this course of action, warning of the "dangers of governmental interference with the press which we think would follow from other artificial attempts to regulate the independence of market forces" (Royal Commission on the Press. 1962, p. 98).
[70] Snoddy, R., op. cit., p. 85.
[71] ibid., p. 85. (See also Levy, H. P., op. cit.).
[72] O'Malley, T. 2000, op. cit., p. 303.
[73] This argument is further explored in chapter five below.
[74] Engel, M. 1998. Tickle the Public: Britain's tabloid press. Lecture delivered at the 1999 Vauxhall Lectures, Centre for Journalism Studies, Cardiff University. Spring 1998. Available: http://www.cf.ac.uk/ jomec/issues/engelmain.html. 3 October 2000.
[75] Tunstall, J. 1996, op. cit., p. 396.

admired",[76] had become the first lay chair of the BPC. Devlin managed to gain for the BPC the active support of Cecil King and Lord Thomson, the industry's two leading proprietors at the time. Tunstall also maintains that after a decade of external criticism, the efforts of Lord Devlin to "eradicate indefensible forms of press behaviour" were welcomed by the industry.[77] The Devlin-led Press Council also "evinced a powerful concern for press freedoms".[78] Rather than reflecting the early success of the BPC, these observations suggest that the reliance on the often-fickle support of the industry, particularly the popular papers, for both publicity and finance rendered it a somewhat precariously positioned regulatory body at best.[79]

Indeed, the degree of uncertainty about the BPC's efficacy was reflected in the continuation of governmental inquiries extending to matters of law affecting the press throughout the period from 1960 to 1975.[80] Specifically, a number of privacy-related Bills were heard in Parliament during the 1960s,[81] which, if they had been passed, would have imposed statutory restraints on the press. While no privacy law was affected,[82] this mounting concern regarding privacy and press intrusion culminated in

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[76] ibid., p. 396.

[77] ibid., p. 396. Hence the period is often referred to as the "King-Thomson Consensus" (see Tunstall, J. 1983, p. 267; and Franklin, B. and R. Pilling. 1998, p. 115. 'Taming the Tabloids: Markets, moguls and media regulation'. In Kieran, M. 1998 (ed.) *Media Ethics*, pp. 111-122. London: Routledge). Lord Devlin himself recognised that this support could be fleeting and as such that the BPC itself was a "flimsy and vulnerable body", describing in the 1960s proprietor Cecil King as "the architect of the Press Council in its present form". Devlin also noted that "it must be remembered that a single great newspaper, if it chooses to go its own way, could gravely weaken the basis on which the Press Council rests" (cited in Tunstall, J. 1983, op. cit., p. 267). This was a prophecy that was to factor significantly in the limited efficacy of the body in years to come (particularly after the entry of Rupert Murdoch as a leading proprietor into the scene).

[78] Robertson, G., and A. Nichol, op. cit., p. 522.

[79] See Tunstall, J. 1996, op. cit., p. 396.

[80] Governmental committees were convened to inquire into laws of Official Secrets (Cmnd. 5104), and Contempt of Court (Cmnd. 5794), in 1972 and 1974 respectively, and Defamation in 1975 (Cmnd. 5907). (For discussion of these, see O'Malley, T. 1998, op. cit., p. 86). In addition, the 1967 Criminal Justice Act set out limitations on what may be reported by the media about committal proceedings (since amended to allow restrictions to be dropped in certain cases). A Bill was also heard in parliament in 1970 which sought to enact further reportage restrictions. Although unsuccessful, it also served to highlight the degree of concern during this period about the nature and scope of media reportage. (For further discussion of the evolution of reporting restrictions on the British media, see for example Hodgson, F. W., op. cit., pp. 157-159).

[81] These were introduced in 1961, 1967, and 1969, the latter of which, seeking to establish a general right of privacy, had reached the second reading when the Younger Committee on Privacy was appointed (Press Council. 1972, p. 64. *The Press and the People: 18th Annual Report of the Press Council, 1971*. London: Press Council.). See also Wacks. R. 1995. *Privacy and Press Freedom*. London: Blackstone Press. The text of these Bills can be found in *Report of the Committee on Privacy*, Cmnd. 5012. 1972, Appendix F. London: HMSO.

[82] Interestingly, the government opposed a privacy law on grounds of the inexpedience of privacy legislation; a privacy law was not desirable on a practical as opposed to a moral or ideological basis. (See Robertson, G. 1983, op. cit.; and Cowen, Sir Z. 1985. The Press, the Law, and beyond: A view from the Press Council. Canberra: Australian Academy of the Humanities).

the establishment of a Committee on Privacy in July 1972, which reported later that year.

The 1972 Younger Committee on Privacy

The immediate background to the establishment of the 1972 privacy committee was the highly competitive phase between 1969 and 1971,[83] which regenerated concern about journalistic conduct, particularly press intrusion into privacy. While the Younger Committee's terms of reference were not confined to privacy matters concerning the press,[84] its core criticisms were reserved for the prevalence of privacy invasion in the information gathering practices of the press. The 1972 committee maintained that such practices "... can do grave damage to private individuals, out of proportion to any general benefit derived from [its] dissemination".[85]

Nonetheless, the committee maintained that the responsibility for balancing the individual's right to privacy with the freedom of expression and of the press had to lie with the press itself rather than the law. Accordingly, like the previous two royal commissions, the Younger Committee recommended the strengthening of press self-regulation. It suggested "... the possibility of a codification of its adjudications on privacy, in a form which would give rather readier guidance to busy practicing journalists, and to the interested public, and that it should be kept up to date".[86] This was the main impetus for the BPC's development of a declaration of principle on privacy as discussed in chapter four. However, the fact that privacy invasions continued was a central reason why a third royal commission on the press was convened in 1974.

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[83] Bailey, S., and G. Williams. 1997, p. 352 . 'Memoirs are made of these: Journalists' memoirs in the UK 1945-95'. In Bromley, M. and T. O'Malley (eds.) *A Journalism Reader*, pp. 351-377. London: Routledge.

[84] However, submissions made to the committee regarding the press and privacy were among the most substantial of them, mostly in the form of complaints about press performance in this area. (Royal Commission on the Press 1974-77, Cmnd. 6810. 1977, para. 116, p. 35. *Report*. London: HMSO).

[85] Committee on Privacy, 1972, para. 122, p. 37. Also among the committee's proposals was that the BPC further increase its lay element to fifty per cent (ibid., para.190, p. 55).

[86] ibid., para. 193, p.55.

The third Royal Commission on the Press 1974-77

The remit of the third royal commission was the widest of all government-initiated inquiries into the British press to date. It was to examine all aspects of the structure and performance of the press, and the functioning of self-regulation via the BPC.[87] Of particular significance was the report's emphasis. While the first two royal commissions had been primarily concerned with constraints on press freedom, the third emphasised the degree of choice, diversity, and independence offered to the public by the press.[88] As O'Malley observes, this reflected a "... marked shift from 1947-49 when the debates implied a set of concerns about the proper relationship between the State and the press, and had less of a focus on the notion of the responsibilities of the press to the public at large".[89]

The 1977 commission's central concerns mirrored those voiced in parliament in the lead up to the third royal commission; the commission roundly condemned the "flagrant breaches of standards" and "inexcusable intrusions into privacy" by the press.[90] However, it continued in the line of development set in motion by the first royal commission in advocating a minimum of state intervention,[91] reaffirming the continuation of the 'status quo' of press regulation based on the principles of 'voluntary restraint'. Stressing the need for further accountability to the public, the commission advised the BPC to increase its lay membership to fifty percent, and to draw up a formal code of practice, which "... would be a natural way of demonstrating that the Press Council is carrying out its stated objects, and set out in some detail the spirit governing the conduct of editors and journalists".[92]

Thus, while the principle of voluntary restraint was confirmed by the report of the third royal commission, its emphasis reflected an important transition point "...in a progressive disenchantment with traditional [libertarian] conceptions of press freedom".[93] As O'Malley explains:

> The third royal commission reflected a *de facto* acknowledgment among politicians that debates about press freedom should move beyond nineteenth century ideas which focussed on the relationship between the state and the press to include questions about the nature of press accountability and

[87] RCP 1977, op. cit., p. 1.
[88] ibid., p. 92.
[89] ibid., p. 90.
[90] ibid., chapter 20, para. 15.
[91] O'Malley, T. 2000, op. cit., p. 304.
[92] RCP 1977, op. cit., p. 236. The third royal commission drew on a 1974 cabinet report reflecting similar themes entitled *"The People and the Media"* as discussed in O'Malley, T. 1998, op. cit., p. 89
[93] Curran, J., and J. Seaton, op. cit., p. 288.

> responsibility to the public ... [This] assumed that public accountability in the press was not the same as State interference with press freedom, in spite of the way that this threat was energetically deployed by proprietors and press managers.[94]

In spite of the fact that the BPC's membership was duly increased to fifty percent thus giving it a lay majority for the first time,[95] the debate over voluntary versus statutory control of the print media did not end with the third royal commission.

The question of voluntary versus statutory restraint: 1980-2000

By the 1980s, the intensity of competition between tabloid newspapers had reached heights unprecedented since the pre-war circulation battles.[96] So too had the level of privacy intrusion. An increasingly widespread discontent with press performance and the BPC itself resulted in a "... formidable backlash of opinion against the press in general, and the tabloids in particular".[97] This 'backlash' had extended outside of parliament.[98] By 1980, the NUJ, which had been active in the institution of the General Council of the Press (forerunner of the BPC), had withdrawn its representatives from the body denouncing it as 'incapable of reform' and 'wholly ineffective'.[99] Soon afterward, the NUJ attempted to forge for itself a more active self-regulatory role. In 1986, the union set up an Ethics Council, for the education of its members, and the promotion of ethical standards by hearing complaints about members' breaches of the NUJ's code of conduct.[100] Unwittingly

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[94] O'Malley, T. 1998, op. cit., pp. 84-94.

[95] Humphreys, P., op. cit., p. 61; Tulloch, J., op. cit., p. 72; and Seymour-Ure, op. cit., p. 236.

[96] See McNair, B., op. cit.; and Koss, S. 1984, op. cit., pp. 615-616.

[97] McNair , B. ibid., p. 165.

[98] The implementation of the Criminal Justice Act of 1988 (s. 158) illustrated the perceived effectiveness of the BPC at this time, which was enacted following public outrage about press conduct, with restrictions introduced on the publication of the details of alleged rape victims (Robertson and Nichol 1992, p. 535). For further discussion of the criticisms of the BPC at this time see, generally, Gibbons, T., op. it., pp. 274-280.

[99] *House of Commons Debates.* 27 January 1989, vol. 145, col. 1338. London: Hansard. (This incident occurred during the period of intense competition from 1979-1981 identified by Bailey, S., and G. Williams, op. cit., p. 352 19). A related development was the establishment of *Press Wise* by the NUJ and other media unions and affiliated parties, which initially functioned akin to a lobby group, supporting the series of Private Members' Bills introduced the 1980s. (See The Press Wise Trust. 1999b. Press Complaints Commission: History and Procedural reform. A briefing paper. October 1999. Online: Press Wise. Available: http://www.presswise.org.uk/press.htm. 20 June 2000).

[100] Ecclestone, J. 1992, p. 656. 'National Union of Journalists'. In Griffiths, D. (ed.). *The Encyclopedia of the British Press 1422-1992*, pp. 656-656.New York: St Martin's Press. Christopher Frost (the current chair of the NUJ Ethics Committee and a former BPC press representative) notes that while some members were opposed to the NUJ taking on such disciplinary role, others argued in its favour seeing little point in having a code if it was not going to be upheld (Frost, C., op. cit., p. 224).

perhaps, the NUJ's actions served to further undermine the BPC, for which these very functions were expected.[101]

These processes culminated in "...the most vociferous calls for press regulation to be heard in Britain since the Second World War" where traditional press freedoms in Britain were significantly challenged.[102] The number of Private Members' Bills, which sought to legislate on privacy and right of reply, illustrated this.[103] While unsuccessful, they were highly significant, as McNair explains:

> Each of these attempts to impose legal constraints on the press failed to gain the necessary support in the House of Commons, but the frequency with which they were made, and the fact that they came from both Labour and Tory MP's, clearly shows how the content of the British tabloids had become an important political issue by the late 1980s. These Bills failed, nevertheless, because of longstanding resistance in the United Kingdom to anything resembling state intervention in, or censorship of, the press.[104]

The 1990 Committee on Privacy and Related Matters

By the late 1980s, the question of self-regulation versus statutory control of the press was very much on the political agenda in the UK, setting the context for another government-initiated inquiry. The Committee on Privacy and Related Matters, chaired by David Calcutt QC, reported in June 1990. The committee cited "... a wide public aversion to newspaper intrusion..." which it attributed to the effects of excessive competition brought about with the changes to the nature of the tabloid market over the previous two decades.[105] Nonetheless, the privacy committee reaffirmed "... a preference for reform by self-regulation", recommending that the press "... should be given one final chance to prove that voluntary self-regulation can be made to work".[106]

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[101] The last chair of the BPC, Louis Blom-Cooper, suggested that this move directly contributed to the demise of the BPC. (Blom-Cooper, L., 1991, p. 13. 'Epitaph: Critique on Calcutt'. In Press Council. *The Press and the Public: 37th Annual Report of the Press Council.* London: Press Council).

[102] McNair, B., op. cit., p. 160.

[103] Labour MP Anne Clwyd's 1987 Bill aimed to give victims of the press rights of redress. In 1988, MP Bill Cash (Conservative) introduced a Right to Privacy Bill. During the 1988/9 parliamentary session, another Privacy Bill was initiated by a Conservative MP John Browne (this Bill was subsequently withdrawn), with a Right of Reply Bill introduced by Tony Worthington (Labour). (A comparative analysis of the content of these Bills is offered in the Annexes to the Lord Chancellor's 1993 consultation paper on privacy referred to below).

[104] McNair, B., ibid., p. 166. This latter point about the reluctance of UK governments to legislate on the press is considered below (see p. 77, note 178).

[105] Home Office. 1990, p. 10. *Report of the Committee on Privacy and Related Matters*, Cmnd. 1102. June 1990. London: HMSO.

[106] ibid., para. 74, p. 57.

However, taking into account the perceived inadequacy of the BPC, the committee proposed that it "... should be disbanded and replaced by a new body [which] must be seen as authoritative, independent and impartial".[107] The committee thus recommended the creation of a Press Complaints Commission (PCC), which would operate a formal code of practice establishing permissible and impermissible practice in such matters as privacy intrusion.[108] However, the privacy committee's report embodied a threat to the press:

> If the press wishes to retain non-statutory self-regulation, it must set up and support the [proposed new body] the Press Complaints Commission ... Should it fail to do so, or should it at any time be clear that the reformed non-statutory mechanism is failing to perform adequately, we recommend that this should be replaced by a statutory tribunal with statutory powers and implementing a statutory code of practice.[109]

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[107] ibid. The 1990 Calcutt committee noted an "inherent conflict" in the BPC's 'dual role' as a defender of press freedom and a protector of the public interest, contending that there were already sufficient bodies with the former objective. (Interestingly, the Younger Committee on Privacy had raised a similar objection in its 1972 report, op. cit., para. 135). Hence, the BPC had been "...likened to a watchdog with two heads barking in opposite directions: one to give warning to the press when its freedom is in danger, the other barking at the press when it abuses that freedom" (Morgan, K. op. cit., p. 139). The Calcutt committee argued that "[t]he exercise of control over journalistic behaviour had always been placed second" (Home Office. 1990, op. cit., para. 2.15, p. 7). (Indeed, the opening of the BPC's 1976 declaration on privacy included in Appendix Two to this thesis appears to confirm this view). This perceived emphasis was a departure from the first royal commission's vision of an institution that would foster a 'professional culture' in the press (Curran. J., and J. Seaton, op. cit., p.296). Consequently, the Calcutt committee rejected a dual role for the proposed PCC, which would function solely as a 'complaints body'. However, the BPC itself took issue with the committee's claims: "So long as it is accepted that freedom of the press is not absolute but necessarily carries with it responsibilities towards the public there is every reason why a single body should sustain the freedom while upholding the standards that reflect the public responsibilities" (Press Council. 1990, p. 257. *The Press and the People: 36th Annual Report of the Press Council, 1989.* London: Press Council.). According to the BPC, the two roles had been "entirely complementary and necessary counterparts of each other" where judging complaints "frequently involves weighing the claims of press freedom and press responsibility". The BPC maintained that investigating press irresponsibility is only tolerable to the press if it has the former duty also. Its omission from the PCC's mandate would "only bring new practical problems for voluntary regulation" (Press Council, 1991, op. cit., pp. 24-26). These arguments are explored further in chapter six below.

[108] Home Office, op. cit., para. 74, p. 57.

[109] ibid. Included in the committee's final report was a suggested code of practice (referred to in chapter seven below). However, the threat embodied in the Calcutt committee's final report indicates that it was not entirely convinced of the industry's long-term ability to police itself. Conceivably, the committee's attitude was not improved by press intrusions during the period in which it sat. A pertinent illustration was the intrusion into the privacy of actor Gordon Kaye by journalists of the *Sunday Sport* while he was in hospital unconscious (Snoddy, R., op. cit., p. 101). Not only did the newspaper's flouting of the BPC's critical adjudication severely undermine the authority of the BPC at this crucial time. The case also highlighted the anomaly of the absence of a legal right to privacy and the lack of a right of action for a breach thereof when this case was heard in the Court of Appeal in 1990 (*Kaye v. Robertson and Sport Newspapers Ltd.*) (ibid., pp. 94-95). The 1990 Calcutt Committee's report also suggested the introduction of three new criminal offences relating to privacy intrusion, offences which in practice only journalists could be found guilty. (For further discussion of these, see Gibbons, T., op. cit., pp. 280-81). The Government stated its "attraction to these recommendations in principle" (*House of Commons Debates*. 21 June 1990, vol. 174, column 1125. London: Hansard). However, with a General Election scheduled for 1992, it is perhaps not surprising that these laws were not enacted.

The government rapidly endorsed the report of the 1990 privacy committee. David Waddington, the Secretary of State for the Home Department, concurred with the committee, stating that: "This is positively the last chance for the industry to establish an effective non-statutory regime, and I strongly hope that it will seize the opportunity that the committee has given it".[110]

The Industry's response and the demise of the British Press Council

As chapter four discusses further, evidence of the level of industry concern at the potential outcome of the privacy committee was illustrated by a flurry of internal reform during 1989, which culminated in the development of a code of practice by a group of national newspaper editors. In addition, the BPC devised a formal code for the first time,[111] a recommendation it had consistently refused to act on previously. Nonetheless, the NUJ welcomed the BPC's effort and at the union's 1990 annual delegate meeting the decision was made to rejoin the body.[112] However, the BPC's fate was already sealed. When the NUJ returned its nominees to the BPC in May 1990, the rest of the industry had already begun acting on the privacy committee's recommendations, withdrawing its funding and establishing the proposed complaints body.[113]

To understand the demise of the BPC, the divergence between the role envisaged for the body by the 1949 royal commission and that which it took on in practice is illuminating:

> ... [T]he Commission's vision of fostering 'a sense of responsibility and public service' through the agency of the Press Council proved to be

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[110] *House of Commons Debates*. 21 June 1990, vol. 174, column 1125. London: Hansard.

[111] Press Council. 1990, op. cit., pp. 248-252. In addition, a system of in-house ombudsmen to consider readers' complaints was agreed to by almost all of the national newspapers during 1990. This was an initiative first seen in the United States, and later adopted in parts of western Europe (Hollstein, M. 1993, p. 44.'A Royal Mess'. In *The Quill*. Jan.-Feb. 1993, vol. 81, n.1, pp. 43-44).

[112] Frost, C., op. cit., p. 189. This was only to find that the industry was already beginning to withdraw its funding form the BPC. Thus, the NUJ had no part in the establishment of the new PCC. Interestingly, while the NUJ had been a driving force in the birth of the BPC, this time it was the Newspaper Proprietors' Association that, "recognising the logic of the last chance saloon", led the industry in its abandonment of the BPC (Snoddy, R. op. cit., p. 108).

[113] Blom-Cooper, L., 1991, op. cit., p. 13. There was at this time some tension between the new self-regulatory body and the NUJ, which has continued over the last decade. This tension was largely because the only representatives of the PCC were newspaper and magazine editors. That journalists were not represented was, according to the NUJ, a way of excluding it from the PCC (Frost, C. op. cit., p. 191. Christopher Frost is the current chair of the NUJ's Ethics Committee).

> quixotic...the professionalizing project it embodied was undermined by stronger forces than it was able to command.[114]

As Weymouth and Lamizet explain:

> The reasons for this failure are not difficult to perceive. Firstly, the original Press Council ... was imposed on the industry which for the most part rejected the need for self-regulation. Secondly, it was financially dependent upon the very newspapers whose conduct it was supposed to monitor and regulate. Predictably, in such circumstances, the Press Council was too weak to deal with its unruly patrons, and unable to impose upon the industry standards of conduct called for by successive Commissions.[115]

Thus, while the 1949 Royal Commission on the Press had envisaged the BPC as a "'professionalizing' strategy to embody and promote a professional culture among British journalists",[116] it was widely seen that "[t]he real long-term purpose of the Press Council (as seen by the industry) was to act as a public buffer, protecting the press from formal legislation and allowing it to carry on in much the same old undisciplined way".[117] Ultimately, the BPC's weaknesses were exacerbated by the fact that "... it had no formal Code of Practice as to what the press should and should not be doing, nor any legal powers to enforce its decisions ... the Press Council had by the 1980s come to be widely perceived as ineffectual, a 'watchdog without teeth'...".[118]

Thus, the Press Complaints Commission (PCC) superseded the BPC. When it began operation in January 1991, the PCC looked to be an improvement on its predecessor. It was given increased funding, and had the active participation of national editors.[119] Significantly, it was also instituted with a formal code of practice, considered further in chapter four. Already the PCC had overcome some of the key weaknesses of the former BPC. However, there were indications the concern about press standards remained.

An attempt to introduce a statutory right of reply backed by an 'Independent Press Authority' was made by MP Clive Soley in 1992,[120] which marked the

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[114] ibid., p. 296.
[115] Weymouth, T, and B. Lamizet, op. cit., p. 49.
[116] Curran, J., and J. Seaton, op. cit., p. 295.
[117] Tunstall, J. 1996, op. cit., p. 307.
[118] McNair, B., op. cit., p. 167.
[119] Tunstall, J. 1996, op. cit., p. 400. (See also Hollstein, M. op. cit., p. 44).
[120] For further discussion about this Bill, see O'Malley, T. 2000., op. cit.

beginning of renewed debate about self-regulation, with privacy intrusion at its centre. Then National Heritage Minister, David Mellor, had warned that the press were 'drinking in the last chance saloon'.[121] However this warning was in vain; intrusions of privacy, particularly into the private lives of politicians, celebrities, and members of the royal family continued.[122] Thus, when the end of the recommended eighteen-month 'probationary period' for the PCC neared and (the newly ennobled Sir) David Calcutt was re-appointed, the case for the continuation of self-regulation looked less than convincing.[123]

Calcutt's 1993 review of press self-regulation: Statutory restraint as 'solution'

Sir David Calcutt's personal report was presented in January 1993. The report was scathing of the performance of the PCC and its efficacy as a regulator of journalistic standards:

> The Press Complaints Commission is not, in my view, an effective regulator of the press. It has not been set up in a way, and is not operating a code of practice which enables it to command not only the press but also public confidence ... It is not the truly independent body which it should be. As constituted, it is, in essence, a body set up by the industry, financed by the industry, dominated by the industry, and operating a code of practice devised by the industry and which is over-favourable to the industry.[124]

The 1993 report was an aberration from government-initiated inquires that preceded it, reflecting an overall dissatisfaction with the principles of voluntary restraint. Highlighting the flaws of self-regulated reform, Calcutt recommended that the PCC be replaced with a statutory Press Tribunal, which would operate a statutory code of practice.[125] In addition, three criminal offences were proposed relating to the acquisition of material by trespass, the use of surveillance equipment on private

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[121] See, for instance, O'Connor, R. 1992, p. 22. 'Covering Princess Diana'. In *Editor and Publisher*. July 18 1992, vol.125, n. 29.

[122] Tunstall, J. 1996, op. cit., p. 402. Ironically, David Mellor himself was enjoying his own 'last chance' as he was forced to resign from cabinet after tabloid disclosures of an extramarital affair shortly afterward (Munro, C. 1997, p. 6. 'Self-regulation in the media'. In *Public Law*, pp. 6-17).

[123] *House of Commons Debates*, 9 July 1992, vol. 211, column 277. London: Hansard.

[124] Calcutt, D., Department of National Heritage. 1993, p. xi. *Review of Press Self-regulation*, Cm. 2135. 14 January 1993. London: HMSO.

[125] ibid., p. xiii. The proposed Tribunal would also have the powers of pre-publication censorship, and to fine newspapers for breaches of the code.

property, and the taking of photographs on private property without the consent of the owner.[126]

The Major-led Government made its reservations clear: "... [W]e are conscious that action to make such a body statutory would be a step of some constitutional significance, departing from the traditional approach to press regulation in this country. In light of [this] consideration, the Government would be extremely reluctant to pursue that route..."[127] However, the government expressed an interim attitude that "recognised the strength of statutory regulation" which it "did not rule out as a possibility".[128]

A National Heritage Select Committee was thus called to consider the Calcutt report. Its report 'Privacy and Media Intrusion' was published later in 1993. Although more sympathetic to the interests of the press,[129] the select committee shared Calcutt's view that the PCC, as constituted, was insufficient particularly in the area of privacy. In spite of developments to the PCC's code, and the employment of a special 'privacy commissioner' in January 1994,[130] the Select Committee maintained that this had made "no difference" to press behaviour regarding intrusion into private lives.[131] Accordingly, the committee recommended a Protection of Privacy Bill, and proposed the creation of a 'Press Commission' as a subsidiary body to the PCC, which would have the powers to fine newspapers for breaches of the new code proposed by the select committee. The new regulatory regime would be overseen by a statutory Press

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[126] ibid., p. 51. These were the same as those proposed by the 1990 Calcutt Committee noted above. Incidentally, in a number of other European countries, there are more stringent regulations on the publication of individual's photographs than there are in Britain. In countries such as France, Spain, and Germany, people are given copyright to their image. This means that newspapers cannot publish people's photographs of people partaking in private activities (or details of their private lives) without their consent. Indeed, in the past members of the royal family have been awarded damages for private photographs published in France, which have been legally publishable in the UK (Amiel, B. 1993. 'Charles, Diana -And the role of the Media'. In *Macleans*, February 1 1993, vol. 106, issue 5, pp. 13-14).

[127] *House of Commons Debates*. 14 January 1993, vol. 216, column 1068. London: Hansard.

[128] *House of Commons Debates*. 29 January 1993, vol. 217, col. 1435. London: Hansard. The Government's final view on the Calcutt report was to be delayed until after the final reading of Soley's 'Freedom and responsibility of the press' Bill (about which a similar view to the Government's response to Calcutt 2 was eventually taken), and the deliberations of the select committee (*House of Commons Debates*. 14 January 1993, op. cit., col. 1068).

[129] Gibbons, T., op. cit., p. 281.

[130] Cram, I. 1998. 'Beyond Calcutt: The legal and extra-legal protection of Privacy interests in England and Wales'. In Kieran, M (ed.). 1998. *Media Ethics*. pp. 97-110. London: Routledge.

[131] Department of National Heritage.1993, para. 31. *Privacy and Media Intrusion.* Fourth report of the Select Committee on National Heritage. Session 1992-93, (HC 294). 24 March 1993. London: HMSO. For a press perspective on the issue of press and privacy intrusion around this time, see Stephenson, H. op. cit.

Ombudsman, who would "act as a bulwark against the inadequacies of voluntary regulation", investigating in particular situations where complaints had not been resolved by the PCC.[132]

The Government's Response: An 'extension to the drinking hours of the Last Chance Saloon' is confirmed

The Government's formal response was presented two years later in July 1995.[133] Its report addressed the questions of whether statutory restraint should replace voluntary self-regulation, the notion of criminal laws for the press and legal rights of redress for victims of press malpractice, and the effectiveness of the PCC itself. The Government reiterated a familiar theme of the regulatory history of the British press. All notions of statutory restraints for the press were dismissed in favour of the continuation of self-regulation under the PCC:

> The Government have considered carefully whether legislative options should be pursued, rather than the self-regulatory alternative. We have decided for the present to allow Lord Wakeham's commission, and the press, to demonstrate that self-regulation can be made to work ...The industry now has to back the PCC and to make self-regulation fully effective. This is an issue which the

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[132] Gibbons, T., op. cit., p. 282. Later in 1993, the Lord Chancellor's Office published a consultation paper on infringement of privacy, which proposed a new tort of privacy infringement. This further illustrates the degree that issues of privacy and press intrusion were on the political agenda of the Government of the time. Of additional interest is the way that the issue of privacy itself was articulated: "...Privacy is a highly complex subject. Different people may need (or want, or have) different amounts of privacy. The same person will need (or want, or have) different amounts of privacy at different times. Sometimes, like Greta Garbo, we want to be alone; sometimes, like Mae West, we do not" (Lord Chancellor's Department and Scottish Office. 1993, para. 3.10. *Infringement of Privacy*. London: HMSO).

[133] Department of National Heritage, 1995a. *Privacy and Media Intrusion: The Government's Response*, Cmnd. 2918. 17 July 1995. London: HMSO. Reshuffling of the Department of National Heritage during this time undoubtedly contributed to this delay as Frost suggests (Frost, C. op. cit., p. 196). However, the delay itself may have been much more significant. Munro indicates that the delay was in fact a result of the division within the government over the relative benefits of enacting Calcutt's recommendations (Munro, C., op. cit., p. 7). Indeed, Lord Wakeham, who at the time was the chairman of a Cabinet Committee convened to produce a Bill to implement the Calcutt report, has stated that the eighteen month period following Calcutt 2 was spent convincing the government otherwise (Wakeham, Lord J., 1998. 'Privacy, the press and the public'. Lecture delivered at the *1998 Vauxhall lectures*. Online: Centre for Journalism Studies, Cardiff University, Spring 1998. Available: http://www.cf.ac.uk/jomec/issues/ wakehammain.html. 3 October 2000). Thus, the implementation of Calcutt's 1993 report seems to have gone further than many are aware.

> Government and the House will and should continue to monitor and debate.[134]

> The 1995 report concluded with the proposition that:
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> Only if it [the press] is prepared to take such action will it satisfy the demands of Parliament and the public for a more effective system of independent regulation of the press offering real prevention, or redress for those harmed by unwarranted action by the press.[135]

Thus, the debate over the future of press regulation had again been resolved in favour of the continuation of voluntary restraint. As then opposition member Chris Smith suggested, the 'last chance saloon' had been granted a substantial extension to its drinking hours.[136]

It is evident that the reforming activity undertaken by the PCC amid this period of debate was enough to convince the government of the viability of the existing system of self-regulation, at least temporarily.[137] However, others were less optimistic:

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[134] *House of Commons Debates*. 17 July 1995, vol. 263, columns 1524-25. London: Hansard. In May 1995, two months before the Governments' final report was promulgated, an episode took place that may have influenced the Government's stance towards the future of self-regulation. This was Rupert Murdoch's public admonishing of an editor of one of his newspapers, the *News of the World*, for intrusive reportage on members of the royal family. Perhaps on the surface, this illustrated the industry's commitment to ensuring the efficacy of self-regulation amid the threats of statutory control. However, as Franklin and Pilling point out, this episode points to a worrying fragility of self-regulation, which being so reliant on the continued support of publishers, can be unreliable and precarious at best (Franklin, B., and R. Pilling, op. cit., p. 116). This contention was also aptly illustrated in 1993, where MGN newspapers (temporarily) withdrew from the remit of the PCC after its adverse adjudication on the *Daily Mirror*'s publication of the notorious "Di Spy" photographs (see O'Connor, R. 1993a. 'Di Spy photos raised specter of press regulation'. In *Editor and Publisher*. December 18 1993, vol. 126, no. 51, pp. 14-16).

[135] Department of National Heritage. 1995, op. cit., para. 6.4. The Government thus made a series of recommendations for improving the PCC, some of which had been implemented while the government was still deliberating. These included increasing the lay element of both the appointments committee and the commission itself. Also recommended was the development of a press hotline, for individuals who considered that their privacy was about to be, or had been invaded by the press. It was suggested that a fund be set up by the industry for the payment of compensation to victims of press intrusion. The acceptance of third party complaints was suggested as well as fuller publication of adjudications by newspapers. The notion for the inclusion of the PCC's code of practice in the contacts of editors and journalists, and the establishment of a compensation fund for victims of privacy intrusion by the press were additional proposals supported by the Government.

[136] *House of Commons Debates*. 17 July 1995, op. cit., col. 1326.

[137] However, that a General Election loomed may have been an important consideration. Nonetheless, by 1995 the PCC's reforms had included the appointment of a new chair, Lord Wakeham (a former senior Conservative Party member and chief whip for Margaret Thatcher), who actively promoted the continuation of self-regulation on behalf of the press, taking measures to enhance its public profile during this period. In addition, the PCC's lay representation was increased, with a post of a 'Privacy Commissioner' on the PCC created, and a Complainants' Charter devised (see Franklin, B., and R. Pilling, op. cit., pp.118-9). Amendments made to the PCC's code during this period are discussed in chapter four.

> Self-regulation only works ... when there is consensual support for it and the self-regulating agency has sanctions. The Press Complaints Commission (PCC) has no sanctions, and it does not have general support in the press. It exists not because it is the product of an internal reform movement, but in response to external pressure from politicians.[138]

Indeed, the particular nature of the 'internal reform' undertaken by the British press had been a fundamental difficulty in the history of press self-regulation up until this point and has not been allayed since,[139] as the remainder of this chapter aims to highlight.

Payments to witnesses: The question of statutory restraints arises again

The parliamentary spotlight was turned on the PCC soon after the Government's rejection of statutory controls for the press in 1995. Payments made by newspapers in 1995 and 1996 to trial witnesses in exchange for interviews resulted in the publication of a consultation paper, which explored the possibility of legislation to restrict the practice of chequebook journalism in criminal trials.[140] Chequebook

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[138] Curran, J., and J. Seaton, op. cit., p. 369. That complaints to the PCC had almost doubled from 1520 in 1991 to 3023 in 1996 may suggest such doubts were founded. (*The Economist*. 1997. 'Law and grief: privacy. Self-regulation versus government regulation of newspapers in the United Kingdom'. September 13 1997, vol.344, no. 8032, pp.58-59. USA). On the other side of the coin is the argument that an increase in complaints is "a sure sign the public not only knows about the PCC and its processes but also has confidence in the Commission to deliver results", as Lord Wakeham maintains (Press Complaints Commission. 1996a. Annual Report of the Press Complaints Commission 1996. Online: The PCC. Available: http://www,pcc.org.uk/annaul/96/default4.htm. 14 April 2000). Which of these arguments is the more valid of the two remains unverified.

[139] This is perhaps not surprising given that, except for the narrower mandate of the PCC compared to its predecessor, there are few differences between the two self-regulatory bodies and, in particular, the context in which they were founded to operate. When they recommended the replacement of the BPC with the PCC, David Calcutt and his 1991 privacy committee never intended that the new body would tackle the job of press regulation single-handedly. The PCC was to be a part of the threefold strategy, which included the statutory restraint of physical intrusion, and a tort of infringement of privacy, both of which the Government failed to enact. This left the PCC to operate with the same problems, particularly with the tabloid press, that were central to the demise of the BPC. (For further discussion of this issue, see Spencer, Earl J.,1996. 'Time to close that saloon'. In *The Spectator*, October 19, 1996, vol. 277, no. 8779, pp. 20-21).

[140] At the centre of the renewed debate were the payments made to witnesses at the trial of Rosemary West in 1995. Similar controversy had occurred in 1966 (amid the 'Moors Murder' trial, which is discussed in chapter four below in the context of the BPC's declaration of principle on payments to witnesses), and in 1983 (during the 'Yorkshire Ripper' trial), to name two prominent incidents. Controversy about payments to relatives of serial killer Peter Sutcliffe in fact resulted in the re-drafting of the Contempt of Court Act 1981 giving the Attorney General powers to issue judicial proceedings against a newspaper if its coverage or actions relating to an (actual or potential) witness might influence the evidence they give in court, and thus the outcome of a trial. (Of course, a difficulty arises when media payments are made to a person who is later called upon to give evidence). (The Press Wise Trust. 1995. Chequebook Journalism: A briefing paper. December 1995. Online: Press Wise. Available: http://www.presswise.org.uk/chequebook.htm. 20 June 2000). However, the latest is especially significant where legislation to restrict this media practice (which has not previously gone beyond Contempt of Court legislation) is currently a possibility as is pointed out below.

journalism in itself is not illegal in Britain, however there were concerns about the wider effect of such payments to trial witnesses, as the Lord Chancellor's consultation paper highlighted: "... legislation is required to deal with the threat which payments to witnesses pose to the proper administration of justice. Press self-regulation did not prevent the payments in the *West* case or others".[141]

A National Heritage Select Committee was called to consider this proposal. The committee believed that an extension of the contempt laws was necessary both to control media payments to witnesses as well as pre-trial publicity.[142] While legislation did not immediately result, the present Government's recent announcement that it will be undertaking further review of the matter indicates that the possibility of further reportage restrictions for the media superceding the authority of the PCC and its code looms over the head of the British press.[143] This further illustrates how the concept of 'press freedom' has evolved in the UK over the twentieth century. Evidently, it is now not only possible for governments to promote press responsibility through the establishment of governmental inquiries; they can also seek to enforce it through legislation. Indeed, during the 1990s, the increasingly central role of politicians in the

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[141] Lord Chancellor's Department, Law Reform Division. 1996, para. 28, p. 6. *Payments to Witnesses: A Consultation Paper.* London: HMSO.

[142] Department of National Heritage. 1997. *Report of the Select Committee on press activity affecting court cases.* Second report of the Select Committee on National Heritage 1996-7 Session. (HC 86). 22 January 1997 London: HMSO. These suggestions received a mixed reaction from within the press. While the NUJ generally supported this proposal, much of the newspaper industry, including its watchdog the PCC, condemned the idea of such legislation. It was argued, (somewhat paradoxically), that its "...code of practice, although not in the West case, was sufficient to address the problem" (cited in Frost, C., op. cit., p. 202). Faced with the possibility of legal restrictions, this controversy resulted in an amendment to the PCC code, as is explored in chapter four.

[143] When the Labour Government came to office in May 1997, it expressed a general antipathy towards statutory control of the press. However, the *News of the World*'s payments to witnesses at the trial of Gary Glitter in November 1999 saw the issue of legislation banning chequebook journalism in court trials return to the parliamentary agenda (Gibson, J. 1999. 'New of the World under investigation for £10, 000 payment to witness'. November 13 1999. Online: Guardian unlimited. Available: http://www.guardian unlimited.co. uk/Archive/Article/0,4273,3930009,00.html. 12 August 2000). It is expected that a report produced by an inter-government working group (comprised of officials from the Lord Chancellor's Department, Home Office, Law Officers Department, and the department for Culture, Media and Sport) will be published in 2001 with proposals for the nature of the legislation (*The Lawyer.* 'Witness Payments to be reviewed'. 2000. Online: The Lawyer Online. Thursday 29 June 2000. Available: http://www.the-lawyer.co.uk/TLn 1002c.html. 16 August 2000). Reportedly, this will involve taking into account how the requirements of the recently incorporated European Convention on Human Rights (effective 2 October 2000) affects contempt proceedings. According to some, this development is a "step down a slippery slope for the press", raising questions about the future of self-regulation, namely the system being undermined by statutory restrictions on media reportage (Thynne, J. 1995. 'Payouts to witnesses put press in dock'. 24 November 1995. Online: The Electronic Telegraph. Available: http://www.telegraph.co.uk. 23 July 2000).

debate about self-regulation further challenged traditional conceptions of press freedom.

Press and privacy intrusion: The question of statutory restraints re-emerges

As Franklin and Pilling suggest, the move towards a more 'tabloid agenda' in the general press has meant that privacy has become a 'commodity' that can be sold to mass audiences.[144] This came to the fore again in 1997, when the issue of privacy and press intrusion re-emerged on the parliamentary agenda for at least the fifth time in a decade.[145] The death of the Princess of Wales prompted an unprecedented degree of public concern about press intrusion and harassment.[146] The ensuing clamour for privacy legislation was directed particularly towards the tabloid press, whose hired paparazzi were believed at the time to be involved in her death. As chapter four illustrates, this threat resulted in 'urgent action' on behalf of the PCC to tighten its code, with the industry's affirmation to refrain from intrusive treatment of the late Princess' sons, Princes William, and Harry for the future.[147] While these efforts may support the argument that 'self-regulation responds to public concern',[148] they also support an hypothesis concerning the externally driven and reactive nature of internal reform initiatives undertaken by the British press.[149]

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[144] Franklin, B., and R. Pilling, op. cit., pp. 13-19.

[145] That is including the criminal laws proposed by Calcutt 1 and 2, and both the Department of National Heritage's (DNH), and the Lord Chancellor's 1993 proposals.

[146] It was around this time that the 1997 Protection from Harassment Act was passed. This legislation had as one of its targets the problem of 'media scrum'; that is, the "tactics approaching mass picketing by media scrum of homes and workplaces of those in the news commonly, although not exclusively, by the tabloid press", (Feintuck, M., op. cit., p. 142,). In considering the PCC's 1997 reform initiatives, its concerns that the Act, with its provisions designed to protect individuals from intrusive behaviour of journalists and photographers, could be used to deflect unwelcome media scrutiny in cases of legitimate investigative journalism, are noteworthy. However, Feintuck doubts that the Act will do much to "...resolve the conceptual framework in which the claims of privacy and the public interest take place", (ibid. p. 148). (For further discussion of this Act as it relates to the media, see Fiddick, J, 1998. *The Human Rights Bill [HL]. Bill 119 of 1997-98:Privacy and the press.* Research Paper 98/25. 13 February 1998. Online: Home Affairs Section, House of Commons Library. Available: http://www.parliament.uk/commons/lib/research/rp98/ rp98-025.pdf. 30 June 2000; and Lawson-Cruttenden, T. and N. Addison. 1997. *Blackstone's Guide to the Protection from Harassment Act 1997.* London: Blackstone Press).

[147] Frost, C., op. cit., p. 203.

[148] This argument was mounted by the late Sir David English (former chair of the PCC code committee) cited in Boshoff, A. 1997. 'Privacy at the heart of new press code'. Electronic Telegraph. UK News. Friday 19 December 1997, issue 939. Electronic Telegraph: Online. Available: http://www.telegraph .co.uk. 24 July 2000.

[149] A private member's Bill initiated in the commons in December 1997 to change the status of the PCC to a statutory body with legal authority may have also motivated the 1997 amendments to the PCC code (see HOC Debates, 9 December 1997, cols. 813-814).

Further threats to the press arose with the implementation of the European Convention on Human Rights (ECHR),[150] which includes provisions on the rights to privacy (Article 8), and freedom of expression (Article 10). While this initiative had been in the election manifesto of the Labour government voted into power in May 1997, the renewed privacy debate undoubtedly gave it momentum. While the conflict between the rights to privacy and freedom of expression was not a new issue, the 1997 Human Rights Bill was the closest the UK had come to addressing it through legislation. Therefore, the relative weight that the Act would give to the two rights was of concern to the press.[151] In brief, the PCC saw the original Bill as a threat to freedom of expression,[152] with the potential to undermine press self-regulation.[153]

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[150] The ECHR was devised in 1950 by the Council of Europe as part of the reconstruction of Europe after the Second World War. It was based on the 1948 Universal Declaration of Human Rights, with one of its central purposes to offer a guarantee against totalitarianism to citizens of post-war Europe. When it came into force in 1953, the convention was implemented by 31 of the 36 signatory states. While the UK ratified the Convention in 1951, it was not recognised in domestic law until 2 October 2000. In the past, offences committed in the UK, which might breach the Convention, must first be tested against the full range of domestic laws before the plaintiff concerned can proceed to Strasbourg for a ruling. The UK has been much slower than most European countries in incorporating the convention and its provisions into domestic law possibly due principally to the fact that the UK has no 'citizens', only 'subjects' of a monarch. (See The Press Wise Trust. 1998. Mass Media: Privacy and freedom of Expression. Incorporation of the ECHR: Background. February 1998. Online: Press Wise. Available: http://www.presswise.org.uk/human.htm# Background. 12 April 2000). It will undoubtedly be some time from now that the effects of the Act's application on the UK media can be assessed.

[151] For further discussion of the Human Rights Act 1998, see Baber, M. 1998. *The Human Rights Bill [HL]. Bill 119 of 1997-98.* Research Paper 98/24 13 February 1998. Home Affairs Section, House of Commons Library. Available: http://www.parliament.uk/commons/lib/research/rp98/rp98-024.pdf. 4 June 2000.

[152] The possibility of a 'back door' privacy law via the Act alarmed the PCC, with the possibility that Article 10 would not being strong enough to counteract this (Petley, J. 1999, p. 156. 'The regulation of media content'. In Stokes, J. and A. Reading (eds.). *The Media in Britain, Current Debates and Developments*, pp. 143-157. USA: St Martin's Press Inc.). This would bring an increased likelihood of injunctions being issued against the press concerning issues of privacy to the detriment of investigative and current affairs journalism (*House of Lords Debates* 24 November 1997, vol. 583, column 771, 5 February 1998, vol. 305, column 841. London: Hansard; and Press Complaints Commission.1998a. Annual Report 1998. Online: Press Complaints Commission. Available: http://www.pcc.org.uk/annual /98/default1.htm. 12 January 2000.

[153] The PCC was concerned that it (and newspapers) would be captured by the definition of 'public authority' in the legislation, (which the Clause 6(3)(c) of the original Bill described as "any person certain of whose functions are functions of a public nature". Discussion of the concept is also given in Home Office.1997a. *Rights Brought Home: The Human Rights Bill*, White Paper, Cm 3782. October 1997. London: HMSO). Put simply, this would have meant that the PCC's rulings could be challenged in courts, thus forcing it to operate in a highly legalistic framework and undermining the very notion of voluntary self-regulation that the PCC was intended to embody. The main thrust of the amendments moved by Lord Wakeham was to ensure that this did not occur in order to secure the status of the PCC as a system of redress for 'ordinary people' (as opposed to the prohibitive nature of a legal route due to the cost involved). However, others argued that if newspapers were not classed as 'public authorities' insufficient protection would be given to privacy in favour of freedom of expression (see Blom-Cooper, L. 1998. 'Self-regulation has only worked to protect the powerful'. In *New Statesman*, February 13 1998, vol. 127, no. 4372, pp 16-17).

In response to the PCC's concerns, the view was expressed that "[t]he message for the press is plain: strengthen self-regulation and strengthen the PCC under its eminent chairmanship".[154] However, Bill's threats to press freedom were addressed when the Human Rights Act (1998) came into effect in October 2000, requiring the Courts to "... have particular regard to the importance of the Convention right to freedom of expression...". [155] The stance of the Labour Government towards the issue of restrictive privacy legislation was an extension of that of the previous Conservative government three years earlier:

> The Government have always made clear our support for effective self-regulation as administered by the Press Complaints Commission under its code of practice. We have also said that we have no plans to introduce legislation creating a general law of privacy ... Similarly, on self-regulation, the new clause provides an important safeguard by emphasising the right to freedom of expression.[156]

Additional cause for press concern arose with the implementation of the European Union Directive on Data Protection into domestic law.[157] The Data Protection Bill illustrated a more specific instance of the tension between the right to

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[154] *House of Lord Debates* 24 November 1997, vol. 583, column 786. London: Hansard

[155] Human Rights Act (1998), section 12(4). London: HMSO, *House of Commons Debates* 2 July 1998, vol. 315, column 541. London: Hansard. Section 32(3) of the Human Rights Act gives the Secretary of State the power to designate relevant codes of practice (potentially including the PCC code) for the purposes of helping Courts decide whether the public interest being served was reasonable (See 32 (3)). The statutory principles, (which like the Convention, does not provide a non-exhaustive definition of the term 'public authority') will be applied by the courts on a case by case basis (Home Office. 2000. 'Frequently asked questions about the Human Rights Act. What is a Public Authority?' 9 October 2000. Online: Home Office. Available: http://www.homeoffice.gov.uk/hract/hra faqs.htm. 18 October 2000). It is interesting that while the PCC was not intended to function as a 'defender of press freedom', it increasingly forged such a role for itself during the 1990s. Petley suggests that "...the fact that the PCC is indeed no more than the newspaper industry's creature was ably, if inadvertently, confirmed by its own chairman when he complained [about the possibility of the PCC being regarded as a 'public authority' with legal status]" (Petley, J., op. cit., p. 156).

[156] *House of Commons Debates*. 2 July 1998, vol. 315, column 541. London: Hansard.

[157] The EU Data Protection Directive was adopted on 24 October 1995 [95/45/EC], which covers both computerised and manual records. Member States were required to bring their domestic legislation in line with the Directive by 24 October 1998, with the purpose of harmonising data protection legislation throughout the EU. Exemptions from the data processing rules could be provided where information is held solely for the purposes of journalism or artistic or literary expression, but only where such exemptions are necessary to reconcile the right to privacy with rules governing freedom of expression. It was assumed that the UK Data Protection Act 1984, which only covered computerised records, did not cover the collection and use of personal information by the media given the manual cuttings systems used at the time of its drafting. However, the media were seen as encompassed by data protection legislation to the extent that since they were now storing and using computerised data, they had thus become subject to the same obligations as other data users subject to the 1984 Act (Wood. E. 1998, p. 40-41. *The Data Protection Bill [HL]: Bill 158 of 1997-98*, Research Paper 98/48 17 April 1998. Online: Home Affairs Section, House of Commons Library. Available: http://www.parliament.uk/commons/lib/research/rp98/rp98-048.pdf. 30 June 2000).

privacy and the freedom of expression and of the press than the Human Rights Bill,[158] as Lord Wakeham summarised:

> At the heart of the directive which this Bill implements is the protection of an individual's right to privacy with respect to the processing of personal data. The challenge for the Government has been to construct a Bill which produces safeguards for ordinary citizens, but does so with appropriate exemptions for journalism that will ensure that the right of those same ordinary citizens to know what is going on in the world is not undermined. In other words, they want to achieve that difficult balancing act of safeguarding both personal privacy and freedom of expression.[159]

While the Data Protection Act, which became effective from March 2000, is not overly hostile to the principles of self-regulation, or those of freedom of expression,[160] it provides another illustration of the perceived challenges to these principles in the UK during the 1990s.

Freedom of Information legislation in the UK: A 'poisoned chalice' for the press?

Because the UK did not have a Freedom of Information Act before 2000, the press (and the media generally) welcomed the Blair Government's promise of one.[161] The overall significance of a statutory access regime for the media is that "[a]s it has developed in the twentieth century, freedom of expression is often said to include freedom of information".[162] Most Commonwealth countries, including New

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[158] ibid., p. 40.

[159] *House of Lords Debates* 2 February 1998, vol. 305, column 462. London: Hansard. The principal concerns of the press about the Bill itself included the wide definition given by the directive of 'personal data' and the inclusion in its definition of processing the use of material for journalistic purposes. Thus, the legislation could be used to undermine press freedom, investigative journalism and effective self-regulation via the PCC (ibid., col. 462).

[160] While the media are not exempt from the entire Act, under Section 32 of the Act journalism is one of the activities that can be exempt from all but one of the data processing rules (that is, principle seven; security). Exemptions from certain provisions include cases where the journalist or publisher reasonably believes that, with regard to the special importance of freedom of expression as noted in the EU Directive, publication would be in the public interest. It is noteworthy that Clause 32(3) states that regard "may" be had to a publication's compliance with any code of practice, although it does not require a code should include the test of necessity to justify infringement of the right to privacy (Wood, E., op. cit., p. 45).

[161] Although a *Code of Practice on access to Government Information* was introduced in April 1994 this does not have the statutory force of a Freedom of Information Act and had innumerable exemptions (National Union of Journalists. 1999. Freedom of Information Bill 1999. Comments from the National Union of Journalists. 9 October 1999. Online: National Union of Journalists. Available: http://www.gn.apc.org/media/foi.html. 23 May 2000). (For a more in depth discussion of the history of freedom of information in the UK, see Birkinshaw, P. 1996. *Freedom of Information: The Law, the Practice, and the Ideal* (2nd edn.). London: Butterworths).

[162] Wood, E., op. cit., p. 40.

Zealand,[163] have freedom of information legislation, the attraction of which for the media (especially investigative, and current affairs journalism) is obvious. Broadly speaking, such legislation declares all official information as in the public domain, incorporating a statutory right to request such information with certain exemptions for information perilous to matters of defense, national security, personal privacy, and commercial secrecy, among others.

However, the long-standing hopes of the media were quashed when the draft Freedom of Information Bill emerged in May 1999.[164] The Bill, which embodied a number of differences to the proposals of the Government's white Paper on the subject,[165] received a critical response from the press. As Petley observed the irony, it was a "...truly remarkable spectacle of the press campaigning *against* the first measure ever enacted in Britain that attempts to put freedom of expression on a statutory footing...".[166]

The NUJ saw the Bill as contrary to the principle of institutional openness associated with freedom of information legislation:

> Far from signaling a clear commitment to the principles of the right to know and openness, the Bill sustains secrecy across broad areas of political, commercial and economic activity, and limits access to information from a number of public and regulatory bodies ... It is a retrograde Bill in a number of crucial areas because it abandons the basic principle and rationale for Freedom of Information legislation that information should be available to the public unless there is clear evidence that disclosure would be damaging.[167]

The NUJ was not the only source of criticism of the Bill. Members of all opposition parties had significant reservations.[168] Subsequently, minor amendments

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[163] To the extent that it affects the print media, New Zealand's freedom of information legislation is overviewed in chapter three.

[164] The relationship between this Bill and the amendments it resulted in to the Data Protection Act are discussed in Gay, O. 1999. *Freedom of Information-The Continuing Debate.* Research Paper 99/61. 16 June 1999. Online: House of Commons Library, Home Affairs Section. Available: http://www.parliament.uk/ commons/lib/research/rp99/rp99-061.pdf. 30 June 2000.

[165] Home Office. 1997b. *Your Right to Know.* 11 December 1997 Cm. 3818. London: HMSO.

[166] Petley, J. op. cit., p. 156.

[167] National Union of Journalists. 1999. Freedom of Information Bill 1999. Comments from the NUJ. 9 October 1999. Online: National Union of Journalists. Available: http://www.gn.apc.org/media/foi.html. 23 May 2000. (This concern also extended to the fact that no reform of the Official Secrets Act, which is seen to be restrictive to investigative journalism, was scheduled).

[168] The leader of the Opposition, William Hague, reportedly attacked the Bill as it was due to be passed as "an example of legislation that was systematically undermining press freedom" and promised the media a "real freedom of information act" if the Conservatives win the next election. (Hodgson, J. 2000. 'Hague makes pledge on press freedom'. The Guardian. 17 October 2000. Online: The Guardian. Available: http://www.guardianunlimited.co.uk/Archive/Article/0,4273,4077429,00.html. 12 November 2000).

were made to the Bill during its passage.[169] However, the reservations of the press were not allayed by the time the Freedom of Information Bill received royal assent on 30 November 2000.[170] Some of the central criticisms of the Freedom of Information Act concern its potential implications for investigative journalism; it is perceived that the 'right to know principle' is insufficiently captured by the legislation, with blanket exemptions for whole classes of information, thus deterring legitimate journalistic inquiries. Overall, the Act was widely seen to 're-nege' on one of the Blair Government's key election promises.[171] As one media representative put it:

> We could have had a Freedom of Information Act which would have heralded the rebirth of serious investigative journalism. But as we stand it matters not whether the hapless journalist chooses the chalice from the palace or the flagon from the dragon. Mr Straw [Home Secretary] has dropped the poisoned pellet in both of them.[172]

Thus, the introduction of 'freedom of information' legislation in Britain is seen to have little potential to reform the widely criticised 'culture of secrecy'. As one press representative noted, the last two decades had witnessed much discussion of restrictions on the press in the UK, but little about press freedoms.[173] The Freedom of Information Act, ironically, was seen to do little to alter this trend. There is a 'high price' to pay for freedom of information one might say.[174]

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[169] Dyer, Clare. 2000. Four threats to the public's right to know, Bills going through parliament will hinder watchdog role of press and bolster state secrecy. Monday May 22, 2000. Online: Guardian Unlimited. Available:http://www.guardianunlimited.co.uk/Archive/Article/0,4273,4020804,00.html. 3 July 2000. Because the debate about the Bill (and its various re-drafts) is highly complex and abounds in a myriad of legalistic issues, it is not covered here in detail. For further discussion of the amended Bill, see National Union of Journalists. op. cit.1999; and The Press Wise Trust. 1999c. Freedom of Information Bill: A briefing paper. August 1999. Online: Press Wise. Available: http://www.presswise.org.uk/freeinfobrief.htm. 20 June 2000.

[170] However, the Act is not expected to come into full force for central government departments until April 2002, and for further authorities in stages afterwards (Campaign for Freedom of Information. Home Page. Online: CFOI. Available: http://www.cfoi.org.uk/. 3 December 2000).

[171] Norris, B. 2000. 'A poisoned chalice'. Press Wise Bulletin no. 33. 3 December 2000. Online: Press Wise. Available: http://www.presswise.org.uk/bulletinarchive2.htm#Bulletin%20No%2033. 12 December 2000. (Bill Norris is the current Associate Director of Press Wise).

[172] ibid.

[173] O'Connor, R. 1993b. 'Crackdown on the British press'. In *Editor and Publisher*, February 13 1993, vol. 126, no. 7, pp. 14-17.

[174] Several commentators contend that there is a direct link between the legal framework within which British journalists operate, (which compared to other western democracies particularly the United States is comparatively restrictive), and the (often questionable) ethical standards of the press. The argument runs that British journalists spend so much time considering what they can 'get away with' from a legal perspective, that they have little regard for their behaviour in an ethical sense. (For further discussion of this contention, see for example, Dring, P. 2000, pp. 311-315. 'Codes and Cultures'. In Berry, D. (ed.) *Ethics and Media Culture*, pp. 311-324. Oxford: Focal Press; Snoddy, R. op. cit., chapter 9 'The press in the USA'; and Belsey, A. 1995, op. cit., p. 96-8). Belsey also suggests that further legal restraints for the press, (mooted periodically as illustrated above) "... would merely be a further excuse for not taking ethics seriously in the practice of journalism" (ibid., p. 98).

"Complacency is the enemy of self-regulation": Prospects for the future

Judging from the changing press-government relations over the twentieth century, the concept of press freedom has evolved significantly. However, the changing nature of government-press relations in the UK also indicates that the principles of voluntary internal reform have not been universally embraced. 'Internal' reform of press self-regulation has most commonly resulted from external threats of 'imposed reform' via the enactment of legislative controls. Indeed, Lord Wakeham's dictum that "complacency is the enemy of self-regulation" has been aptly illustrated in the regulatory history of the British press,[175] and it seems unlikely that 'the enemy' will be conquered in the immediate future.[176]

Press intrusion into privacy has dominated discourse on press regulation in the UK for over fifty years and the issue evidently remains unresolved. Calls from within the industry continue to defend the efficacy of self-regulation, and those from without continue to question it, hence the increasingly prevalent attempts from within parliament to enact legislation impinging on the press' activities; measures once scorned by both the press and parliament alike. As the previous discussion has indicated, uncertainty about press self-regulation has been a central characteristic of the regulatory history of the British press over the last century. Notably, the post-war concern about the ethical performance of the press has not been allayed by either the BPC, nor its predecessor the PCC even in spite of a stream of threats of statutory control of the press.

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[175] The statement was made by Lord Wakeham in Press Complaints Commission. 1996a., op. cit. The passage of the Youth Justice and Criminal Evidence Bill in 1999 also triggered amendments to the PCC code, as discussed in chapter four below.

[176] Indeed, the pledges of the press following the death of the Princess of Wales to head widespread calls to 'leave the Princes Harry and William alone', were soon dishonored. A front-page headline in the *Daily Mirror* (19-11-98) 'Harry's had an accident but we're not allowed to tell you' illustrates pertinently the facetious manner in which sectors of the press have responded to the calls of the PCC, as well as their attitude towards its authority more generally. Since then, formal guidelines have been issued by the PCC designed to aid in balancing harassment, privacy, and accuracy with legitimate 'public interest' for dealing with Prince William for the future (Alderson, A. 2000. 'Press is warned not to indulge in 'free-for-all' as Prince turns 18'. In the *Electronic Telegraph*, issue 1843, Sunday 11 June 2000. Online: The Electronic Telegraph. Available: http://www. electronictelegraph.co.uk. 30 August 2000; and Leonard, Tom. 2000. 'Wakeham urges media restraint over William'. In the *Electronic Telegraph*, issue 1860 Wednesday 28 June 2000. Online: The Electronic Telegraph. Available: http://www.electronictelegraph.co.uk. 30 August 2000). The PCC's guidelines state that photographs of Prince William private places should not be taken nor published; that anything written about him should be accurate, he should be subject to physical intrusion or harassment, and that no material obtained through such means should be published. (See Press Complaints Commission. 2001c. Statistics and review of the year: 2000. Online: PCC. Available: http://www.pcc.org. uk/2000/statistics_ review.asp. 15 January 2001).

Press treatment of children, particularly those of public figures in the UK, will certainly be a telling issue for the future. With the royal princes ruled 'off limits', the attention of the tabloids has already evidently shifted towards the children of other high profile British figures.[177] The recent measures taken by Tony Blair to protect the privacy of his children indicates that the tabloid press ought to reconsider the potential consequences of attempting to 'commodify' the personal lives of the famous and their children, at least to prove valid Lord Wakeham's claims that 'self-regulation works'. Whether the persistent warnings of Lord Wakeham to the press will be sufficient to 'tame the tabloids', and maintain the ethical standards of the press more generally in the eyes of policy makers in the UK remains to be seen.[178]

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[177] Press Complaints Commission. 1998b. 'Statement by the Rt. Honourable Lord Wakeham, Chairman of the PCC, on 'Can self-regulation achieve more than law?' Press releases 15 May 1998. Online: Press Complaints Commission. Available: http://www.pcc.org.uk/press/detail.asp?id=30. 14 January 2000.
In January 1999, Tony Blair lodged a formal complaint to the PCC about press treatment of his daughter. Later, in July 1999, following extensive coverage by the press to his baby son's private christening, Blair contacted Lord Wakeham "asking for guidance for the longer term about how the industry's Code of Practice might best be applied to the Blairs' own family situation and their children's right to privacy". (Press Complaints Commission. 1999a. Statement issued by Lord Wakeham, Chairman of the PCC on Tony Blair and photographs of his family. 1 August 1999. Online: The PCC. Available http://www.pcc.org.uk/ adjud/press/pr010700.htm. 2 August 2000). Similar issues have arisen during 2000, and that the Blairs have since chosen to go to the courts for redress says little about the level of confidence in the PCC, both as a regulator of the press and a forum for redress. (See Millward, D., N. Bunyan, and A. Sparrow. 2000. 'Blairs will do "whatever it takes" to defend privacy'. Online: The Electronic Telegraph, March 2000, issue 1748. Available: http://www.telegraph.co.uk. 12 May 2000).

[178] Now of course, the emphasis in the Human Rights Acts 1998 on freedom of expression, means that enacting a statutory regime for the UK press would be almost impossible, as Lord Wakeham highlights. (The Press Complaints Commission. 2001b. PCC: The first decade 1991-2001. Online: The Press Complaints Commission. Available: http://www.pcc.org.uk/10YearBook/introduction.asp. 15 February 2001). However, even before the enactment of this legislation it was suggested that statutory control is far from an inevitability. Gibbons maintains that "a principal reason why self-regulation in the [British] press has persisted for so long, despite its patent inadequacies, is that both the press and its owners have been able to exploit the reluctance of government to be seen to interfere with free speech in a democracy. They have been able to identify the media's interests with the broader constitutional principle" (ibid., p. 279). Others have identified a fear of a 'tabloid backlash' (of which many British politicians have had much first hand experience during the twentieth century) as another reason why British governments have turned their backs on proposals to legislate on the press. This is particularly in the area of privacy intrusion (although some may say that elements of the Protection from Harassment Act 1997 as they affect the media were a step in a similar direction). These issues are coupled with concerns about the impact of such legislation on serious investigative and current affairs journalism. (See for instance, Barendt, E., 1995 'Britain rejects privacy law'. Privacy law and policy reporter. Australasian Legal Information Institute: Online. Available: http://www.austlii.edu.au/ 25 May 2000). Of course, the fact that policy makers have struggled to define the concept of privacy itself in order to draft legislation has also factored in the preservation of the voluntary route to the protection of privacy. (See for instance Von Dewell, G. 1997, pp. 196-212. *Press Ethics: Regulation and Editorial Practice.* Düsseldorf: EIM Public Dept.). It is also important to note that enacting a statutory regime for the press would be 'political suicide' for any government, as Gibbons tacitly highlights (Gibbons, T., op. cit., p. 279).

What is notable at present, however, is the pattern to which the regulatory history of the British press has followed. The 'cycle of press self-regulation' is illustrated by O'Malley:

> Proprietors have only acted to significantly improve the practice of self-regulation when either threatened by legislation or when placed under scrutiny by high profile inquiries...If the post-war history ... [of press regulation in Britain] tells us anything, it is that the press, politicians, governments, inquiries, and critics have failed to arrive at a workable consensus on the question of press regulation. It also suggests that until such a consensus is reached the cycle or*[sic]* public criticism, inquiry, threat of legislation, burst of reform, and return to public criticism will continue.[179]

Assessing the degree to which the regulatory history of the New Zealand print media conforms to this pattern is the central objective of the following chapter.

[179] O'Malley, T. 2000, op. cit., p. 307-308.

CHAPTER THREE

The Regulatory History of the New Zealand Press: A Comparison with the British Experience

> New Zealand is fortunate in having a press, which though not perfect, recognises that freedom carries corresponding obligations, and performs its function fairly and responsibly. The country is equally fortunate in having politicians who acknowledge that a vigorous, independent press, as inconvenient as it may be occasionally, is an indispensable part of a democracy. That is a very delicate balance which could easily be upset at any time by excesses or abuses on either side.[1]

As the following discussion aims to illustrate, the post-war history of press regulation in New Zealand has been, for the most part, quite unlike the character of the British experience. While perceived threats to press freedom have largely shaped the manner in which the British system of press self-regulation has unfolded, the comparative lack of such pressure apparent in the regulatory history of the New Zealand press has had implications of its own.[2] Through exploring this argument, this chapter provides an analytical framework from which to consider the development of New Zealand print media codes of ethics in chapter five.

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[1] Du Fresne, K. 1994, op. cit., p. 41.

[2] Indeed, the New Zealand press is often said to be one of the freest in the world (O'Reilly, P. 1998. '1998 world press freedom review: New Zealand'. Online: International Press Institute. Available: http://www.freemedia.at/archive98/nz.htm. 30 March 2000). At the same time, the New Zealand press has not been exempt from 'emergency' or 'maritime legislation' of a pre-publication censorship nature, (part of the legal framework for the media in several countries) differ to laws such as the Defamation which apply 'post-publication'. The New Zealand Conservation of Public Safety Act of 1932 (repealed in 1987) was one such piece of legislation used to restrict media reportage. Its effect on the media was pertinently illustrated during the 1951 Waterfront dispute, when the Holland Government invoked the Act to ban the publication of material likely to encourage, aid or abet a strike. (Vance, M. 2001. 'Censors strike at press freedom'. In *The Press*, 24 February 2001, p. 12). A similar piece of legislation was the 1939 Censorship and Publicity Emergency Regulations, which empowered the Director of Publicity, a 'press censor' of media coverage dealing with the war, to restrict public statements tending to imperil public safety and to avoid the release of military information to the enemy. During the Second World War, concerns about an alleged 'excess of zeal' on behalf of the director in exercising his powers. (NZJA. 1941. 'State control'. In *The New Zealand Journalist: Official organ of the New Zealand Journalists' Association*. March 12 1941, vol. 7, no. 3, pp. 4-5. Wellington: NZJA).

3.1 Press regulation in the early years: The role of the New Zealand Journalists' Association

It was not until 1972 that New Zealand's system of press self-regulation was formalised with the establishment of the New Zealand Press Council (NZPC). Before this time, the NZJA forged for itself a regulatory role similar to that performed by the NUJ in the British press before the BPC was established. From its inception in 1912, the NZJA functioned in the manner of a trade union, principally concerned with industrial matters concerning the wages and working conditions of its members, who comprised the majority of working journalists in New Zealand.[3] While the NZJA did not assume the full range of self-regulatory functions expected of press councils, the existence of a 'professionally conscious' journalists' association is seen to have forestalled demands for a formal self-regulatory system until relatively late into the twentieth century.[4] Like the British NUJ as a hybrid of trade union and professional association, the NZJA became increasingly concerned with professional and ethical matters, as well as issues of press freedom as its involvement in the debate surrounding the News Media Ownership Bill 1965 illustrates.

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[3] As this thesis is concerned principally with the role of journalists' unions relating to their professional concerns, a discussion of trade unionism is not offered. However it is noteworthy that from 1935, New Zealand's industrial legislation provided for compulsory union membership, which allowed the NZJA to exert considerable influence on the professional and ethical standards of New Zealand journalists for a significant period. Indeed, like the NUJ in the British context, the NZJA was the first body to introduce a code of ethics for journalists in New Zealand. The NZJA was renamed the New Zealand Journalists' Union (NZJU) in 1974 after the amalgamation of the provincial branches (excluding the Northern Journalists' Union (NJU), which later assimilated with the NZJU in 1979). It was subsequently renamed JAGPRO, the acronym of the constituent bodies following the amalgamation with the Lithographers' Union in 1989, then PPMU after amalgamating with the Printers' Union in 1995. In 1996, the Union became the EPMU after amalgamating with the Engineers' Union. (*The Word*. Nov/Dec 1994, vol. 61, no. 5, p.4. 'PPMU the sum of many parts'. Wellington: JAGPRO).

[4] Stuart Perry, (a former member of the NZPC), suggested that both the existence of the NZJA from 1912, as well and from 1898 of "...a strong proprietors' association, conduced to a state of affairs that might not have lasted so long in a larger (and more competitive) environment" (Perry, S. 1982, p. 5. *The New Zealand Press Council: Establishment and Early Years*. Wellington: Newspaper House).

The News Media Ownership Bill: Questions of 'press freedom'

The News Media Ownership Bill arose out of controversy surrounding the attempts of an international London-based publishing group headed by Lord Thomson to buy into the then Wellington Publishing Company in January 1964.[5] Had the Thomson bid been successful, the capital's morning newspaper would have been passed into the hands of a foreign business concern.[6] The perceived effects of foreign ownership of newspapers were at the heart of the controversy over the Bill itself. The New Media Ownership Bill is significant to the present discussion to the extent that it challenged conventional ideas about government intervention in the press. As its underlying significance was noted at the time: "...the takeover bids raised rather acutely the ugly question of whether newspapers are, as they are often proclaimed, a kind of public utility, or ordinary profit-making businesses".[7]

Reminiscent of British trends, the New Zealand press industry was divided in their support for the Holyoake Government's Bill.[8] The proposal for statutory restrictions on foreign ownership of news media received the support of most of the Newspaper Proprietors' Association (NPA). In fact, the NPA was responsible for the initial appeal to the Government to implement restrictions on overseas intrusion following the Thomson takeover bid.[9] The interests of the NPA in the proposed legislation centered upon the argument that the entry of foreign players would led to a break down of the structure of the New Zealand Press Association (NZPA), the corporate news-sharing agency at the centre of the New Zealand press.[10] It was contended that a competitor from outside the NZPA, operating independently of its

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[5] O'Neill, R. B., op. cit., p. 669. The Wellington Publishing Company Limited (founded in 1906 to publish Wellington's morning daily, *The Dominion*) is now defunct. The company became the basis of the current newspaper and magazine publishing company Independent Newspapers Limited (INL), which was formed in 1972 from a hybrid of Independent Publishers Ltd. (owner of the *Waikato Times*) which became part of WPC in 1971, Blundell Bros. Limited, (publisher of Wellington's *Evening Post*), which WPC had taken over earlier that year, and the Truth (NZ) Ltd. (taken over by WPC in 1970). (See Independent Newspapers Ltd. History of INL. Online: INL. Available: http://www.inl.co.nz/about/history. html. 28 October 2000).

[6] McAllister, I. D. 1965, p. 110. 'Should overseas interests be permitted to own New Zealand newspapers'. In *New Zealand Financial Times*, 10 November 1965, vol. 36, no. 2, pp. 110, 179. Wellington, New Zealand: New Zealand Financial Times Co.

[7] 'New Zealand Newspapers'. 1964, p. 8. In *New Zealand Monthly Review*, May 1964, vol. 5, no. 45.

[8] The respective positions taken by working journalists and proprietorial interests over the 1965 Bill was interesting to the extent that in the UK, the reverse tended to be the case.

[9] Cleveland, L. 1964, p. 40. 'How free is the New Zealand press?'. In *Comment: A New Zealand Quarterly Review*, April/May 1964, issue 19, vol. 5, no. 3, pp. 36-42. Christchurch, New Zealand: Comment Publishing Company.

[10] ibid., p. 40. See also Cleveland, L. 1969, p. 47. 'The mass media system: Functions and responsibilities'. In *Political Science*, December 1969, vol. 21, no. 2, pp. 36-47. Wellington: Victoria University College, School of Political Science and Public Administration.

non-competitive arrangements for news sharing, could concentrate on sensational areas comparatively absent in the New Zealand press.[11] As newspapers were forced to compete for advertising and New Zealand managers thus forced to retaliate with similar tactics, the ensuing circulation wars would have negative repercussions for the ethical standards of newspapers. In the effort to gain circulation, increased sensationalism in newspaper content would result in a lowering of standards generally in the news media, reducing the overall quality of newspaper content and the variety of news available to the public.[12] Such a reduction in variety would be exacerbated if foreign competition absorbed its New Zealand competitors.[13]

The objections to the Bill were both practical and philosophical. It was considered that Thomson should have been permitted to enter the New Zealand field because the entry of a new operator into one that was a 'sluggishly competitive' would bring benefits to New Zealand newspaper journalism as a whole.[14] As to the effect on professional and ethical standards, the view was expressed that

> Britain has shown fairly conclusively that intense competition lowers newspaper standards and we are thankful to have escaped the worst features of British journalism here. But the threat of competition is a different matter. It may be a very good thing for us.[15]

Opponents of the Bill questioned the notion of a blanket restriction on foreign ownership citing the limitations of New Zealand's closed, non-competitive, domestic metropolitan newspaper field on the quality of news available to the public.[16]

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[11] Cleveland, L. op. cit., 1964, p. 41; and Cleveland, L. 1965, p. 9. 'How secure is the New Zealand press?' In *Comment: A New Zealand Quarterly Review*, December 1965, vol. 7, no. 1, pp.7-10. Christchurch, New Zealand: Comment Publishing Company.

[12] Cleveland, L., op. cit., 1969, p. 45-7.

[13] An anomaly of the Bill was noted by Worth: "If the object [of the Bill] is to maintain diversity of control of the news media, then it should be directed to Domestic as well as foreign owners". See Worth, H., 1965, p.3. 'The News Media Bill: Protection for Incompetence'. In *Dispute*, September/October 1965, vol. 1, no. 8, pp. 1-3. Furthermore, the NPA's arguments relied on the likelihood that editorial independence would not be preserved with foreign ownership, and reflect a paramount desire to preserve the structure of the NZPA.

[14] Cleveland, L., op. cit., 1969, p. 45

[15] *New Zealand Monthly Review*, May 1964, op. cit., p. 8. There are interesting parallels here with the UK Labour government's 1965 legislation implementing restrictions on (aggregate domestic) newspaper ownership, noted in chapter two. The BPC did not oppose the Bill, voicing its concern as to the negative implication of concentration of ownership on freedom of the press and of expression. However, the BPC did express some reservations of an ideological nature. It proposed that certain of the Bill's provisions would undermine press freedom, contending that press freedom was founded on the absence of special press law allowing the exercise of government control on the press (Levy, H. P., op. cit., chapter 27 'Monopolies and Mergers').

[16] Bradley, S. W., 1973:6. *Newspapers: An Analysis of the Press in New Zealand.* Auckland: Heinemann Educational Books. *New Zealand Parliamentary Debates*, House of Representatives, 23 September 1965, 2nd session, 34th parliament, vol.344, August 31- October 1 1965, p. 2958-9. Wellington: Hansard GP.

Increased competition would bring more diversity in the newspapers on offer.[17] The NZJA was an active voice in the opposition towards the Bill, taking the position that the possibility of foreign ownership was a chance for 'professional salvation' of newspaper journalism, forcing better management into a 'stagnant' press.[18] Foreign ownership could increase the level of critical journalism, with more opportunities for better jobs, advancement, and specialisation for journalists.[19].

These practical considerations extended to ideological objections. Not only would such legislation hinder the improvement in the quality of news journalism; being 'formulated on principles that are the anti-thesis of democratic freedom',[20] it also 'struck at the very roots of the freedom of the press'.[21] In a submission to the Statutes Revision Committee on the News Media Ownership Bill, the then President of the NZJA,[22] B. R. Gridley conveyed its central arguments:

> It represents a form of Government control over newspapers in New Zealand. It introduces permanent and absolute protection for New Zealand-domiciled newspaper proprietors. It thus limits competition in the dissemination of public information. It ignores and increases the dangers of monopolistic tendencies by newspapers operating within New Zealand ... By its restrictive measures on overseas ownership and its consequent legal requirements on New Zealand newspapers the Bill establishes an element of legislative control in this country which is unprecedented, unnecessary, and dangerous in its implications.[23]

The Labour Party expressed similar reservations. Opposition member Norman Kirk contended that the Bill was a means by which the Government was "... arranging to keep all the elements of the press in a position where [they] can deal with them by Government-imposed control ... He [the Prime Minister] is taking steps to keep the press entirely within the reach of Parliament..."[24]

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[17] This was seen to have the potential to extend to the content of newspaper output, which was limited by the existence of the NZPA. The NZPA required that carbon copies of all articles written must be submitted for distribution. This meant that any bias or wrong interpretation was not balanced by another version of the same story. Newspapers operating outside of the remit of the NZPA system may have had the potential to alter this ('New Zealand's Press'. 1965, p. 21. In *New Zealand Monthly Review*, December/January 1964/1965, vol. 5, no. 52).

[18] Cleveland, L., op. cit., 1964, p. 40.

[19] Cleveland, L., op. cit., 1969, p. 45.

[20] Worth, H., op. cit., 1965, op. cit., p. 3.

[21] *New Zealand Parliamentary Debates*. 19 October 1965, p. 3613, 2nd session, 34th parliament, October 5 -November 1 1965, vol.345. 1966. Wellington: Hansard, GP.

[22] Minutes of the Annual Conference of the NZJA, Wellington. 10-11 September 1965, p. 8.

[23] *New Zealand Parliamentary Debates*. 19 October 1965, op. cit., p. 3604.

[24] *New Zealand Parliamentary Debates*. 23 September 1965, p. 2961, 2nd Session, 34th Parliament, August 31 - October 1 1965, vol.344. Wellington: Hansard GP.

That excessive foreign ownership of news sources would be detrimental to New Zealanders due to 'divergent interests to New Zealand owners' was the essence of the argument for the enactment of the legislation.[25] While the NPA's arguments for the enactment of the legislation were mostly practical, the attitude towards foreign ownership expressed by the Government was largely philosophical:

> ...[T]oo much overseas control of news media would in principle be undesirable, not so much because it could disturb the present economic equilibrium of the industry, but mainly because it could place a powerful instrument of mass communications in potentially dangerous hands.[26]

The Government's attitude reflected a departure from both its traditional policy orientation,[27] and from traditional libertarian ideas about the relationship between the press and government. While the NZJA and most journalists advocated an essentially free-market position by arguing that competition would improve newspaper quality, and a libertarian conception of press freedom by stressing that restraints on ownership would contravene that freedom, the National government's arguments reflected an ideological shift towards the doctrine of social responsibility.[28] The National government reflected a view that regulating media ownership was 'socially responsible', and in the 'public' interest of New Zealand citizens. That the Government did not regard the Bill itself as 'interference' in press freedom is perhaps further confirmation of an ideological shift in views about the role of governments in the press, and the nature of 'press freedom'.

In many ways, this reflects the stance of successive governments in the UK context, which through establishing inquiries into the press, sought to promote a press that was 'socially responsible'. The difference between the two cases, however, is that in the UK such interference went little further than to serve as 'warnings' to the press to 'put its house in order' on a professional level. On the other hand, New Zealand

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[25] *New Zealand Parliamentary Debates.* 10 August 1965, p. 1761, 2nd Session, 34th Parliament, July 9-August 27 1965. Wellington: Hansard GP.

[26] Cleveland, L., 1965, op. cit., p. 8.

[27] It is interesting that this illustration of 'protectionist' policy restricting competition and free enterprise came from the National party. This was an issue raised in the House at the time of the Bill. (See *New Zealand Parliamentary Debates.* 19 October 1965, op. cit., p. 3613). As Cleveland also observed, the Dominion affair was 'politically interesting', where a Bill emerged from within a political party "...which professed to encourage freedom of enterprise...[ironically] found itself advocating the enthronement of an internal monopoly, and more dangerous still, threatening a form of state interference in the management of the news media (Cleveland, L. 1965, op. cit., p. 9). The question might thus be raised of a political motivation underpinning its support of the NPA's interests; for instance, we might question how many National MPs were affiliated to the NPA at the time.

[28] ibid., p. 8.

governments did not evidently have the qualms displayed by those in post-war Britain about being seen to contravene 'press freedom'. In spite of widespread opposition, the News Media Ownership Bill was passed in November 1965.[29]

3.2 Calls for regulation and the establishment of the New Zealand Press Council

Unlike the regulatory history of the British press, the New Zealand press has only experienced one major threat of statutory regulation.[30] In the late 1960s, it was widely perceived within the press that the Labour Party intended to establish a statutory press council should it gain office in the 1969 General Election.[31] While the notion of a government-imposed press council undoubtedly influenced the NZJA in its decision made in September 1968 to convene with the NPA to discuss the establishment of a voluntary body,[32] additional processes factored in this.

The political interest in the creation of a press council was not wholly driven by a view that press regulation was needed, but more that it was wanted.[33] Certain social changes and changes in public attitudes have been attributed to the development of the NZPC, which lagged behind the establishment of those in Europe, including in the UK. A developing culture of public accountability and institutional transparency was extending to the private sector including the press: "The public was

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[29] The 1965 Act's provisions limited foreign ownership of New Zealand news media to fifteen percent of shares in any one publishing company. It was, however, as pledged by the Labour Party to the House during its final stages, repealed in 1975 in full by section 133(2) of the Commerce Act 1975 under the Labour Government voted into power in the 1972 General election, and just prior to the beginning of the Muldoon administration in 1975 (O'Keefe, J. A. B, 1976, p. 121. *The Commerce Act 1975: The Text of the Stature with Annotations*. Wellington: Butterworths of New Zealand Ltd.). The 1975 Commerce Act was able to take into account public considerations and had a wide discretion in deciding whether to approve newspaper mergers and acquisitions. The Act was amended in 1986 and 1991 through which the wider public interest discretion has been progressively abandoned (McGregor, J. 1992, pp. 36-37. 'Who owns the press in New Zealand?'. In Comrie, M., and J. McGregor (eds.). *Whose News?*, pp. 26-38. Palmerston North: Dunmore Press). The present legislation aims to protect only commercial interests in cross and foreign media ownership in contrast to the Australian equivalent, which takes into account social objectives including diversity of news sources (Martin, F., 1996. 'Do Kiwi media need government to set ownership rules?' In *The Independent*, 29 November 1996, p. 15. New Zealand: Fourth Estate Holdings Ltd.).

[30] Certainly, there have been threats to press freedom in terms of legislation impinging on the newsgathering activities of the press, for instance the Privacy Bill of 1991-2 discussed below. However, the possibility of overarching statutory controls on the press in the vein of the broadcasting sector has not been a concern of the New Zealand print media like it has in Britain over the twentieth century, as is the underlying theme of this chapter.

[31] Minutes of the 56th Annual Conference of the NZJA, Wellington, 20-21 September 1968, p. 2; and NZPC. Annual Report 1997, p. 5. *The Press and the People: 25th Annual Report of the New Zealand Press Council, 1997*. Wellington: The Press Council.

[32] ibid., p. 2.

[33] NZPC. 1997, op. cit., p. 5.

no longer prepared to be told that officials and institutions knew best and that complaints could be satisfactorily dealt with 'inhouse'. What the public wanted was transparent independence in complaint resolution".[34]

When the ideas for the development of a press council were being floated in the late 1960s, the British system of press self-regulation, which was the 'blueprint' for the NZPC, was nearing its second decade in operation. This given, it is likely that there was awareness within the press that the implications of failing to acknowledge demands for a self-regulatory body could readily be translated to the New Zealand context. This knowledge perhaps hastened the development of a press council in this country.[35] However, the decision to establish a self-regulatory regime by the New Zealand press was not entirely in response to a perceived need to counter abuses as it was in the British case, nor was it entirely without external criticism of professional standards.

There was a degree of public pressure on the industry to act in instituting a self-regulatory body. The National Council of Women, the United Nations Association of New Zealand, and the Post-Primary Teachers' Association were among the bodies responsible for earlier requests to have a press council established.[36] However, one particular incident is perceived to have been the driving force behind the establishment of the NZPC, which may have even prompted the Labour Party's promotion of a statutory body. In response to what was perceived as unethical reportage by the *Truth* newspaper, an entry in the Post-Primary Teachers' Association Journal in July 1966 opined that:

> This type of writing is no credit to the Press of New Zealand. Surely the logical alternative to a controlled press is a press that controls itself. New

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[34] NZPC. 1997, op. cit., p. 5. The Ombudsman Act was passed in the early 1960s, which formalised a system whereby citizens could take their grievances about government departments and other public sector agencies. The Act precipitated the adoption of similar systems in the private sector, where the NZPC was one of the first of these to be developed in New Zealand (ibid., p. 5).

[35] Moreover, having previously witnessed the National government's implementation of what was perceived to be unnecessarily restrictive legislation via the New Media Ownership Act 1965, it is possible that the press thought it best to take the opportunity to establish a voluntary regulatory system before any government saw fit to impose a statutory version.

[36] Perry, S. 1982, p. 6. *The New Zealand Press Council: Establishment and Early Years.* Wellington: Newspaper House. Another similar proposal occurred as early as 1949 (interestingly, the year the First Royal Commission on the Press reported in Britain). It was suggested that the newspaper industry should set up an 'Editors' Association', with a committee to which the public could direct complaints against newspapers (Mulgan, A., 1949, p. 11. 'New Zealand's newspapers: How good or bad are they?' In *New Zealand Magazine*, Winter 1949, vol. 28, no. 2., p. 11. Wellington, New Zealand: New Zealand Life Co.). The proposed 'Editors' Association' would also work with the NPA in areas of newspaper ethics and staff training to "raise all standards in the profession, technical and ethical" (ibid., p. 11); (a similar 'professionalising strategy' that was anticipated for the General Council of the Press in the UK).

> Zealand needs a Press Council – a body that will take full professional responsibility, including disciplinary action where necessary – and no paper should be allowed to publish that is not affiliated to that council.[37]

The responsiveness of the press may have influenced the stance of the Government in interfering in the regulation of the New Zealand press at this stage.[38] This said, while the British NUJ actively campaigned to have a press council instituted in Britain, there is no evidence that the NZJA had considered any such initiative before the issue emerged on the public, and political agendas.[39] In this respect, the nature of internal reform of the New Zealand press in this instance may not differ substantially to that of Britain in its reticence about acting on the NUJ's (and others') early proposals for press self-regulation.

However, the reluctance of the National Government to interfere in such processes was made clear when Prime Minister Keith Holyoake was asked in the House by Labour member Dr A. M. Finlay if he supported the plea for a press council. Denouncing the involvement of Government in such matters, he stated that: "My Government has no present proposals for any action in the Government's sphere".[40] As the previous chapter highlighted, the aversion of British governments to contravening press freedom through government-imposed controls went deeper than political affiliation. In New Zealand, however, while the Government believed that

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[37] Page, A. J. 1966, p. 17. 'On being in "Truth"; The need for a Press Council'. In *New Zealand Post-Primary Teachers' Journal*, July 1966, vol. 13, no. 6, p. 17. New Zealand: NZPPTA. While it is not known who was responsible for the first idea of establishing a press council, it was a letter written in the on July 1, 1966 by the principal of Wanganui Girls' College, Miss Alexia Page, that brought the idea "... into the practical realm of politics, and, indeed, gave it urgency" (Perry, S., op. cit., p. 6). The article criticised a report carried by the *Truth* newspaper, which she claimed to have misrepresented her and had been detrimental to one of her pupils. Of further interest concerning the 'need for a Press Council' was the fact that the *Truth* was outside the jurisdiction of the NPA, as Sir Thaddeus McCarthy, who undertook a survey of the BPC on behalf of the President of the NPA, pointed out. The proposed self-regulatory body needed to be more representative of the views of the NPA and NZJA in order to function as an independent and effective mechanism for public redress of complaints about newspaper practice (Perry, S. op. cit., p. 10).

[38] Certainly, it may be questioned why the New Zealand press took until 1972 to institute a press council, with the process having taken a similar length of time to the parallel British experience. A view taken by the NZJA amid the process late in 1967 sheds some light on this apparent delay. The issue was purposefully deferred until early 1970, not because of opposition to the idea of a press council, but because it was seen 'unlikely that the Attorney General [who was to have final veto] would give consideration to the matter until after the election' (Minutes of the NZJA Dominion Council Meeting, Wellington, 17 November 1967, p. 2). That the New Zealand press also undertook significant research into existing self-regulatory models would also account for the time it took before the council began operation on 1972.

[39] It was in February 1968 that interest was first expressed within the NZJA at looking into the idea of establishing a Press Council in New Zealand (Minutes of the NZJA Dominion Council Meeting, Wellington, 5 February 1968, p. 3).

[40] *New Zealand Parliamentary Debates*. 27 July 1966, p. 1541, 3rd session, 34th parliament, 1 July-16 August 1966, vol.345. Wellington: Hansard, GP.

any responsibility for establishing a press council lay with the industry itself, the Labour Party evidently did not, which accelerated the establishment of a voluntary model by the press.[41] Indeed, had the Labour Party won the 1969 General election and ignored the NZJA's petition to reconsider the notion,[42] the regulatory history of the New Zealand press might have taken a different turn.

In the event, the self-regulatory option was that taken with the establishment of the NZPC in 1972 in a form similar in constitution and jurisdiction to the British model it was based on with Sir Alfred North as its chair.[43] Both the Labour and the National parties were satisfied with this outcome. Deputy Prime Minister John Marshall accorded that "[t]he Press Council is an exercise in self-discipline which will enhance the already high reputation of New Zealand newspapers and journalists".[44] Similarly, Dr Finlay concluded that:

> I am delighted at the initiative shown by the two bodies within the industry to co-operate in this project. I have always advocated the establishment of such a council, and even more strongly supported the notion that it should come from within the industry itself and not be imposed on it.[45]

However, as the following section illustrates, it was not long after the NZPC was established that Dr Finlay was seen to retreat from this belief in the principles of 'voluntary restraint' by the press.

3.3 Government-Press relations: 1972 and beyond

The 1975 Criminal Justice Amendment Bill was at the centre of renewed debate about press freedom in New Zealand. While the Labour Party had sided with New Zealand journalists on the issue of media ownership a decade earlier, this was not the case concerning the 1975 Bill, introduced by the Labour Government. The debate, reminiscent of similar ones in the UK, revolved around the freedom of the press to publish material on court proceedings versus the right to privacy of

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[41] These respective views of the Labour and National Party concerning the notion of a statutory press council were, however, opposite to those each took concerning the News Media Ownership Bill discussed above, which further begs the questions of an underlying political motive in the case of the earlier Bill.

[42] Perry, S. op. cit., p. 7.

[43] The NZPC was formed with one representative of the Newspaper Proprietors Association (NPA), one NZJA representative, one lay (public representative) member with three alternates, and a chair from a judicial occupational background.

[44] ibid., pp. 13-14.

[45] Cited in NZPC. 1981. *The Press and the People: 9th Annual Report of the New Zealand Press Council, 1981.* Wellington: The Press Council.

defendants in the courts. It was one of the first instances in the history of the New Zealand press where the conflict between the rights to individual privacy and freedom of the press (and of expression) appeared on the parliamentary agenda.[46]

The 1975 Criminal Justice Amendment Bill (no.2) was intended to give effect to the proposals contained in a 1972 report of the criminal law reform committee. The committee had recommended that the publication of the names of accused persons be suppressed unless the court ruled that publication was in the public interest.[47] The Bill was introduced in April 1975 by the then Attorney General, Dr. Martin Finlay.[48] As it progressed, the central concern for the media was the scope of the Bill's provisions embodied in Clause 14. The original Bill had proposed the suppression of names only in certain circumstances, especially in cases of sexual offences against children. This had led to discussions about the possibility of overarching name suppression within the review committee.[49] The debate then centred upon whether the proposed clause 14, prohibiting the publication of the names of those accused (unless found guilty) would be extended to a ban on those convicted also (unless otherwise ordered by the court).[50]

A particular concern with this was that the right to privacy of an accused person was seen to outweigh freedom of expression, and the right of the public to be informed through the media of matters of public interest. The argument against the proposed clause 14 was that it would render court reporting ultimately ineffective, with reporting of the processes of justice being denied to the public.[51] As opposition member Sir John Marshall expressed:

> If the accused is not identified in the course of the trial, then justice will not be seen to be done; and this will not happen if the parties cannot be identified as

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[46] Also at issue were judicial interests as illustrated below.

[47] *New Zealand Parliamentary Debates.* 17 April 1975, pp. 676-680, 3rd Session, 37th Parliament, March 25–April 23, vol. 396. Wellington: Hansard, GP. Interestingly, the report drew on the UK Younger committee on privacy in its report, which drew attention to the fact that several European countries had voluntarily adopted the practice of refraining from publishing names in such circumstances to validate its proposals.

[48] In many ways, it was similar in its provisions to the United Kingdom's 1967 Criminal Justice Act. The issue of restrictions on media reportage of court cases was not an entirely new one in New Zealand; similar issues were manifested in earlier restrictions imposed on the publication of details of defended divorce cases, domestic proceedings, as well as details pertaining to those in the children's court. The 1975 Bill was designed to 'regularise' the procedure for newspaper reportage of such material (ibid., p. 678).

[49] *New Zealand Parliamentary Debates.* 18 April 1975, pp. 711-722, 3rd Session, 37th Parliament, March 25 – April 23, vol. 396. Wellington: Hansard, GP.

[50] ibid., p. 711. See also *New Zealand Parliamentary Debates.* 16 September 1975, p. 4472. 3rd Session, 37th Parliament, September 2 – September 26, vol. 401. Wellington: Hansard, GP.

[51] *New Zealand Parliamentary Debates.* 18 April 1975, op. cit., p. 707.

> part of the proceedings ... If [the accused's identity] is not made known all kinds of situations can arise—where rumours get about and where, in a small community, various people may be believed to be the accused person when, in point of fact, they have no connection with the case.[52]

As the proposed clause 14 affected the press in the right to publish matters in the public interest, Marshall continued to state the industry's concerns:

> The right to publish should be preserved; and it is exercised in most cases in which there is a matter of importance and public interest ... in important cases in which the public interest is involved and it is desirable that people should know that justice is being done openly, the name of the accused should be published.[53]

However, in response to criticism from within the National Party and the press, Dr Finlay contended that:

> I should have thought it was the privacy of the individual that was at stake more than the freedom of the press. I seems to me very ironic that, at a time when there is increasing pressure all around the world for legislation protecting privacy, one of the first steps taken in New Zealand is made the target for attack in the name of the so-called freedom of the press ... the privacy of the individual is one thing and the freedom of the press is another, and the two must be balanced. [54]

In spite of a significant degree of opposition, it was on these grounds that the Bill was passed, and with it, clause 14 prohibiting the publication of the name of an accused person unless a conviction was entered. In a similar manner to the pledge of the Opposition in 1965 to repeal the News Media Ownership Act, the National Party promised the repeal of the Labour Party's 1975 Criminal Justice Amendment Act.[55] The legislation was duly repealed by the newly elected Muldoon-led government on

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[52] *New Zealand Parliamentary Debates*. 16 September 1975, op. cit., p. 4472. *New Zealand Parliamentary Debates*. 18 April 1975, op. cit., p. 713.

[53] *New Zealand Parliamentary Debates*. 16 September 1975, op. cit., p. 4472. This remark was made in response to a claim that the press did not publish many cases and when it did it seldom gave names, although the concern went deeper than this to the essence of freedom to publish as newspaper editorials of the time illustrate. As the *Auckland Star* contended, "[t]he importance of the freedom of the press is not so much in what it does as what it may do so if it chooses", (In Chapple, G., Fry, A., Steincamp, J., and Watson, P. 1976, p. 14. 'Courts and the press'. In *Listener*, September 18 1976, vol. 83, no. 9, 1976. Wellington, N.Z: New Zealand Broadcasting Corporation).

[54] *New Zealand Parliamentary Debates*. 18 April 1975, op. cit., p. 713.

[55] This initiative was welcomed by the press. As Alfred North, the chair of the NZPC expressed: "[T]hat parliament should think it right in its 'laudable efforts to protect an alleged offender or his relatives to contemplate interfering 'with a system of justice which in all democratic countries relies not only on justice being done but also on it being seen to be done'" (NZPC. 1975, pp. 3-4. *The Press and the People: 3rd Annual Report of the New Zealand Press Council, 1975.* Wellington: The Press Council).

July 29 1976, restoring what the press deemed as more of a balance between the privacy of the accused and the freedom to publish.

The Official Information Act 1982: Legislating freedom of Information

The previous chapter highlighted that freedom of information legislation has obvious significance for the media, where "[t]he availability of information is at least as important to the media as the rules prescribing what they may and may not publish".[56] In the New Zealand context, such legislation is particularly important for journalists in the discovery and interpretation of official information because of the comparatively small staff numbers at most New Zealand newspapers. This necessitates a fast and systematic channel through which official information can be attained. In addition, that there tends to be only one major newspaper per town in New Zealand makes it all the more important that information is made available because of the relatively limited forums for its expression to the public.[57]

The Official Information Act (OIA) was designed to reverse the principle of secrecy embodied by its predecessor, the Official Secrets Act 1951, to one of openness and availability of official information, which includes virtually all that held by all government departments and organisations, as well as State Owned Enterprises (SOEs).[58] On world standards, New Zealand was relatively early in enacting freedom of information legislation,[59] especially in comparison with the UK as indicated above. The history of freedom of information legislation in this country in fact dates back to 1977, when a Bill was introduced in parliament but lapsed after its second reading.[60] Subsequent public pressure for freedom of information legislation allowed the issue to

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[56] Burrows, J., and U. Cheer, op. cit., p. 386. This discussion only covers the main issues concerning New Zealand's freedom of information legislation as it pertains to the news-gathering activities of the press. For more expansive discussion of the 1982 Act's history and content, see Eagles, I., M. Taggart, and G. Liddell.
1992. *Freedom of Information in New Zealand.* Oxford: Oxford University Press.

[57] Priestley, B. 1984, p. 47. 'Official Information and the news media', pp. 46-56. In R. J. Gregory (ed.) *The Official Information Act: A beginning.* Wellington, New Zealand: Institute of Public Administration.

[58] Burrows, J., and U. Cheer, op. cit., p. 386.

[59] Aitken, J. 1997. 'Open Government in New Zealand'. Address to the Conference *Open Government in Britain.* Nuffield College, Oxford, UK. Thursday 13 March 1997. Online: Education Review Office. Available: http://www.ero.govt.nz/speeches/1997/jas/130397.htm. 23 September 2000. New Zealand's freedom of information legislation was modeled on that existing in the US and Sweden, with similar legislation enacted in Australia and Canada at the federal level the same year (the Freedom of Information Act 1982, and the Access to Information Act 1982 respectively). The main distinguishing feature of the New Zealand counterpart was the 'gradualist (or incremental) approach' to the opening up of access to official information underlying the Act, compared with the 'one shot' approach of the former statues (Eagles, I., M. Taggart, and G. Liddell, op. cit., p. 15).

[60] Du Fresne, K., 1994, op. cit., p. 36.

remain on the political agenda, and resulted in the preparation of a draft Bill by the 1978 'Danks Committee', as it was known, which was introduced and passed in 1982.[61] The Act incorporated the statutory requirement that official information was to be made available upon request unless there is a good reason to withhold it.[62]

However, the delays experienced by media organisations in accessing official information, even resulting in a denial of access, have been seen to contravene the principles of public openness and institutional accountability on which the Act was based.[63] Sir John Jeffries, the current chair of the NZPC, believes that while the Act was framed to enhance free speech, it had the potential to be used to delay, and even prevent the release of information.[64] Given that the timeliness of information is paramount for the news media, this was seen as highly problematic. Even since the Act's 1997 revision, which sought to address such problems,[65] it is often maintained that Act's provisions for access to information are not interpreted in the spirit of the legislation.[66] As one critic suggests, "... almost universally editors say their use of the Act is meet with obstruction by officials who drag out requests as long as possible and

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[61] Aitken, J., op. cit. The Act was amended in 1989 to recognise the SOE Act, and in 1992 and 1993, to acknowledge the Privacy Act 1993. (Eagles. I., M. Taggart, and G. Liddell, op. cit., p. 3).

[62] The Act gives specific reasons for withholding information. These include individual privacy, commercial sensitivity, national security, and a number of others given in section 6 of the Act. There are also 'inconclusive reasons' for withholding requested information, established under section 9 of the Act (see Committee on Official Information, 1980, paras. 74-78, pp. 25-27. *Towards open government: General Report.* 19 December 1980. Wellington: GP).

[63] *The Southland Times*, 20 February 1998, ed. I, p. 6 'Newspapers have many roles'.

[64] Jeffries, Sir J., cited in *Evening Post*, 23 February 1998, ed. 3, p. 12 'Act obstacle to free speech'.

[65] The time limit of 20 working days was considered in the 1997 review. It was reinforced that requests were to be processed 'as soon as reasonably practicable' with the recommendation that the Government should review the Act with a view to a reduction to 15 working days. (See New Zealand Law Commission, 1997. *New Zealand Law Commission Report 40, review of the Official Information Act 1982.* Wellington: Law Commission, GP).

[66] It has been argued that these problems have been exacerbated by the Local Government Meetings Official Information (LGMOI) Act 1987 (which extended the freedom of information principles to local government information), and the more recent Privacy Act 1993 discussed below. Both statutes are seen to have exacerbated rather than relieved the 'culture of institutional secrecy'. The former piece of legislation has been criticised on the grounds that "[p]ublic organisations once open to public scrutiny, such as harbour boards and Crown Health Enterprises [and such bodies thus 'commercialised' under the 1986 SOE Act]...now conduct their business behind closed doors on the pretext of ensuring commercial confidentiality...[and] local authorities frequently use flimsy pretexts to exclude the press from their deliberations", where the 1987 Act's jurisdiction covered the presence of the media at such meetings (Du Fresne, K. 1995, p. 13. 'Press freedom is fragile'. In *The Evening Post*, 31 March 1995, edn. 3 p. 13). Others agree that the commercial nature of the SOE's, which can readily employ the 'commercial sensitivity' exemption as grounds for releasing information, are seen to "...represent a serious erosion of the democratic process by stemming the free-flow of information" (Grant, D., and J. Tully. 1997, p. 40. In *Privacy: A Need for Balance*, pp. 38-40. Wellington: Newspaper Publishers' Association and Commonwealth Press Union (NZ Section). The present government's 2001 health reforms may address the difficulties for the media created by the Health and Disability Services Act, which excluded RHAs and CHEs from the principles of the LGMOI Act, and thus the media from attendance to their meetings.

are reluctant to comply...".[67] Assessing the efficacy of the Act for the media, another press representative concludes that

> The OIA is a noble sentiment which hasn't fulfilled its aim. I think it is seen by government departments and other bodies subject to it as an irksome impediment rather than a device by which they can disseminate information that the public has a right to know.[68]

Thus, it would appear that New Zealand's freedom of information legislation manifests similar difficulties for the press to those anticipated of the UK counterpart.[69]

The 1988 Royal Commission on Social Policy

Of all government-initiated inquiries that have been concerned with the print media in New Zealand, the 1988 Royal Commission on Social Policy was the most expansive. The attention paid in its report to the print media concerned the structural and economic characteristics of the domestic newspaper market and the influence of advertising upon freedom of expression. Like the series of government-sponsored inquiries into the British press throughout the post-war period,[70] the 1988 royal commission correlated concentrated ownership with limiting freedom of expression.

Observing that the print media were demonstrably no more immune to the market tendency toward concentration and conglomeration than broadcasting, thus restricting access and diversity, the 1988 report proposed remedies to ameliorate the

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[67] Goulter, J. 1998, p. 7. 'Constant battle to break secrecy culture'. In *The Daily News*, 9 February 1998, edn. 1, p. 7.

[68] Gavin Ellis, editor of the *New Zealand Herald*, cited in Goulter, J. ibid. p. 7.

[69] As a related concern, the perceived difficulties of the New Zealand defamation laws are noteworthy here. The 'statutory defense' (whether the subject matter of the offending material is in the public interest, with reasonable care has been taken as to the truth of the material and that an opportunity for right of reply has been given to the defamed, were to be among the considerations) for media organisations accused of defamation (libel) recommended by the 1975 report produced on the subject has been seen as insufficient. While the NZPC supported 'the main thrust of the proposed legislation' embodied in the 1988 draft Bill (NZPC. 1988, p. 7. *The Press and the People: 16th Annual Report of the New Zealand Press Council, 1988.* Wellington: The Press Council), it was criticised by others. The NZJU (as the old association had by 1988 been renamed) welcomed the inclusion of the proposed statutory defence, but felt it was weakened by the provision for mandatory corrections, where this undermined freedom of speech and editorial responsibility (*The Word.* Dec./Jan 1992/3., vol. 59, no. 6, p.87. 'Defamation changes small but welcome'. Wellington: JAGPRO). The view that "...the Act fails to achieve the objective of the 1975 Committee on Defamation...to establish a 'new balance between reputation and freedom of expression [as the 1977 committee advocated]'" is one still expressed within the media at present (*The Word.* August/September 1993, vol. 60, no. 4. 'Honest opinion may prove a difficult defence'. Wellington: JAGPRO).

[70] As noted in the previous chapter, it has been contended that in spite of the myriad of laws that impose restrictions on the British press, little was ever done to amend those "ineffectual laws relating to monopolies" (Weymouth, T., and B. Lamizet, op. cit., p. 49).

structural inequalities in New Zealand's press industry. Accordingly, the committee proposed an advertising tax in order to establish a 'media bank' to promote diversity of ownership and lower barriers to market entry.[71] Evidently, the UK's tradition of general disinclination towards legislation designed to address the structural and economic problems of the press had (since the repeal of the News Media Ownership Act in 1975) translated into the New Zealand context. The 1988 report's isolation of the structural and economic difficulties apparent in the New Zealand press were not addressed by the Lange government.[72]

Press freedom and the Privacy of Information Bill 1991

Press intrusion into privacy has been a central topic in the debate on press performance in Britain over the twentieth century, as the previous chapter highlighted. The New Zealand experience, however, has been markedly different. Therefore, the inclusion of the media in the original Privacy of Information Bill was seen to have come 'out of the blue'; there was no 'precedent' of invasive behaviour by the press on which to justify such restraints on the media.[73] However, the Bill was not ultimately driven by a perception of the need to restrain, or counteract the abuses of the media. Rather, the Bill was underpinned by the broader imperative of establishing parameters for the use and exchange of personal information in the public sphere in the 'computer age'; the media were included more or less 'by default.[74] In this respect, it was an extension of the prolonged inquiry into the issue of privacy and computer data banks beginning in 1973.[75]

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[71] Farnsworth, J., 1988. 'Social Policy and the Media in New Zealand'. In *Report of the Royal Commission on Social Policy Te Kōmihana A Te Karauna Mō Ngā Ā Huatanga-Ā-Iwi.* Volume IV, Social Perspectives. April 1988.

[72] Certainly, the notion of economic regulation of the press (among other activities) would have been very much contrary to the spirit of the time. As broadcasting in New Zealand was being de-regulated, with State broadcasters TVNZ and RNZ being commercialised (implemented through the Broadcasting Act 1989), it would have been surprising to see diametrically opposed protectionist policy initiatives being applied to the (private sector) print media industry.

[73] See Tucker, J. 1997, p. 17. 'Privacy: Do we need the Act?' In *Privacy: A Need For Balance*, pp. 17-21.Wellington: Newspaper Publishers' Association and Commonwealth Press Union (NZ Section).

[74] ibid., p. 19. See also Taylor, P. 1997, p. 19. 'No history of prying press'. In *Privacy: A Need for Balance*, pp.22-24. Wellington: Newspaper Publishers' Association and Commonwealth Press Union (NZ Section).

[75] New Zealand Law Commission. 1973. *Report of sub-committee of the Law Revision Commission on computer data banks and privacy.* Wellington: Law Commission, GP. Given the predominantly manual systems used by the New Zealand press at this time, their exclusion from the report is probably not surprising.

Nonetheless, the Bill's extension to the private sphere meant that the print media were captured by its original provisions. This was especially problematic for the news media where no acknowledgement was made in the Bill of their 'special position' in the democratic process. It was also perceived to contravene press freedom and freedom of expression more generally. As Burrows argued, "[t]o make the media subject to restraints like that would not only be contrary to the freedom of speech which our Bill of Rights protects, it would contradict the very idea of what the media are about and what they are for".[76] Therefore, had it not been amended to allow special provisions for the print media, it would have had implications that were more far-reaching. In the event, the Privacy Act 1993 addressed the threat to press freedom and freedom of expression with its exemption for the print media (and "in relation to its news activities any news medium") from the 'privacy principles', which remain the cornerstone of the Act.[77]

3.4 Press self-regulation is challenged

As far as the print media were concerned, however, the Privacy of Information Bill served to ignite debate about the efficacy of New Zealand's system of press self-regulation. An observation had been made around the time of the Bill's introduction that

> [a]n overall trend towards more aggressive and intrusive reporting has gone unchallenged ... There is little evidence that [Press Council] decisions form an informal code of ethics, or conduct that journalists refer to when working on sensitive stories [as the NZPC claimed]. The Council has little impact on professional standards.[78]

Such criticisms evidently made their way to parliament. In their report, the Select Committee who has considered the Privacy of Information Bill clarified the

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[76] Burrows, J., 1994. 'Privacy from a legal perspective'. In Ballard, P. (ed.). *Power and Responsibility: Broadcasters Striking a Balance*, pp. 75-91. Wellington: The Broadcasting Standards Authority.

[77] The Privacy Act 1993, 028, Section 2xiii. The Privacy of Information Bill was seen by some to have represented a retreat from the principles of freedom of information and 'open government' codified in the Official Information Act 1982 (which turned out to have difficulties of its own for the media). The transferring of aspects of the Official Information Act to the latter Bill was a concern to many which remained after the Bill was passed. Journalists have maintained that the Privacy Act is used superfluously as an 'excuse' to deny requests for information of certain classes, or to stifle the process, thus exacerbating the difficulties experienced by the media with the Official Information Act above (see O'Reilly, P., op. cit.; and Taylor, P., op. cit.; Grant, D., and J. Tully, op. cit.).

[78] McGregor, J. 1990, p. 4. 'Giving teeth to the watchdog'. In *The Word*, December 1990, vol. 57, no. 12.

significance of the print media's exemption to the House in March 1993. While acknowledging the special position of the news media in a democracy and the importance of press freedom therein, it was clear that the exemption did not come without certain provisos:

> ... [T]he Committee would like to see evidence of further and more effective self-regulation by the news media ... We certainly believe that there is a case for the news media to strengthen the ability of the Press Council to help individual citizens in circumstances in which privacy and other rights have been transgressed ... This is not the end of the matter ... [We] await with expectation some moves on the part of the news media that would indicate ... that they are treating the protection of privacy as a serious issue.[79]

This was the first time in New Zealand that the press had been explicitly instructed to strengthen its system of self-regulation from within parliament. This lies in contrast to the British press for whom direct warnings to 'put its house in order' were nearing the double figures mark by 1993. However, the Privacy Bill triggered parliamentary interest in the issue of privacy and the press, and the general efficacy of press self-regulation. Thus, the overall significance of the Bill lies in the fact that it brought with it the first real instance of external scrutiny of press self-regulation in New Zealand. The ensuing calls for vigilance with the message that 'complacence is the enemy of self-regulation', in turn, paved the way for yet another 'first' in the history of the New Zealand press; the development by the NZPC of a set of ethical guidelines.

The 1998 Review of the Privacy Act: Impact on internal reform of the press

While the Select Committee's message did not have any immediately effect, the pending review of the Act meant that the print media's exemption would be up for re-evaluation. While in the event the media's exemption was to remain, the review also carried a message for the print media concerning the system of press self-regulation under the Press Council. Privacy Commissioner Bruce Slane maintained that:

> Self-regulatory regimes would need to have adequate rules or privacy standards to which agencies adhered, as well as enforcement mechanisms

[79] *New Zealand Parliamentary Debates. Privacy of Information Bill: Report of the Justice and Law Reform Committee*, 18 March 1993, p. 14133. 43rd Parliament 19991-1993, 23rd March - 27th April, pp. 14133-35. Wellington: Hansard, GP.

> delivering high compliance and appropriate redress. In my view, the Press Council would provide an adequate vehicle for self-regulation if it adopted a code detailing standards expected of news media concerning respect for privacy and provided for compensation or redress in cases of breach ... I believe the code of practice ratified by the UK Press Complaints Commission on 26 November 1997 would provide a good model for a code, while the $5000 Broadcasting Act figure would probably cover many complaints adequately ... If privacy needs to be protected and no adequate self-regulatory code is developed, separate legislation would be more satisfactory than applying the Privacy Act.[80]

The message to the New Zealand press was similar to those conveyed in Britain under similar circumstances; establish an effective self-regulatory mechanism via a code or face the possibility of statutory restraint. In doing so, the 1998 review set a precedent in the post-war regulatory history of the New Zealand press by breaking with the tradition of non-interference in the self-regulation of press standards.

The Report itself is especially significant not so much for the specific recommendations it made, as for the degree of internal reform of press self-regulation the pending review triggered. Confronted with the possibility that Privacy Commissioner Bruce Slane would bring the media within the scope of the Privacy Act, the imminent review stimulated an unprecedented degree of reforming activity within the New Zealand press.[81] This itself may be brought within the scope of the conclusion drawn of the nature of internal reform of press self-regulation in Britain. The British press has tended only to engage in 'internal' reform under conditions of significant external, namely parliamentary, pressure. Similar pressure for the New Zealand press came in the form of the 1998 Privacy Act review, as chapter five illustrates further. While a recent development, this raises the question of whether the

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[80] *Necessary and Desirable: Report of the Privacy Commissioner on the First Periodic Review of the operation of the Privacy Act 1993*, December 1998. Chapter 8 'Rethinking the exceptions: Parliament, Ombudsmen, Royal Commissions, News Media, and International'. A suggestion had been made to the review committee that the exemption should only apply for the print media where 'a self-regulatory regime whereby privacy complaints could be addressed' was established, which presumably prompted these recommendations for the NZPC. Slane also expressed doubt as to whether the NZPC would meet the 'EU adequacy tests' without a code on privacy. While not concerned specifically with media self-regulation, the tests are concerned with the export of personal data to non-member countries, for which a principle holds that only can such a transfer be undertaken if the country in question provides an adequate level of privacy protection. (Lawnet. 1997. Foreign data protection legislation and transborder data flow controls. The EU Control Model. 7 November 1997. Online: Lawnet. Available: http://www.lawnet.com.sg/freeaccess/ech/ Annex_1.htm#2.4. 26 August 2000).

[81] As chapter five discusses further, the NZPC announced its decision to develop a written set of guidelines, with publishing companies INL, and Wilson & Horton announcing similar intentions of their own. Both Wilson & Horton and INL also chose this time to place their magazines under the jurisdiction of the NZPC.

'policy of the British press' of avoiding external calls for reform until restrictive legislation is imminent is a foreseeable trend for the future of press self-regulation in New Zealand. [82]

3.5 The effects of market conditions and 'commercial viability' on ethical standards

In comparing the overall character of press self-regulation in New Zealand with that of Britain over the twentieth century, it can be concluded that while parliamentary pressure has been the main impetus for internal reform in both cases, this trend has been comparatively slow to emerge in New Zealand. In accounting for this difference, it is worth noting some of the characteristics of the market conditions and degree of competition in each of the two countries and their implications for ethical standards. The geographical and economic idiosyncrasies of the British press are illuminating.

From a global perspective, the British press is unusual in having a large number of nationally distributed titles.[83] As Tunstall explains:

> Most dailies in Europe, North America and elsewhere are regional and local dailies which enjoy monopoly or semi-monopoly situations; these favourable market conditions encourage the newspaper to appeal across a broad range of local interests. The very interests of localism favour constraint. The other main type of newspaper is the élite or prestige newspaper, usually based in the national capital or a regional state capital. This type of newspaper exercises self-constraint as part of its élite/prestige character. But Britain's national newspapers belong to neither of these two categories; they are subject to the constraints neither of local monopoly nor of being élite national publications.[84]

The structure of the London-based national press allows for both extensive advertising reach and a huge national circulation a means for obtaining revenue due to the size of the county's population.[85] However, such a number of newspapers vying

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[82] Snoddy, R., op. cit., p. 75.
[83] Gibbons, T. op. cit., p. 126.
[84] Tunstall, J. 1996, op. cit., p. 391.
[85] Jaehnig, W. op. cit., p. 98. Britain's population size is also said to offer a bigger market for what Rooney refers to as 'nonserious national daily newspapers', which have the largest market among national dailies in Britain (Rooney, D., op. cit., p. 93).

for the same advertisers and readership lends itself to a high degree of competition.[86] In fact, it has been said that the British press illustrates "the most striking example of oligopolistic competition in Western Europe".[87]

That excessive competition has negative implications for ethical standards has been evidenced in Britain,[88] particularly by the tabloid press as the main target of the criticism about ethical standards over the twentieth century. Excessive competition can work against the pursuit of an ethical route in obtaining a story because of the prevailing 'get it fast and get it first' mentality where the failure to do so can put the journalist's job at stake. [89] An outcome of this is a tendency toward invasions of privacy (notably of public figures), high degrees of sensationalism, exaggeration, and fabrication.

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[86] The regional press is not such a 'problem', as Tunstall's above statement also suggests given that localism tends to favour 'constraint'. Furthermore, (like the New Zealand newspaper press), ownership of the regional press tends to be more heavily concentrated than the national press, and as Gibbons explains, "...[the regional press] uses much syndicated material and maintains a high ratio of advertising to editorial content", (Gibbons, T. op. cit., p. 126).

[87] Humphreys, P., op. cit., p. 96. It was only recently in 1995 that the issue of structural regulation of the UK press received serious consideration with the Conservative Government's initiative to introduce legislation limiting multi-media and cross-media ownership outlined in a White Paper prepared in 1995 (Department of National Heritage. 1995b. *Media Ownership: The Government's Proposals*, cm 2872. London: HMSO). Though unlikely to address the specific issues raised here, the present Labour Government has since made its own recommendations for media ownership rules, published in a Communications White Paper on 12 December 2000 which it hopes will be implemented by 2001/2. It proposes that the current special regulations restricting newspaper and cross-media mergers and acquisitions be relaxed, with newspapers subject to general competition law. The proposals are designed to allow further liberalisation without compromising plurality objectives in media ownership. The aim is thus to encourage fairer competition in all media markets, retaining safeguards to ensure that the media as a whole can never be exclusively controlled by a small number of major players (see The Society of Editors. 2000. Communications White Paper. Comment on Ownership rules. News Section. 13 December 2000. Online: Society of Editors, UK. Available: http://www.ukeditors.com/articles/2000/December/News428. html. 22 December 2000).

[88] As a general contention, this is a debated one. As Sparks exemplifies with reference to the US context: "In the United States, competition is regarded as a threat to the high standards of serious reporting and commentary that journalism has managed to sustain through the monopoly in the local market that most ['quality' newspapers] have enjoyed for a long time...If, in the United States, the tabloid is seen as threatening to destroy news, in some other countries it is seen as one of the ways that the news can be rescued from irrelevance to the lives of the mass people who would otherwise reject it entirely" (Sparks, C., op. cit., p. 9).

[89] Further discussion of factors contributing to the peculiar state of the British press, and the 'tabloid phenomenon' more generally can be found in Weymouth, T., and B. Lamizet, op. cit., pp. 43-46.
Although Britain's 'tabloid phenomenon' is usually cited as an illustration of a lack of regard for ethical journalism, alternative arguments have been mounted. Rather than deliberately flouting 'decent' ethical standards, it has been suggested that tabloid journalists and editors embody a "double, and partially conflicting, discourse and appreciation of practice, stories, and methods...On the one hand they do, and to a certain extent have to, share the ethical standards required by the profession...However, another form of assessment is at work, one which is deeply enshrined in daily professional practice and shaped by implicit rules that find their roots in the specific competition taking place in the journalistic field. And it is in the failure to reconcile both forms of judgement...[that is a possible reason for the proclaimed commitment of the tabloid press to the PCC's code, only for another 'scandal' to emerge shortly afterward]" (Rhoufari, M., op. cit., p. 164).

Evidently, excessive competition has implications for the efficacy of a self-regulatory system based on the concept of voluntary restraint. Press self-regulation in Britain has been tenuous at best because during the most competitive periods the necessary support of the industry's employers to operate within the bounds of the industry's ethical structures was not there. At present then, voluntary self-regulation arguably does little more to address the 'crisis of ethics' than to place a band-aid over a much deeper wound that over the twentieth century has not been sufficiently treated.[90] The continuation of governmental threats issued to the press is thus likely to achieve little more in the future than to keep the 'cycle of self-regulation' rotating when viewed from this broader perspective. Feintuck reinforces this contention:

> Continued reliance on the PCC as presently constituted, and despite reforms, appears to lack all credibility; and it appears to do more to protect the interests of a non-interventionalist government and the commercial judgement of newspaper editors and proprietors than it does the general public interest.[91]

The evolution of press self-regulation in New Zealand has occurred in a different context. The New Zealand newspaper press has always comprised a large number of publications in relation to its population due mainly to the difficulties of New Zealand's geographic peculiarities and scattered population centres experienced in the earlier days of settlement.[92] However, a lack of more than one major morning or evening newspaper in a single town is a general characteristic of the New Zealand press. With most newspapers enjoying a monopoly or semi-monopoly position, and newspaper ownership now heavily concentrated,[93] competition between dailies has been comparatively minimal, with the country's metropolitan newspapers predominantly keeping to their own respective circulation areas from both readership and advertising perspectives.[94] As McGregor points out, "[this] pattern of concentration is heightened by the fact that many cities or towns in New Zealand are

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[90] This point is explored further in chapter six.
[91] Feintuck, M. op. cit., p. 151.
[92] O'Neill, R. B., op. cit., pp. 667-8.
[93] The trend towards aggregation of print media ownership over the last twenty yeas has given rise to extreme concentration in this country. The newspaper and magazine publishers INL and Wilson & Horton represent what McGregor describes as the duopoly of newspaper ownership in New Zealand (ibid., p. 30). As she also points out, the Sunday newspaper market which in countries such as Britain are fiercely competitive, is monopolised in this country by INL which owns all the Sunday newspapers in New Zealand (ibid., p. 31).
[94] The existence of the cooperative news-sharing agency, the New Zealand Press Association, since the end of the nineteenth century has, by its very nature and function, contributed to this situation as was highlighted at the beginning of this chapter.

dominated by the one newspaper company".[95] These structural patterns have allowed the maintenance of comparatively high ethical standards.[96]

Yet it is ultimately because of this apparent lack of competition within the New Zealand press that there had been relatively little criticism of the ethical standards of the New Zealand press. In the British experience, competition has not generally been conducive to effective self-regulation; in New Zealand, the opposite has evidently been the case.[97] This is corroborated by the comparative lack of governmental interference in the regulation of the press on a professional level, as this chapter has highlighted. As Tully suggests, the NZPC has not really been 'put to the test':

> How would it react if a New Zealand version of The *Sun* consistently flouted its findings?...Will journalists be able to take effective action to arrest a decline of standards or will New Zealand, too, reach the point where politicians in tune with public opinion introduce legislation to regulate the [press]?[98]

However, a theme of the regulatory history of the British press that a 'free press' is not free from public nor indeed, parliamentary scrutiny,[99] has become increasingly applicable in the New Zealand context. That complacency can indeed be seen to threaten press freedom and the principles of self-regulation has been illustrated in both countries. In Britain, both the establishment of self-regulatory structures and the later internal reform thereof have been driven by parliamentary pressure. The inverse of this argument captures the history of press self-regulation in New Zealand. A lack of parliamentary pressure accounts for the comparatively slow trend towards the establishment and subsequent reform of self-regulatory structures by the print media. Part two of this thesis assesses how these trends have impinged upon the evolution of print media codes of ethics in Britain and New Zealand.

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[95] McGregor, J. 1992, op. cit., p. 31.

[96] The issue of a disturbing *lack* of competition within the New Zealand press as a concern voiced from within the industry was noted in the discussion of the 1965 News Media Ownership Bill above. The lack of competition was, earlier in the century, attributed to the "similarity between appearances and content of newspapers" and their homogeneous and "bland reportage" (Cleveland, L.1964, op. cit., pp. 36, 39). Some elements of the 'vigour' of the British press were in fact found wanting in New Zealand, with the need for increased competition often claimed necessary to combat the problems of the "backwardness, monotonous and moribund" nature of the New Zealand press" (ibid., p. 39).

[97] A trend observable in New Zealand more recently, however, concerned the shift of the 'women's magazines' towards a more 'tabloid style' of journalistic practices and reportage as a consequence of the increasing competition between them during the 1990s. This is discussed further in chapter three below.

[98] Tully, J. 1992a, op. cit., p. 148

[99] O' Malley, T. 1997, op. cit., p. 148.

PART TWO

The practice of 'voluntary restraint'

CHAPTER FOUR

Exploring self-regulated reform in the context of the British press

> A particular scandalous 'exclusive' story triggers, if not public outcry, then the fury of a politician...Indignation is promptly followed by condemnation, with some variations, from the media profession. Threats to legislate on journalistic practices are sometimes issued before, in most cases a consensus is reaffirmed on the limits not to be crossed and on the need to preserve the principle of self-regulation...The crisis usually dies down with plenty of 'professions of faith', promises of future measures to avoid certain practices and a lot of commitment that usually helps ease down the pressure...until the next outrageous 'splash'.[1]

This chapter is directly concerned with exploring the evolution of print media codes of ethics to have emerged out of this 'cycle of self-regulation' in Britain. Based on the trends located in chapter two above, a hypothesis might be formulated. The measures taken by the British press to improve the operation of self-regulation have been largely reactive, occurring in the face of perceived threats to 'press freedom' which have tended to come in the form of parliamentary efforts to legislate 'social responsibility' at the professional level of the press. This reform is more aptly described as 'externally-inspired' reform of self-regulation and thus contrasts with the notion of internally inspired and proactive self-regulated reform underpinning the concept of voluntary restraint framed in chapter one above. These arguments are employed to describe and account for the evolution of print media ethics codes in Britain, with which the New Zealand case is compared in chapter five below.

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[1] Rhoufari, M., op. cit., p. 163.

4.1 Early code developments: The NUJ's code of conduct

As chapter two highlighted, it was at the instigation of the NUJ that the ethical standards of the British press were brought to government attention, culminating in the 1947-49 Royal Commission on the Press. This indicated that while formally a trade union that was formed to promote the industrial interests of the country's working journalists,[2] the NUJ was also a key 'watchdog' on the ethical and professional standards of the press before a formal self-regulatory system was created in 1953.[3] Although the NUJ continued to function as a subsidiary regulatory body after this time, it is the period before 1953 when the NUJ first developed its code of conduct with which this section is primarily concerned.[4]

The NUJ's code of conduct was the first journalistic code to be developed in the UK.[5] Therefore, it is noteworthy that this initiative came from a body at which time comprised the majority of the country's working journalists. Having emanated from within a trade union, the development of the NUJ's code thus provides an interesting comparison to those developed in the context of formal systems of press self-regulation. As chapter two indicated, both the former BPC and the PCC were ultimately externally induced systems of voluntary self-regulation; a factor with implications for the evolution of their respective sets of ethical guidelines as this chapter explores. The evolution of the NUJ's code thus illustrates how a journalistic code of ethics might be developed and applied 'differently' depending on the role and functions of the issuing body.

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[2] Discussion of journalism trade unionism in the UK can found in the two official histories of the NUJ: Mansfield, F. J. 1943. *Gentlemen. The Press! Chronicles of a Crusade. Official History of the National Union of Journalists.* London: W. H. Allen; and Bundock, C. J., op. cit., 1957.

[3] The Institute of Journalists (the body out of which the NUJ grew) is not discussed at length here. While the IoJ did operate a code of ethics for journalists after 1962 (Harris, N. G. E., 1989, op. cit., p. 179), it played an increasingly limited role as a regulator of professional standards as the twentieth century progressed as its membership was limited. This was brought about with the increasing recognition of the NUJ, both in an industrial and professional capacity, as well as the growth of employers' associations that took significant membership form the early Institute (see Underwood, C. op. cit.).

[4] While the membership of the NUJ was not confined to print journalists as radio and television broadcasting developed (like the NZJA discussed in chapter five), its code was developed by print journalists for print journalists. Therefore, it is of significance to the present chapter.

[5] Jones, J. C., op. cit., p. 36. In fact, the NUJ was the first journalists' trade union in the world (Ecclestone, J. op. cit., p. 655).

The Functions of the NUJ

The NUJ grew out of a general dissatisfaction with the Institute of Journalists (IoJ) to effectively serve the industrial interests of working journalists.[6] However, also included in the NUJ's 1907 founding objectives was the mandate to "deal with questions affecting professional conduct and etiquette", which "... was considered an essential safeguard of the reputation and good name of the union".[7] An understanding of the NUJ's interest in professional issues is offered by its view that "[i]t will be impossible for any association of journalists to gain respect or influence unless, in its operations, it takes cognisance of such offences as insobriety, improper conduct, and neglect of professional duty".[8] This offer much insight into the reasons the NUJ proceeded to adopt a code of conduct in 1936.

A decade after the NUJ was established, a motion was carried confirming that the union should act as the "guardian of the profession's honour".[9] It was following the First World War that the NUJ took measures to do thus. As chapter two noted, the inter-war period brought increased competition within the British press. Intrusion into private lives was emerging as a pertinent issue and the NUJ appealed to employers to "limit these disturbing practices in the collection of news". In 1931, the national executive of the NUJ proceeded to create a system of moral and financial support to members who suffered at the hands of employers for refusing to "carry out intrusions repugnant to his sense of dignity".[10]

The initiative to adopt a code of conduct came three years later in 1934 from the Hartlepools branch of the NUJ.[11] It was proposed that the national executive consider the preparation of a code "on the lines of those codes of behaviour enforced by other professions and trade organisations" to which NUJ members would be formally bound.[12] While there were some questions raised as to whether there "anything that could be done in the nature of unprofessional conduct that the union

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[6] As noted in chapter two, one of the main grievances was that because the IoJ's membership was not confined to working journalists but also included proprietors and manager, the interests of the workers were not seen to be sufficiently promoted (Ecclestone, J. op. cit., p. 655). (See also Bundock, C. J., op. cit., pp. 1-7).
[7] ibid., p. 8.
[8] ibid., p.8.
[9] Mansfield, F. J., op. cit., p. 17. Relative success for the NUJ in the sphere of collective bargaining came quite early on which allowed increased attention to be paid to professional and ethical matters.
[10] ibid., p. 17.
[11] Bundock, C. J., op. cit., p. 128.
[12] ibid., p.128.

could not stop under its existing rules",[13] the support for a code outweighed any opposition. A draft code was prepared and referred back to the annual delegate meeting (ADM) the following year for consideration. Following considerable debate and subsequent amendments to the proposed draft, a code of conduct was adopted at the 1936 ADM as an index to the rules of the NUJ.[14]

The NUJ's code of conduct was devised in line with its overarching aims of protecting journalists who, in the course of carrying out an employer's instructions, were put in a position "repugnant to his*[sic]* sense of dignity".[15] As Jones suggests, "[t]he first manifestations [of journalistic codes] were essentially to protect working journalists from unreasonable demands made by those who employed them and to give effective force to the nature and security of their professional status".[16] Evolving from an internal perception that 'evidence' of a sense of professionalism would allow the union increased recognition and influence in the sphere of industrial bargaining, the NUJ's code was also driven by its industrial objectives. This is not to suggest that the NUJ's code of conduct necessarily failed in respect of offering protection to the public. Indeed, the failure to observe, for example, ethical standards relating to the intrusion on 'innocent, bereaved or otherwise distressed persons' would have serious implications for the journalist as laid out in the rules of the union. As Jones points out, the NUJ code was "perfectly adequate for the conditions of the time",[17] thus serving as a viable mechanism for the voluntary restraint of its members.

However, in the late 1930s and 1940s increasing competition and concentration of ownership brought challenges to the effectiveness of both the NUJ

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[13] ibid., p.128.
[14] ibid., p. 128. The code adopted by the NUJ in 1936 is included in Appendix Two to this thesis.
[15] Mansfield, F. J. op. cit., p. 17. Jones also suggests that "the main function the NUJ code, in its early days, was protective of the journalist, rather than the reader" (Jones, J. C. op. cit., p. 35).
[16] ibid., p.11.
[17] Jones, J. C., op. cit., p. 35.

and its code of conduct as regulatory devices.[18] The 'problem of press ethics', exacerbated by the changes to the competitive climate with new rivals in radio and television broadcasting, were an increasingly urgent matter for the union. Not only was the issue of the protection of the journalist's professional integrity at stake; action was needed in order to protect citizens and consumers from unprofessional journalistic practices.[19]

The issue of privacy intrusion dominated the NUJ's 1937 ADM. Again, the NUJ decided to appeal to proprietors to help "stamp out the malpractices of a small minority in the collection of news".[20] The NUJ's appeals were in vain thus highlighting a fundamental difficulty of the body as a regulatory of ethical standards. While the NUJ attracted the membership of the majority of working journalists, an obvious setback was the fact that it exerted no authority on proprietors, managers or editors.[21] This offers insight into why the NUJ began enlisting wider support by campaigning for a governmental inquiry into the press in 1945, which resulted in the development of UK's first formal self-regulatory body for the press in 1953.[22]

The decline of the regulatory role of the NUJ and its code of conduct

Following the establishment of the BPC as the industry's formal self-regulatory body, the NUJ was left to concentrate on industrial matters. This is not to say that its concern with the ethical problems in the performance of journalists

[18] Though not a direct concern of this thesis, the perceived correlation between concentrated ownership in the press and ethical standards of journalists is noteworthy. Editorial independence is a core concern. As Weymouth and Lamizet contend: "Writing for a tabloid often means adopting an obligatory house-style and attitudes towards news coverage are likely to be imposed by either the editor or owner. Failure to comply usually means the departure of the journalist concerned" (Weymouth, T., and B. Lamizet, op. cit., p. 44-5. In some countries (notably Australia, Germany and the Netherlands) journalists have responded to increasing concentration of press ownership and demanded that proprietors agree to charters of editorial independence, which binds owners and mangers to the codes of the press, as in the Australian example. As Chadwick notes, this has the potential to bridge a gap inhibiting effective self-regulation between proprietors and journalists on the issue of journalism's structure on which they tend to be divided (Chadwick, P. 1994., op. cit., pp. 173-174). (For further discussion of the relationship between press ownership and editorial roles in the British context, see Hanlin, B. 1992. 'Owner, editors and journalists'. In Belsey, A., and R. Chadwick. *Ethical Issues in Journalism and the Media*, pp. 33-48. London: Routledge).

[19] Jones, J. C., op. cit., p.35.

[20] Mansfield, F. J., op. cit.

[21] Furthermore, to deal with the economic structure of the industry which was perceived to be at the core of the problem was even further beyond its ability.

[22] The ensuing relationship between the NUJ and the BPC provided an illustration of the theoretical arguments for and against the merits of a code of practice; the BPC's failure to adopt a code as advocated by the NUJ was in large measure why the NUJ withdrew its membership from the BPC in 1980.

diminished. However, because its code only ever applied to the employees who formed its membership, some journalists were not bound by it in any way, and it often lacked recognition by newspapers. Some newspapers, most notably those with a tabloid orientation, refused to recognise both the NUJ code of conduct, and the NUJ itself.[23] Others expressed regret at the decline of the regulatory role of the NUJ, which was seen by some to have "kept professional and ethical standards high".[24]

The introduction of computer technology into newspaper production had the effect of weakening the NUJ's regulatory force. While the NUJ was successful in countering the Fleet Street proprietors in the use of new technologies in the 1960s, this was not the case in the 1980s.[25] Employers were under increasing pressure to take advantage of new technology, which meant reductions in staff, resulting in major disputes in which the print unions were defeated.[26] The industrial relations legislation introduced by the Thatcher government also contributed to the decline of the NUJ. The Employment Acts of 1980 and 1982 brought a move away from collective bargaining towards individual contracts which meant that the NUJ has since been derecognised by employers thus removing professional standards and restraints from editors and owners.[27]

These processes played a part in reducing the role of the NUJ's code of conduct, which, because the benefits of union membership for journalists became less obvious, a breach of the code was no longer the threat it might once have been.[28] As Snoddy suggests, NUJ members found to have breached the code and subsequently

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[23] This was perhaps most notably reflected in the anti-union campaigns led by the tabloid press in the 1980s (Rhoufari, M., op. cit., p. 170).

[24] ibid.., p. 170.

[25] See McNair, B., op. cit., pp. 138-9.

[26] Weymouth, T., and B. Lamizet, op. cit., p.47. The most notable was the Wapping dispute of 1986 when the exodus out of Fleet Street to the new publishing plant at Wapping was led Eddie Shah, with Rupert Murdoch and other Fleet Street newspapers following. The victory of the proprietors represented one of the most significant erosions of union power in the history of British industrial relations. (For further discussion of this episode, and the industrial disputes involving the NUJ during the 1980s see, for instance, McNair, B., op. cit., pp. 142-147).

[27] Weymouth, T., and B. Lamizet, op. cit., p. 45. (See also McNair, B., op. cit., p.145; and Humphreys, P., op. cit., p. 41).

[28] Frost, C., op. cit., p. 224. The NUJ's Ethics Council developed in 1986 has since under gone significant changes. In the early 1990s the rules were altered after attempts to remove its disciplinary role, and now only hears complaints lodged by union members and not from the public. This has removed a significant degree of its regulatory power and has seen a significant decline in the number of complaints lodged. The Ethics Council now concentrates on its educational role and deals much less harshly with NUJ members who have been found to have breached the code in a bid to salvage its declining membership (Frost, C., ibid., p. 224-5). (The current functions of the NUJ Ethics Council are listed in the NUJ's rule book are published on the Dublin Branch of the NUJ's website: 'Rules of the NUJ'. 10 August 2000. Available: http://indigo.ie/~nujdub/rules.htm. 30 October 2000).

fined have tended to withdraw form the union rather than pay the fines imposed as a sanction,[29] thus undermining the regulatory force of the code as well as the union itself.

In spite of such difficulties, the NUJ code of conduct has been revised since this time.[30] Notably, the code has been brought into line with changes in the technology used by the press with requirements concerning the digital manipulation of images incorporated into the code in February 1999.[31] Another recent development to the NUJ code concerned the issue of 'conflicts of interest'. The code now cautions against endorsing 'by advertisement any commercial produce or service save for the promotion of his/her work or of the medium by which he/she is employed'.[32] The efforts of the NUJ to maintain it code are admirable particularly when compared with the case of the former British Press Council whose ultimate demise can be attributed to its failure to operate a formal code of practice.

4.2 Codes of practice and the British Press Council

As chapter two highlighted, at the time of the BPC's formation in 1953 there was a wider body of opinion that held that a code of practice was necessary for the effective functioning of a self-regulatory body. However, the BPC did not share this view for most of its existence. A main reason for the BPC's early failure to adopt a formal code was its belief that because both the NUJ and the IoJ had their own codes, a third code of press conduct was unnecessary.[33] Instead, the BPC maintained a preference for a system of 'case law' based on its adjudications on complaints against newspapers. As Lord Devlin, who chaired the BPC in the 1960s had explained, "[t]he Press Council has, whether it realised it or not, adopted the methods of generations of judges who produced the common law of England. They let it grow out of the

[29] Snoddy, R. op. cit., p. 179.
[30] In addition to its code of conduct, the NUJ issued a number of guidelines on such matters as race relations reporting (Jones. J. C., op. cit., p. 72), and the avoidance of sexist stereotyping (Stratford, T. 1992. 'Women and the press'. In Belsey, A. and R. Chadwick (eds.). *Ethical Issues in Journalism and the Media*, pp. 130-136. London: Routledge).
[31] NUJ. 2000. Information on the digital manipulation of photographs. Online: National Union of Journalists. 10 August 2000. Available: http://indigo.ie/~nujdub/rules.htm. 30 October 2000.
[32] The current version of the NUJ code is included in Appendix One to this thesis.
[33] Jones, J. C., op. cit., p. 35.

decisions they gave".[34]

The preference for an 'unwritten code' was further justified by Levy in his 1967 history of the BPC: "... [A]lthough there was no written set of rules which could be described as the ethical code of the Press, there were certain principles tacitly acknowledged and observed by journalists as the unwritten ethics of their profession".[35] This approach was evidently based on what the council perceived as the merits of 'case law'; its flexibility and evolutionary nature as opposed to a more rigid code of conduct.[36] Yet as Sir Zelman Cowen (who himself chaired the BPC in the early 1980s) observed, "[t]he preference for [a 'case law' approach] meant that the Council has not complied with the recommendation pressed upon it by Commissions and Committees ... to formulate a code of press conduct".[37]

The Press Council's 'Declarations of Principle'

Although the BPC chose not to produce a formal code of practice until the end of the 1980s, it did develop what it called 'declarations of principle'. These related to especially problematic areas of journalistic conduct that were highlighted by the BPC's more 'high profile' adjudications,[38] and, indeed, the external criticism such conduct triggered. The BPC circulated declarations of principle to editors on such issues as chequebook journalism, privacy intrusion, misrepresentation and political partisanship in newspapers.[39] However, the declarations tended to be less interesting for what they contained and more for the context in which they were developed as the BPC's declaration of principle on payments to witnesses illustrates.

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[34] Cited in Cowen, Sir Z. 1985, pp. 9-10. *The Press, the Law, and Beyond: A View from the Press Council.* ESSO lecture delivered in the Coombs Lecture Theatre, Australian National University, Friday 6 September 1985. Canberra: Australian Academy of the Humanities. The council's case law approach is perhaps not surprising given the legal background of those who chaired it.

[35] Levy, H. P., op. cit., p. 464.

[36] Jones, J. C., op. cit., p. 36. Certainly, a very rigid code has its faults, as chapter one noted. However, a system of case law has defects of its own including the potential ambiguity for those making complaints about newspaper conduct, those adjudicating on them, and, of course, those subject to the body's rulings.

[37] Cowen, Sir Z., op. cit., p. 10.

[38] ibid., p. 10.

[39] Hodgson, F. W., op. cit., p. 162. The 1966 declaration was preceded by a 1964 declaration, formulated soon after the arrival of Lord Devlin to the position of Chairman of the BPC on the 'right to publish evidence given in open court' (see Levy, H. P. op. cit., p. 481-83 Appendix 3). This declaration concerned the rights of the press as opposed to guidance for the press in terms of professional conduct, with which those issued afterward were mainly concerned. Little can be confirmed as to it origins however it might be surmised that the 1964 declaration emerged as a response to threats of reportage restrictions amid debates leading up to the implementation of the 1967 Criminal Justice Act.

The declaration of principle on 'payments to witnesses' was first issued in 1966 following a period of parliamentary criticism and scrutiny of the use of chequebook journalism during the 'Moors murder trial' in 1965-6.[40]. The 1966 declaration is a pertinent illustration of the press's response to early pressures to 'put its house in order'. The urgency of the issue for the BPC was heightened by the possibility that the action of the newspaper concerned (the *News of the World*) would be found to have violated contempt of court law. Motivated by the notification that the Attorney-General was investigating the possibility of stricter controls on what could be published about court proceedings, the BPC moved rapidly to rally editors for discussions.[41] As Levy pointed out, "[t]he Press Council thought that the best way to meet the concern of the Government would to be to give assurances in the form of a declaration of principle [on the issue of payments to witnesses]".[42]

A committee of BPC representatives was duly appointed to draft the declaration with copies subsequently sent to both national and provincial newspaper editors for their comments.[43] At a joint meeting of the BPC's committee and a number of newspaper editors, where the major contentions were debated and overcome, an amended version of the declaration of principle was circulated to editors in the form given in Appendix One of this thesis. As the outcome of the most direct consultation and collaboration between the BPC and the press than had at any time previously occurred, the development of the 1966 declaration was seen as a crucial event in the history of the self-regulatory body.[44] According to Levy, the 1966 declaration illustrated, "... the increasing confidence of the Press in its Council and the growing statute and authority of the Council itself".[45] However, a deeper assessment of the 1966 development suggests otherwise.

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[40] When it emerged in a cross-examination of the chief witness for the prosecution that he was under contract with a newspaper for payments of £1000 per story about the crime, the BPC felt that it was "obliged to consider the issue of press payments to witnesses, and deal with it accordingly" (Press Council, 1991, op. cit., p. 248). (See also and Levy, H. P. op. cit., p. 482-4).

[41] While the Attorney-General concluded that the testimony of the witness was not affected by the newspaper's payments in a particular case concerned, misgivings were expressed that such activity may lead to a 'colouring of evidence' thereby prejudicing the proper conduct of future trials, (Press Council. 1968, p. 8. *The Press and the Public: 14th Annual report of the Press Council, 1967.* London: Press Council).

[42] Levy, H. P., op. cit., p. 442.

[43] ibid. , p. 442.

[44] ibid. , p. 446.

[45] ibid. , p. 446.

Codes of ethics: Manifestations of social responsibility or 'constraints on press freedom'?

Given the circumstances, it is not surprising that the BPC attained a consensus on the voluntary option where the development of the 1966 declaration "almost certainly forestalled anti-press legislation".[46] Indeed, with 1962 royal commission and a series of parliamentary Bills concerning the press in the immediate background, the British press had a clear case to prove as to its ability to effectively self-regulate. It also was fortunate that during the period from 1964 to 1969 competitive pressures were relatively mild,[47] thus assisting the BPC gain proprietorial support for its initiative. Thus, there were indications that this support may be short-lived.

Perhaps anticipating such a difficulty, the BPC had included a 'reminder' in the 1966 declaration that "satisfactory observance of the principle must depend upon the discretion and sense of responsibility of editors and newspaper proprietors".[48] As Levy also noted in 1967, "[t]he value of the declaration will largely depend on the spirit in which it is interpreted".[49] While 'necessary' at the time, the interpretation of the 1966 declaration as a "restraint on press freedoms" said little for the spirit in which it would be applied in the long-term.[50] Indeed, whether the "sense of responsibility" that was required of editors and proprietors to give the declaration effect would survive the onslaught of future periods of intense competition was another matter.[51]

The Press Council's 1976 Declaration of Principle on Privacy

Given that by the mid-1970s, the issue of press and privacy intrusion had received significant parliamentary attention, it is of little surprise that a declaration of principle on privacy was formed at this time. The context in which this declaration of principle was developed offers a further illustration of the pattern of internal reform from which the ethical guidelines of the British press have evolved. The 1972 report

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[46] Hodgson, F. W., op. cit., p. 163.
[47] Bailey, G., and S. Williams, op. cit., p. 352; and Tunstall, J. 1996, op. cit., p. 395.
[48] Levy, H. P., op. cit., p. 465.
[49] ibid., p. 466.
[50] ibid., p. 446.
[51] Levy noted that in December 1966 the Attorney-General voiced his satisfaction at the course of action taken by the BPC in developing the declaration on payments to witnesses, announcing that it was an issue "the press itself should tackle". However, the enactment of the 1967 Criminal Justice Act with its provisions on the scope of media reportage of court trials, closely followed in 1970 by further parliamentary concern about the nature and scope of such reportage (ibid., p. 447), soon raised question as to the efficacy of the 1966 declaration.

of the Younger Committee on privacy had criticised press intrusion during the highly competitive period of 1969-71,[52] urging the BPC to codify its decisions on privacy.[53]

However, it was not until 1976 that this recommendation received consideration by the BPC. The impetus was threat of statutory intervention with the Faulks Committee on Defamation considering including privacy intrusion in its terms of reference for revising the law.[54] The BPC responded to this threat by developing a declaration of principle in privacy,[55] an effort that was nonetheless seen as unsatisfactory for some.

The 1974-77 Royal Commission on the Press rejected the BPC's submission that its 'case law' approach was preferable.[56] The 1977 report stated that:

> The standards they apply and the terms in which they are expressed fall short of what is desirable. In particular, we consider that adjudications do not contain sufficient argument, and that they sometimes make too many allowances for editorial discretion and errors of fact.[57]

The 1977 commission thus recommended that "the council should draw up a code of press behaviour which "... should set out in *some detail* the spirit governing the conduct of editors and journalists",[58] continuing to suggest that the voluntary model

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[52] Bailey, G., and S. Williams, op. cit., p. 352.

[53] Committee on Privacy, op. cit., para. 193, p. 55. One of the BPC's central objections to this recommendation was articulated by Cowen: "[It is] rather puzzling that there is such emphatic opposition to the protection of privacy at law, while there is a reiterated readiness to provide that protection by Press Council decision ... If the objection is that privacy had too uncertain a profile, and that to give it legal protection would have a chilling effect on a free press, it is an objection which should apply to the impact of Press Council adjudications ... [as well as to the notion of a privacy code]" (Cowen, Sir Z., op. cit., p.14). It was perhaps because of this contention that the recommendation for the BPC to formulate a privacy code went quietly unheeded.

[54] Hodgson op. cit., p. 163. Hodgson notes that "The Council's early consideration of the problem of intrusion into people's private lives came just as the Porter*[sic]* Committee on Defamation was considering including intrusion in its terms of reference for revising the law". However, the name of the committee's chair was incorrectly identified here; the Porter Committee on Defamation sat in 1948 (amid the first royal commission on the press) before the BPC was established.

[55] See Appendix One.

[56] Blom-Cooper, L. 1991, p. 11. 'Epitaph: Critique on Calcutt'. In Press Council, 1991. *The Press and the People*: 37th Annual Report of the Press Council. London: Press Council. The 1977 royal commission accepted the evidence of Alexander Irvine (now Lord Irvine who is currently pressing for legislation to ban press payments to witnesses), who argued that the BPC "did not always make adequately clear the basis on which its decisions were made" (ibid., p. 11).

[57] Royal Commission on the Press. 1977, p. 236, para. 20.48.

[58] ibid., p. 236, para. 20.48 [Italics added]. This was also in spite of the BPC's revision and subsequent extension of the existing declaration on cheque-book journalism in January 1975 to include "indirect payments made to contributors for the purpose of enabling them to make payments for articles or the ingredients of articles contributed by them" (Press Council. 1991, op. cit., p. 249).

was likely to continue only if those who control the press ensure that it behaved with proper restraint.[59]

The recommendation that the BPC draw up a formal code was by this time a familiar one. However, the BPC met this request with the (also familiar) response of inaction, maintaining that it was

> ... still preferable to rely on building up jurisprudence rather than seek to reduce practice and ethics to a tight code. Partly it was conditioned in this view by the changes there are in public attitudes to conduct and to the press, and its view that it would be easier to reflect these in its adjudications without the constrictions and formality of a more apparently permanent code.[60]

In spite of the increasingly competitive environment of the 1980s, the BPC's attempts to strengthen its self-regulatory were confined firstly to an amendment to its existing declaration on chequebook journalism in 1983.[61] The amendment widened the restrictions on the practice of chequebook journalism in criminal trials to rule out payments to family and associates of criminal suspects in an effort to deflect the threat

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[59] Royal Commission on the Press. 1977, op. cit., p. 236, para. 20.48. That the BPC's declarations had a limited impact on the press as a whole (as the 1977 report indicated) was inadvertently confirmed by the Piers Morgan (former editor of the *News of the World*) later in 1999, when he recalled that "[t]here was nothing before the PCC code of any serious regulation of newspapers" (Society of Editors. 1999., op. cit.).

[60] Press Council. 1991. *The Press and the People: 37th Annual Report of the Press Council (1990).* London: Press Council. (Arguably, a code need not be so 'permanent' if it is proactively revised and updated when unprecedented ethical issues arise, rather than waiting until the next threat of statutory restraint, as some may have argued in response to this comment).

[61] The January 1983 amendment concerned press payments to associates of alleged criminals being tried by the courts. The main catalyst for this amendment was criticism about press payments to associates of the defendant during the Sutcliffe trial (widely known as the trial of the 'Yorkshire Ripper'), and in particular, the renewed interest of the Attorney-General. Sectors of the press were found not only to have practices chequebook journalism during the trial, thus constituting pre-trial prejudice, but also to have harassed victims' families for interviews. The Government had issued the warning to the BPC of the possibility of legislation banning the practice "if a voluntary press council was unable in the immediate future to work effectively and co-operatively with the newspaper industry", (Press Council. 1983, p. 305. *The Press and the People: 29th/30th Annual Report of the Press Council, 1982/3.* London: Press Council). The BPC had additional concerns. Its limited authority was highlighted by the deceptive manner in which certain newspapers attempted to avoid the BPC's censure after it learned that a significant sum had been made to a relative of Sutcliffe on behalf of the *Daily Express* which the newspaper's editor denied. When the BPC produced evidence to contradict the editor's claim, he responded that he 'had forgotten' that the offer was made (ibid., pp. 278-285). In its special inquiry into the matter, the BPC warned that the failure to display responsibility and self-control in such matters, and to adhere to the BPC's declaration in the full spirit would "inevitably lead to much greater legislative control on the conduct and content of the press". (See Press Council. 1983. *Press Conduct in the Sutcliffe Case*, para. 15.6. Press Council Booklet no. 7. London: Press Council). Other such attempts to evade the BPC's scrutiny were made by other editors, including David English, who, (somewhat ironically), was to become the chair of the PCC's code committee until his death, when Les Hinton took over the role in 1998.

of further statutory intervention.[62] Similar circumstances surrounded the development of a new declaration of principle for financial journalists in 1985.[63]

A major difficulty of the BPC during the 1980s was the fact that while it was supposed to perform as an 'independent self-regulator', it relied heavily on the support of the very press industry whose professional conduct it was expected to monitor. Keeping employers 'on board' whilst at the same time trying to retain the confidence of the public (and certainly politicians) of its effectiveness was a battle the BPC had fought during the 1980s, and eventually lost at the end of the decade. The more competitive the pressures were on press owners, managers and editors, the more difficulty the BPC evidently had in gaining acceptance for a formal written code of behaviour. That was until the late 1980s during which the abolition of voluntary self-regulation was increasingly a possibility.

The Press Council adopts a code of practice

By the late 1980s, the BPC itself stated that it was "acutely aware that the threat that a statutory alternative to the Press Council remained on the political agenda in Britain".[64] The future of the BPC itself as the press industry's self-regulatory body lay with whether it could prove its ability as an effective watchdog over professional standards with sufficient self-regulatory mechanisms in place. Thus, the BPC took immediate measures to show that voluntary self-regulation could be made to work. That a code of press conduct was a significant part of thereof was finally acknowledged; circumstances had forced a change in attitude towards the adoption of a formal code of practice.

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[62] As chapter two noted, the Contempt of Court Act (1981) was drafted amid the controversy about the conduct of the press in the Sutcliffe case.

[63] This was devised in June 1985 following parliament's receipt of a review of investor protection. The underlying motivation for the declaration is indicated in the preamble of the declaration itself: "[t]he Press Council considers it undesirable for the professional conduct of financial journalists to be subject to special statutory or government regulation. It believes however that there are generally recognised ethical obligations and restraints which should be accepted voluntarily by journalists who write or handle financial material and by the newspapers and magazines which employ them" (Press Council. 1991, op. cit., p. 250-51). In the same year the BPC published "Principles for the Press", an indexed digest of all its decisions from 1953 to 1984, as a means of making available its accumulation of case law. (See Paul, N. S. 1985. *Principles for the Press: A Digest of Press Council Decisions, 1953-1984.* London: Press Council.) When this was published, the intention was stated that it would be kept up to date (Cowen, Sir Z., op. cit., p. 10), although there is no evidence that this was carried out. Gibbons confirms that this digest was more of a "typology rather than a synthesis and did not appear to be used as an authoritative source in its decisions" (Gibbons, T., op. cit., p. 276).

[64] Press Council. 1990, op. cit., p.250-251.

In January 1989, the BPC's chair, Louis Blom-Cooper, set up an internal review committee to investigate the council's role and functions, the first major internal review the council had conducted since its inception in 1953.[65] The committee was to consider issues in relation to its aims, membership, and "the balance between its duties to preserve press freedom and uphold journalistic standards by dealing with complaints". A major consideration was whether the BPC should have a formal code of practice.[66] The review committee recommended a number of procedural improvements to the BPC, including the proposal that a code of practice be adopted. After discussions with the organisations of editors, journalists and publishers, a code of practice was adopted and promulgated by the Press Council in March 1990.[67]

The code's preamble highlighted the underlying motivation for this course of action: "Newspapers, periodicals and journalists have a duty to defend the freedom of the press in the interests of the public, and to resist censorship. Unethical conduct jeopardises this objective".[68] However, dismissing the promotion of press freedom as duty for a self-regulatory body, the Calcutt Committee recommended the abandonment of the council to be replaced with the PCC, recommending an improved code for the new 'complaints-only' body.[69] Thus, the efforts of the BPC were 'too little, too late'.[70] The development of a code as a final bid salvage any remaining credibility arguably hindered rather than aided the BPC in its cause. The BPC, which had been tolerated by the press until this point as for its ability to "avert criticism and avoid significant change",[71] was shown up to be little more than an apologist for the press and its repeated excesses.

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[65] ibid., p. 248.
[66] ibid., pp. 248-9.
[67] Press Council. 1991 op. cit., 243. The 16 clause code was intended to be used in conjunction with the existing declarations of principle on payments for articles, privacy, and financial journalism (see Appendix One).
[68] ibid. , p. 243.
[69] Home Office. 1990, op. cit., p. 57. London: HMSO. The code advocated by the privacy committee is contained in an appendix to the report alongside that of the NPA sub-committee for comparison. The industry largely welcomed the abolition of the BPC, hence the speed at which it withdrew its funding form the body and transferred its financial support to the PCC. This was undoubtedly the cause of much embarrassment to the body in view of its earlier proclamations in 1989 of the 'unanimous commitment' on the behalf of the industry to its self-regulator (Press Council. 1991, op. cit., p.340). This left the BPC unable to do little more than question, somewhat pitifully, "who, now, will perform the role of safeguarding the freedom of the press?" (Blom-Cooper, L. 1991., op. cit., p. 18).
[70] Curran, J., and J. Seaton op. cit., p. 296.
[71] Tunstall, J. 1996, op. cit., p. 400.

4.3 The development of an 'editors' code'

During the BPC's internal review, the Newspaper Publishers' Association (NPA) took measures of its own to pre-empt the spectre of statutory restraints, which further illustrate the degree that the imminent Calcutt report was taken seriously by the press. By the end of July 1989, a sub-committee of the NPA was formed, with Andreas Whittam-Smith (then editor of the *Independent*) as its chairman.[72] Following a series of meetings of the committee, which comprised newspaper editors of both ends of the newspaper spectrum, a decision was reached to formulate an 'editors' code of practice' with a system of in-house ombudsmen to support the code.[73]

For the effort to succeed at this crucial stage in the regulatory history of the UK press, it required the support of the leading proprietors. This was recognised by the committee, who sought to obtain the support of the industry's leading proprietors. Both Rupert Murdoch and Robert Maxwell were receptive to the idea of an editors' code,[74] which is not surprising given the hostility towards the press at the time. While a code of ethics was, under normal circumstances, seen as 'a constraint on press freedom', it was undoubtedly seen to be preferable to the statutory option. Thus, at a meeting held in December 1989 a five-point national press code, based largely on previous BPC adjudications, was approved.[75]

The development of the 'editors' code' was a milestone more for the fact that this was the first time all of Britain's national newspaper editors had collaborated in effecting an internal reform initiative than for the emergent code itself.[76] Overall, the code itself gave little indication otherwise with almost every clause and practice it claimed 'unacceptable' exempted by an ill-defined "public interest" (or 'get out') reference.[77] While an aberration from the complacency that had characterised press self-regulation in Britain thus far, the reactive nature of these measures cannot be

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[72] Press Council. 1989, op. cit., p. 249.

[73] Frost, C., op. cit., p. 189. This system was borrowed from the US and some Western European countries. As Snoddy observes, this development may have had the potential to develop into an important part of the self-regulatory process as a 'first filter for complaints' (Snoddy, R., op. cit., p. 198). However, the context in which this development occurred, as well as the fact that many newspapers have since disbanded with the idea with the view that complaints should be left to the PCC, now make this unlikely. (The *Guardian* is one notable exception).

[74] ibid., p. 150. Also contributing to Murdoch's support of the measure was the 'financial imperative' in promoting 'good behaviour' by the press; recent out of court settlements with such public figures as Elton John of £1 million would have most probably factored in this, as Snoddy observes (ibid., p. 150).

[75] ibid. , p. 151; and Tunstall, J. 1996, op. cit., p. 400.

[76] Snoddy, R., op. cit. p. 151; and Frost, C. op. cit., p. 189.

[77] See Home Office. 1990, op. cit. for a critique of the NPA's code.

ignored. It is difficult to see the NPA's efforts as any more than an attempt to soften the impact of the Privacy committee's proposals for reform.[78] Frost concurs; "[o]ne of the main reasons for this was the avoidance of legal control rather than any real attempt to clean up their act".[79]

Indeed, that the NPA expressed little concern about the possibility that its actions could be seen to undermine the BPC reflected more of a commitment to staving off the statutory option than it did to effective voluntary restraint.[80] This undoubtedly influenced the 1990 Calcutt Committee's conclusion that the BPC, ultimately because it lacked the necessary authority, should be replaced with a new self-regulator. Thus, the PCC was established in 1991 in the form and with the functions proposed by the 1990 privacy committee.

4.4 The PCC's code of practice: 1991 and beyond

Following the 1990 report of the Calcutt committee, numerous MPs had issued warnings to the effect that the press was 'drinking in the last chance saloon'. It had become quite clear by this stage that an effective code of practice, as the keystone of the new system of self-regulation, would be the essence of that 'last drink'. As Snoddy contended,

> [t]he lack of an agreed code until it was too late can, in retrospect, be seen as one of the reasons why the Press Council failed. The future of the new system of self-regulation under the Press Complaints Commission now depends to a considerable extent on whether newspapers respect the code they have agreed to.[81]

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[78] Gibbons, T., op. cit., p. 280.

[79] Frost, C., op. cit., p. 189.

[80] Snoddy notes that while the editor of the *Guardian*, Peter Preston, had some reservations about developing a code independently of the BPC, Whittam-Smith (who chaired the NPA sub-committee) argued that given the present state of affairs the NPA had to "look after its own"; the BPC would soon "fall into place" (Snoddy, R., op. cit. p, p. 150-151). However, Louis Blom-Cooper, the last chair of the BPC maintained that the BPC had been "starved of funding and seriously undermined by prominent figures among the national newspapers", isolating Whittam-Smith in particular as attributable for the BPC's demise, (Hodgson, F. W., op. cit., p. 165).

[81] Snoddy, R. op. cit. 1992, p. 197. A similar point was made by the first chairman of the PCC in September 1991. The code's observance was crucial; "on this the continuation of self-regulation will depend", (Lord McGregor cited in Snoddy, ibid., p. 113).

The PCC's code of practice was based on the codes drawn up by the BPC, the NPA sub-committee, and that suggested by the privacy committee.[82] The final draft was circulated to the trade associations and the new chairman Lord McGregor of Durris for approval, which was accepted without major alteration by the time that the PCC began operation in January 1991.[83] Praising these efforts, Stephenson dismisses claims that "...the industry have not listened to outside criticism and suggestions".[84] However, there were indications otherwise.

The report of the 1990 Calcutt committee had stated that the PCC should "*itself* publish, monitor and implement a code of practice".[85] Instead, the PCC's code committee comprised of various newspaper editors united by the common objective of deflecting the threat of statute proceeded to draft a code not dissimilar to those which the BPC, and the group of editors had each drawn up. The initiatives of both the BPC and the NPA had already been criticised by the 1990 privacy committee as being "too vague and without sufficient guidelines for the working journalist", with "too little explanation given as to what was, or was not acceptable in terms of intrusion of privacy".[86]

That the PCC code was not formulated in the spirit of the 1990 privacy committee's proposed draft was the target of considerable criticism, with many of the committee's proposals seen to be significantly diluted.[87] However, the industry maintained that there was "no conscious effort to soften the code, but simply to make it more practicable and relevant".[88] As Stephenson explained:

> Where there are specific differences between [the PCC code] and the draft proposed by Calcutt 1, the reason is that the industry and the Commission

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[82] See Appendix to Calcutt, D., op. cit. The establishment of a code committee was to become an integral part of the PCC's formal procedure for revising its code of practice. It has to date comprised of a chairperson and senior editors from across the industry. The committee meets three times a year to review representations from members of the pubic about possible changes to the code, which the chair and director of the PCC attend also (The Press Complaints Commission. 1996b. Report by the chairman of the Code Committee Sir David English for 1996. Online: The PCC. Available: http://www.pcc.org.uk/96/codechai. htm. 14 April 2000).

[83] Calcutt, D., op. cit., para. 3.42, p. 17.

[84] Stephenson, H. op. cit., p. 21, para. 5.7.

[85] Calcutt, D., op. cit., para. 3.42, p. 17 (italics in original).

[86] Whittam-Smith retorted that the code proposed by the 1990 Privacy Committee had given "too little weight to the public interest in publishing news that the persons concerned did not wish to see published", (Calcutt, D., op. cit., p. 3.6, para. 11).

[87] Gibbons, T., op. cit., p. 281. That the PCC code sufficiently dealt with the issues of privacy and right of reply (which Calcutt 1 had suggested legal remedies for) was crucial as a means of proving that these proposed new press laws did not need to be enacted. However, as chapter seven illustrates through a content analysis of the current PCC code, this is questionable.

[88] Calcutt, D., op. cit., para. 3.62, p. 20.

have considered them and do not accept the Calcutt arguments as being in the public interest or in the interests of good journalism.[89]

The 1993 Calcutt report: An incentive for revision of the PCC's code

In spite of the arguments mounted to combat the criticism of the PCC code, there were early indications on that the PCC code was an insufficient self-regulatory mechanism, particularly in relation to the issue of press intrusion into privacy.[90] The first major adjudication of the PCC concerned a complaint made by a Labour MP who accused the editor of the *News of the World* of invading her privacy through the publication of matters concerning her private life.[91] The particular irony with this was that the editor of the newspaper concerned had been a member of the code committee who devised the code for the PCC. This was not a good look for the press at a time when it was trying to demonstrate the validity of voluntary restraint via the industry's new code of practice.

Perhaps not surprisingly then, the PCC was roundly condemned in the 1993 Calcutt report. That the PCC code had not been developed in the Calcutt 1 was a view that underpinned Calcutt 2's central criticisms. Having been formulated by the industry, in the interests of the industry, the PCC code was judged to be "over-favourable to the industry",[92] It was on these grounds that Calcutt advanced the closure of the 'last chance saloon'. Proposing a statutory code of practice, which would "need to cover the extent to which journalistic intrusion into the lives of members of the royal family and others was justifiable", and "reflect the principles

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[89] Stephenson 1994, para. 5.8, p. 22.

[90] There had in fact been some minor amendments to the code by this time. These included the re-wording of clause 10 on 'payments for articles', and an additional paragraph inserted into the code's preamble concerning the re-printing of the commission's adjudications. Draft proposals on the issue of financial journalism were being considered at the end of 1992, to appear in the code in 1993.

[91] Discussed further in Snoddy, R., op. cit., pp. 109-111; and Robertson, G., and A. Nichol, op. cit., pp. 535-6. The PCC was further discredited in 1992 after it severely criticised newspapers who were re-printing extracts of Andrew Morton's biography of Princess Diana under highly sensational headlines. Lord McGregor reprimanded "sections of the press for dabbling in the stuff of other people's souls" only to find out later that Princess Diana had co-operated with Morton in the production of the book. Indeed, a lack of press co-operation with the PCC was perhaps illustrated by the inclusion in May 1992 of a 'reminder' in the PCC code's preamble that editors were obliged to publish critical adjudications 'in full and with due prominence'. Cause for further scepticism about the PCC came in 1993 in the context of the 'Di spy' case outlined in chapter two above (p. 67, note 134). A public falling-out between the PCC and MGM newspapers about the case saw the group (temporarily) withdraw its newspapers from the commission. These incidents were reminiscent of the Gordon Kaye episode that occurred when Calcutt 1 was sitting in 1989-90 (refer chapter two, p. 61, note 109) and did little to prove the viability of self-regulation.

[92] Calcutt, D. op. cit., p. xi.

underlying the proposed criminal offences" proposed by the 1990 committee,[93] this threat provided an impetus for a revision of the PCC's voluntary code.

Just as press intrusion into privacy was the theme of the 1993 Calcutt report on the future of press self-regulation, it was, not surprisingly, the issue on which the post-Calcutt 2 amendments to the PCC code were centred. In March 1993, a new clause on 'listening devices' was formed, which ruled out the publication of material obtained by using "clandestine listening devices or by intercepting telephone conversations" unless "justified by the public interest".[94] Later in 1993, a definition of 'private property' was incorporated on which entry to obtain material for publication was ruled "not generally acceptable".[95]

In May 1993, the funding body of the PCC, Pressbof, published a report of its own entitled *Strengthening of Self-regulation.* The report listed a range of measures designed to instil public confidence in the PCC, and to ensure the "serious application of the newspaper and periodical industry's Code of Practice".[96] In addition, the code was now to be kept under continuous review by the code committee, as earlier advised by Calcutt 2. The PCC itself had acquired a new independent chairman. Lord Wakeham had arrived to the post at a good time for the press. As a former 'political fixer' for the Thatcher government, Lord Wakeham was well received the industry as a good candidate for 'fixer of the press' and the criticisms of self-regulation.[97]

A further development concerning the PCC code can be understood in view of Calcutt's criticism that the code had been formulated by the industry, instead of by the PCC itself. As the point had been raised in 1992:

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[93] ibid., para. 6. 9, p. 46. As chapter two noted, these included entering private property without consent to gain material for publication, and the placement of surveillance devices on private property, photographing, or recording of voices, on private property with a view to publication and an intent that the individual(s) concerned are identifiable.

[94] In the background was also the criticism of the 'Squidgy episode' which had occurred in the meantime.

[95] The definition of 'private property' given in the code was also amended in October 1993, and later in February 1995 (Frost 2000, p. 195), as noted below. Additional amendments to the PCC code are listed in Appendix One.

[96] Press Standards Board of Finance, 1993. *Strengthening of Self-regulation.* May 1993. London: PCC. Included in the proposals was the notion of a privacy commissioner, who would deal solely with complaints to the PCC about privacy intrusion, which was enacted in January 1994. Lay membership was increased to eight non-press members in relation to seven editors. Presbof's report proposed a number of other suggestions, which, in one way or another were simply reiterations of earlier recommendations made by Calcutt 2 and the 1993 National Heritage select committee, outlined in chapter two.

[97] The appointment of Lord Wakeham to chair of the PCC might be seen to mark the beginning of a period similar to the 'King-Thomson consensus' of the 1960s when Lord Devlin chaired the BPC referred to in chapter two (p. 56, note 77).

> The PCC makes great play of the fact that it enforces a code that it did not draft. It is not clear why it imagines this to be a good thing; the Code deliberately obscures several important Calcutt provisions and, in any event, was drafted by a committee chaired by the editor of the *News of the World.*[98]

In 1993, the PCC sought to appease the concerns that a code devised by the industry was thus 'over-favourable to the industry'. From June 30 1993, the PCC would ratify any alterations to the industry's code it operated in order to ensure wider public confidence.[99] A procedure was established to resolve any differences between the PCC and the industry, which was utilised in the 1993 code amendments.[100]

Because circumstances had forced the PCC to accept this as a weakness as pointed out by Calcutt 2, the PCC's could no longer legitimately claim its strength lay in the fact that it's code was 'framed by the industry for the industry'. In spite of this, the PCC still attempted to maintain its claim, if only to placate any fears within the industry that it would use this power of final say in a draconian manner, as well as those that the PCC would not effectively exercise them. In its annual report for 1995 it stated that

> The Code is, crucially, the industry's own Code. Although it must be ratified by the independent PCC to take effect, it is the fact that the Code is drafted by the industry practitioners for the industry that ensures the unswerving commitment of all sectors of the newspaper and magazine publishing press to self-regulation.[101]

The difficulties that the prevailing market conditions and competitive pressures created for the 'serious application' of the PCC code were also explicitly acknowledged. A number of national editors, in attempt to justify breaches of the code (particularly its privacy clause) had cited the existence of "pressures from above; commercial pressures" on editors to break the code.[102] Some expressed the view that editors should be covered by the code also and the PCC thus sought to ensure that the code was included in the employment contracts of journalists and editors. This was an effort to address the problem of adhering to the code and thus being put at a 'competitive disadvantage'. Although the implementation of this idea took some time,

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[98] Robertson, G., and A. Nichol, op. cit., p. 529.
[99] Hodgson, F. W., op. cit., p. 66.
[100] Stephenson, H., op. cit., para. 5.8-5.9, p. 22.
[101] Press Complaints Commission. 1995, p. 11. *Annual Report, 1995.* London: The PCC.
[102] O'Connor, R. 1993a, p. 15.

by 1996 the PCC claimed that the majority of senior editors in the UK had the PCC code written into their contracts of employment.[103]

A striking feature of the code operated by the PCC as it had evolved over the last decade is the fact that it "...has had to be updated with each new public crisis of confidence in the credibility of self-regulation".[104] This was the context in which the PCC and its code originated, with both evolving in a similar vein over the last decade. As it is widely argued by the industry and the PCC, this is evidence that self-regulation 'responds to public concern'.[105] However, others may take an alternative view that press self-regulation in Britain reacts to the possibility of external intervention and legislative control. Indeed, this was the context in which later code revisions took place.

The Government's 1995 response to the question of press regulation: An incentive for further code reforms

It is noteworthy that while the Blair Government stated that it 'strongly preferred the principle of self-regulation' over statutory restraint, there was an implicit ultimatum given to the press. Either the existing system of voluntary restraint be strengthened, particularly in the area of privacy, or the possibility of legislative control could ensue. As the Government had emphasised, "... the right to privacy should be more explicitly spelt out in the industry's code of practice".[106] However with the threat of legislation temporarily alleviated, it is not surprising that the amendments to the PCC code were minimal, with merely the wording in four clauses

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[103] Press Complaints Commission. 1996a., op. cit. Others suggest that while the code may be in a number of editors' contracts, it is more a myth that it is included in those of journalists (Gilmour, M., op., cit., p. 44).

[104] Jempson, M. 2000. PCC finds editor guilty of code breach. Press Wise Bulletin 16. 11 May 2000. Online: Press Wise. Available: http://www.presswise.org.uk/bulletinarchive.htm#Bulletin%20No% 2016. 23 June 2000.

[105] The reform of press self-regulation under the PCC following Calcutt's and the DNH's 1993 reports, at the least went some way to legitimate the Government's interim response which dismissed the notion of statutory control of the press. Indeed, in May 1995, the PCC had made some further amendments to its code in view of the pending government report. The definition of 'private property' was expanded from the previous version 'any private residence, together with its garden and outbuildings, but excluding any adjacent field or parkland' to incorporate in 1995 'and the surrounding parts of the property within the unaided view of passers-by'. (See Appendix A to this thesis). However, as chapter two pointed out, the Government's adversity to the notion of state control of the press was largely to do with ideological factors. Hence, the government's emphasis was on the view that legislative control of the press would be a significant departure from the 'traditional approach' to press regulation in the UK and would thus be of considerable 'constitutional significance'. This differed to Calcutt's stance (among others) who, departing from the status quo, proposed 'solutions' to the problems of press performance on practical grounds, namely to combat privacy intrusion.

[106] *House of Commons Debates*. 17 July 1995, vol. 263, columns 1524-25. London: Hansard.

altered.[107] In spite of the Government's advice, the more general right to privacy, to whom it would apply, and under what circumstances, was not addressed by the revision. The notion remained confined to the precept that intrusions, inquiries and the use of long-lens photography to obtain information or pictures of people on private property without their consent were "not generally acceptable" unless justifiable in the "public interest".[108]

The spectre of legislation on 'chequebook journalism' and the 1996 amendments to the PCC code

Chapter two highlighted that it was not long after the Conservative Government's reaffirmation of press self-regulation that further questions were raised about the ability of the PCC and its code to regulate journalistic conduct. Newspaper payments to witnesses in a high profile court trial during 1995-6 brought further parliamentary criticism and subsequent proposals for statutory restrictions on chequebook journalism. The PCC argued that there had only ever been a small number of incidents that the proposed legislation sought to address, yet it was in response to this threat that the 1996 amendments to the PCC code's 'payments to witnesses' clause took place.[109]

Calls for privacy legislation and the 1997 revision of the PCC code of practice

In 1997, the PCC code underwent the most significant revision to date. As the previous chapter highlighted, the death of the Princess of Wales spurred both public

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[107] These changes were made in 1996 and were based on those recommended in the Government's white paper 'Privacy and Media Intrusion' (Press Complaints Commission.1996b., op. cit.).

[108] Problems with adherence to the revised code's privacy provisions became apparent soon afterward. Following a series of publications which invaded the privacy of members of the royal family (see Munro, C, op. cit., p. 7) the PCC was forced to admit (albeit implicitly) that the existing 'public interest' definition offered by the code was able to be manipulated by newspapers. A memorandum was issued to editors in October 1996 cautioning against the overuse of the 'public interest' defence in justifying breached of the code of practice, which could undermine effective self-regulation, and, indeed, it public credibility. Seven 'public interest tests' for a breach of the code to editors, which the PCC would apply assessing a public interest defense for invasion of privacy and other breaches of the code (Press Complaints Commission. 1996a. op. cit.).

[109] The previous version of the PCC code required that trial witnesses (actual or potential) or their associates could only be paid in exchange for their stories when in the 'public interest' defined by the code. The clause on the subject was amended in 1996 to distinguish between payments to criminals and payments to witnesses (see Appendix Two). The PCC's code committee stated that the amendments were "designed to introduce transparency into the making of such payments by the press" (Press Complaints Commission. 1996a, op. cit.). However as chapter two noted, there are current legislative proposals to restrict the practice of chequebook journalism in the context of criminal trials.

and parliamentary outcry.[110] The possibility that statutory restraints in the area of press intrusion would be enacted was at an all time high. Thus, the efficacy of the PCC code was called in to question again, providing an incentive for further revision.[111] The 1997 amendments to the code were the result of an 'urgent review' into the issue of harassment and intrusion undertaken by the PCC in September 1997. As the code committee report for the year itself stated,

> Public opinion following the death of the Princess was telling us loud and clear that we needed to look at our laurels – and ensure that our own rules on privacy and harassment were as tough as they should be. We listened and acted – and did so with the speed that statute or judge made law never could.[112]

The outcome of the 'urgent review' was that for the first time, the code specified that the right to personal privacy was a right that should be accorded to "everyone",[113] presumably regardless of an individual's fame or notoriety, (although this latter provision was not made explicit).[114] The previous definition of 'private property' was also expanded, with the taking of pictures of people in private places without their consent altered from 'not generally acceptable' to 'unacceptable'.[115] "Private places" were re-defined as any "public or private property where there is a reasonable expectation of privacy", which the previous versions of the code had not acknowledged. Other amendments reflected more directly the Paris events from which they largely arose. The 'persistent pursuit' of individuals was ruled

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[110] An interesting pint was made by Stephenson and Bromley that "[t]he extent of spontaneous mass public mourning which followed [the death of Princess Diana] suggested a potential for a far wider active citizen participation in making the press answerable for its actions and philosophy in covering public figures. Whether, ultimately, this potential would be realised remains an open question", (Stephenson, H., and M. Bromley, op. cit., p. 9).

[111] This said, the PCC itself stated (somewhat defiantly) in its annual report for 1997, "we continued to improve and tighten the code even before the events in Paris. Many of the Code changes ratified in November 1997 dealt with areas on which the Commission had been working on throughout the year" (Press Complaints Commission. 1997. Review of the Year: 1997. Online: The PCC. Available: http://www.pcc.org.uk/97/review.htm. 3 July 2000). These issues included the treatment of children in the public eye, discrimination on grounds of mental illness and the problem of 'media scrum', with which the newly-implemented Protection from Harassment Act aimed to address in part as noted in chapter two.

[112] Press Complaints Commission. 1997. Report by the chairman of the Code Committee for 1997. Online: The PCC. Available: http://www.pcc.org.uk/97/comrep97.htm. 17 September 2000.

[113] This was based on the definition of privacy given in the newly incorporated ECHR.

[114] This issue is considered further in chapter seven below.

[115] This was in line with the replacement of 'should not' with the stronger form 'must not' throughout the code although clauses marked with an asterisk may be overridden with a legitimate public interest defense, as broadly defined in the code. (See Appendix One).

unacceptable as was obtaining of information or pictures through 'intimidation or harassment' unless in 'the public interest' defined in the code.

The theme of privacy, particularly of public figures, extended to amendments made to the clause on children, perhaps anticipating future media interest in the young Princes of Wales.[116] The code was amended to state that all young people should be "free to complete their time at school without unnecessary intrusion".[117] In addition, the code was amended to state that "pupils must not be approached or photographed while at school without the permission of the school authorities". The code also ruled out "payments to minors for material involving the welfare of the child, nor payments to parents or guardians" for such information, unless "demonstrably in the child's interests".

The code's new definition of the 'public interest' acknowledged the particular vulnerability of children, which was altered to read "in cases involving children editors must demonstrate an exceptional public interest to over-ride the normally paramount interests of children". In addition to these changes, the existing clause on intrusion into grief or shock was augmented. Previously, the clause had dealt only with intrusion into grief or shock in relation to the gathering of information. This was extended to the publication of stories at such times, which "must be handled sensitively".[118]

The preamble to the PCC code was also reworked in 1997. Both editors and publishers were now to ensure that the code was 'observed rigorously' by both their staff, as well any other contributors to their publication. Never before had the code explicitly placed responsibility on publishers to ensure that the press observed the code. This was perhaps in part an acknowledgement of the often conflicting requirements put on the press by publishers that may militate against adherence to the

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[116] Undoubtedly, this was in the context of the potential problem press coverage of the sons of Princess Diana had for press self-regulation in the future, and in response to incidents that had previously occurred; for instance, the attention given by the media to Prince William when he began attending Eton College in 1995.

[117] Previously the code had afforded this protection to those under the age of 16.

[118] This change was perhaps driven by an acknowledgement of the potential impact coverage of Princess Diana's death could have on members of the royal family, particularly her young sons and the potential public outcry if not respected. Advances in technology utilised by the press were accounted for in the 1997 revision. The clause on accuracy was altered so as to confront (albeit implicitly as chapter seven discusses) the potential for digital manipulation of images. The publication of discriminatory material was another area considered in the 1997 revision. Discrimination on ground of mental illness was not permitted by the 1997 version following discussions on the issue between the PCC and the Department of Health and the Mental Health Act Commission (Press Complaints Commission. 1997, op. cit.).

code discussed previously in this thesis, and the powerful role of this group in ensuring the success of press self-regulation more generally. These amendments were ratified by the PCC on the 26th of November 1997, and came into effect in January the following year.[119]

Remarking on these amendments the chairman of the code committee stated that

> The new code is a demanding one – in letter and spirit. But it is also a realistic one. All editors know how important it is to them, what lengths they go to in order to stick to it, and what happens on those rare occasions when they step outside of it. Our task in 1998 and in the years beyond is to prove that to the public, and show them we mean what we say.[120]

These comments embody a dual interpretation. Certainly, they may be taken at face value; that is, that the 1997 alterations were seen as a genuine attempt to maintain the highest standards of professional conduct in the British press. Nonetheless, one can certainly question whether, if the ensuing code was deemed so 'realistic', then why did its implementation take such a degree of public and parliamentary criticism of the press as that demonstrated in the aftermath of Princess Diana's death? Why did the industry not act on earlier criticisms of the nature of its code, or better still pre-empt them? Privacy intrusion was clearly a central 'ethical problem' in the British press if the number of previous parliament-initiated inquiries and parliamentary Bills concerned with the issue were anything to go by. In spite of repeated recommendations that the industry tighten self-regulation in this area, it took until 1997 to do so.

Questions can also be raised about the claim of the code's 'importance to editors'. Based on an assessment of the processes and pressures that underpinned the 1997 revision (along with many of with those enacted previously) the code's 'importance' is arguably on a level not entirely compatible with the ethical motivation of a code of practice. Rather than evolving in the genuine spirit of professionalism and as a means of promoting the highest the ethical standards in the press, the PCC code appears to have evolved fundamentally as a means of protecting the press from statutory restraint. As Petley suggests of the code's 'importance' to the UK press: "...

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[119] After 1997, the scope of the PCC's code's application was extended to the Internet versions of UK magazines and newspapers (Press Complaints Commission. 1997, op. cit.).

[120] ibid. That the industry 'meant what it said' was certainly questionable in view of the two high-profile cases involving the children of Prime Minister, Tony Blair, concerning their right to privacy referred to in chapter two (p. 77, note 177).

[it] manifestly does not and cannot seriously be regarded as anything other than the newspapers' insurance policy against the threat of statute".[121]

The 1999 changes to the PCC code of practice

The most recent changes to the PCC code do little to contradict the above contention.[122] The 1999 amendment occurred in response to a parliamentary initiative, the Youth Justice and Criminal Evidence Bill 1999.[123] The Bill was designed to acknowledge the vulnerable position of child victims or witnesses of crime. However the possibility further reportage restrictions via the Bill prompted much concern from within the press. Like the outcome of earlier Bills relating to issues of privacy and press freedom, the 1999 Bill was amended to meet the concerns of the press.[124] This came in exchange for a guarantee that its existing mechanisms for voluntary restraint would be tightened to cover the areas at which the proposed statutory restraints were directed.

The 1999 changes to the PCC code centred upon clause 10 (renamed 'reporting of crime' from its previous title 'innocent relatives and friends'). New requirements concerning child victims of, or witnesses to, crime were incorporated. That "particular regard should be paid to the potentially vulnerable position of children" in such circumstances was acknowledged in the code, although is it followed by the statement that this provision "should not be interpreted as restricting the right to report judicial proceedings".[125] A minor amendment was also made to clause 7 of the code. The provisions relating to 'children in sex cases' now are subject

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[121] Petley, J. op. cit., p. 156.

[122] No amendments were tabled to the PCC code of practice during 1998 (Press Complaints Commission. 1998c. Report of the Code Committee 1998. Online: The PCC. Available: http://www.pcc.org.uk/98/ coderep.htm. 17 September 2000).

[123] These were the origins of the 1999 amendment noted by Lord Wakeham himself, although presumably under a guise of 'responding to public concern', as well as developments on the legislative front. (Press Complaints Commission. 1999b. 'Wakeham welcomes changes to editors's Code of Practice'. Press Releases 21 January 1999. Online: Press Complaints Commission. Available: http://www.pcc.org.uk/ press/detail.asp?id=32. 14 January 2000). In fact, section 158 of the 1999 Act's predecessor (the 1988 Criminal Justice Act) itself arose out public outrage over the publication of a rape victims details (Robertson, G., and A. Nichol, op. cit., p. 535).

[124] The amended Bill draft Bill recognised the concerns of the media that aspects of the original Bill would unduly hinder news reporting that involved children (Dodd, M. 1999. 'The Bill that would put these stories off limits'. In *UK Press Gazette*, 15 January 1999, p 14). Statutory defenses were also added to the bill for the media where publishers and editors could have been prosecuted for contravening its provisions (Greenslade, R., 1999. 'New bill shows its clause'. Guardian Unlimited, Monday February 22 1999. Online: The Guardian. Available: http://www.guardianunlimited.co.uk/ Archive. 4 July 2000).

[125] That the clause is also captured by the code's applicability 'public interests defence' might be seen to further undermine its provisions.

to the 'public interest' defence of the code.[126] This was reportedly tabled so as to correct an anomaly present in cases where a judge rules that identification of a child would be in the public interest previously not acknowledged by the code.[127] These changes were ratified by the PCC on December 1 1999, and operative from January 2000.

In the 1999 revision, the definition of the 'public interest' given in the code (which now may be invoked to defend a breach of eight of the sixteen clauses in the code) was augmented. The third of the now four provisions reads "there is a public interest in freedom of expression itself. The Commission will therefore have regard to the extent to which material has, or is about to, become available to the public".[128] This change was considered important for all newspapers as it "recognised for the first time the public interest in freedom of expression itself in the code".[129] It may be questioned whether this extension does not also reflect the desire on behalf of the PCC to legitimate any apparent tightening of the code to certain sectors of the press, who may be reluctant to see their 'freedom being whittled away' by the code. Of course, any disinclination on behalf of the press to effect these changes in practice will have ramifications for the authority of the PCC and credibility of press self-regulation itself.

4.5 The future potential for print media codes of practice in Britain

From an assessment of the context from which the PCC code has evolved over the last decade, some conclusions might be drawn about the potential role of ethics codes in the British press for the future. It is apparent that the numerous efforts from within parliament to promote 'social responsibility' in the British press have not been

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[126] Press Complaints Commission. 1999c. Report by the chairman of the code committee Les Hinton for 1999. Online: The PCC. Available: http://www.pcc.org.uk/99/code_committee_report.asp. 17 September 2000.

[127] Press Complaints Commission.1999d. Annual Report. Statistics and review of the year 1999. Online: The Press Complaints Commission. Available: http://www.pcc.org.uk/99/statistics_review.asp. 5 January 2000.

[128] This change mirrors the 'public domain' defense in clause 12 of the Human Rights Act 1998, overviewed in chapter two (ibid.). Hence, the PCC took the opportunity to enshrine in its code 'the importance of freedom of expression' also (Press Complaints Commission. 1999d, op. cit.). This is in spite of the fact that the promotion of press freedom was a duty expressly excluded form the PCC's remit in the 1990 Calcutt Committee's report, as noted in chapter two.

[129] Press Complaints Commission. 1999b, op. cit. At present (February 2001), the PCC is considering changes to its clause on financial journalism following an adverse adjudication on share tipping uncovered on one national newspaper (Press Complaints Commission. 2001c., op. cit.).

widely embraced within the press. As evidenced by the nature of internal reform of press self-regulation since 1953, the evolution of self-regulatory codes highlights a tension between a view of codes as an unnecessary restraint on 'press freedom' and one which holds that an effective code is a pre-requisite for effective self-regulation. While a compromise may have been reached through the last amendment to the PCC code, it is thus likely that before long the scales will tip once again with the next 'scandal' that attracts parliamentary concern.

In this respect, the evolution of self-regulatory guidelines within the British press differs from the development of the NUJ's code of conduct in 1936. As an internally inspired initiative, the development of the NUJ code can be seen to resemble more closely the 'genuine spirit' of social responsibility theory than can the efforts of both the former BPC and the PCC. These differences can perhaps be explained with reference to the role occupied by the NUJ within the British press. The NUJ was not a formal press self-regulator with a 'case to prove' to either the public or parliament that the principles of voluntary restraint indeed can be shown to work. Its jurisdiction covered only the 'working journalist' and thus was able to avoid some of the difficulties the BPC and PCC have faced. As chapter six explains further, the broader context in which a self-regulatory body is positioned, where the fickle support of press proprietors tends to wane at the very times self-regulation crucially depends on it, has implications for how press self-regulation, and self-regulatory codes evolve in Britain.

Therefore, it is apparent that the current journalistic culture creates difficulties for the application of voluntary codes of ethics irrespective of the issuing body. It is in this culture that complacency as the 'enemy' of the self-regulation of ethical and professional standards is reared, with negative repercussions for the genuine application of codes of ethics. Texter reinforces this contention:

> Ethical principles are not simply up against reluctant or immoral journalists, but rather they are continuously put to the test by the harsh realities of the press whose frame of reference has become a commercial one ... the margin for the application of a code of ethics has been reduced to its narrowest expression by the economic guidelines to which it is subordinated.[130]

[130] Texter, C., op. cit., p. 58. (Texter was in fact referring to the French press, though arguably this remark is just as applicable in the British context in illuminating the role of print media ethics codes therein).

As discussed in chapter six, underlying this difficulty is the tension between the commercial role of the press with profit-making objectives, and the social role of the press with 'social responsibilities'. So long as this conflict remains overlooked in the UK, the role and functions of print media ethics codes appears limited at best. Arguably, the limited ethical force of the PCC code is corroborated by the continuation of the behaviour that the code's provisions rule against. Yet, the PCC continues to defend press self-regulation and in doing so the more 'dubious' press conduct as part of the 'price we pay for a free press'. Therefore, it is certainly questionable whether the PCC can function, at present or in the near future, as more than an apologist for the press, operating a code of practice that is evidently little more than apocryphal. Whether these conclusions can be drawn about the New Zealand experience is the central theme of the following chapter.

CHAPTER FIVE

The evolution of print media codes of ethics in New Zealand

> The British Press Council has been under fire because the British press has been under fire. Recent steps to reform the Council and to change its procedures have gone hand in hand with a parliamentary challenge to the British press to put its house in order or face what it fears, the imposition of statutory controls. In New Zealand, circumstances are different. With a few exceptions, our press is not given to the shortcomings that have aroused concern and condemnation elsewhere.[1]

This comment, made in 1991 by former NZPC member Tom Larkin, captures the overall character of the evolution of journalistic codes in the New Zealand context. The reference to the British case provides a useful starting point for this chapter. As chapter three illustrated, the New Zealand experience of press self-regulation has been a great deal less turbulent than the British experience. However, this itself has impinged on the nature of the development of ethical guidelines by the print media as the following aims to highlight. In doing so, this chapter argues that the conclusion drawn of the evolution of self-regulatory codes of the British press can be applied to the New Zealand case, albeit in reverse. That the comparatively slow progression towards the adoption of codes by the New Zealand press can be understood with reference to the lack of parliamentary scrutiny of press standards is the central theme of this chapter.

The first part of this chapter is dedicated to a discussion of the efforts of the New Zealand Journalists' Association (NZJA), as it was initially called, to implement a code of ethics. The main intention of this aspect of the New Zealand case is to ascertain how the pressures and processes involved in the adoption of an ethics code compare with the experience of the NUJ. In doing so, the possible reasons why the NZJA did not in fact adopt a code until after six decades of operation, compared to the relatively early initiative of its British counterpart, are considered in particular.

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[1] Larkin, T., cited in NZPC. 1997, op. cit., p. 6.

The ethical standards of the New Zealand press: Early attitudes

Early accounts of the professional standards of the New Zealand press differ markedly to those of the British press. Where as early as the 1930s the British press was increasingly being charged with privacy intrusion, distortion, inaccuracy and sensationalism, in New Zealand both the methods of newsgathering and the output of the press were seen to be of a high ethical standard. In 1958, the president of the NPA, S. D. Smith, maintained that "[t]he standard of our press is praised frequently by visitors, and in all modesty we can accept that praise, knowing that we...strive to maintain a high standard of ethics".[2] Pointing to the difference between the New Zealand press and other comparable countries, the 1962 anniversary publication of the NZJA concurred:

> There have been some hair-raising examples in Australia and Fleet Street of breaches of any reasonable code of ethics...But the proud, and plain, fact is that these things don't seem to happen in New Zealand...The complaint is sometimes the other way round—that safe in their monopoly—the newspapers are not trenchant enough, especially in their leading articles, are too milk-and-watery in their politics.[3]

As chapter three pointed out, the difference between the market conditions can be correlated to differing perceptions of the ethical standards of the print media in Britain in relation to that of New Zealand over the twentieth century.[4] This, in turn, allowed the New Zealand press to operate without the degree of government

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[2] Smith, S. D. 1957, p. ix. 'Foreword'. In Scholefield, G. H. *Newspapers in New Zealand.* Wellington: A.H. and A. W. Reed.

[3] New Zealand Journalists' Association. 1962, p. 63-64. *The New Zealand Journalists' Association, 1912-1962.* Wellington: The NZJA, Huddard Building. Certainly, it may be a valid contention that on both counts these comments came from within the New Zealand press industry itself, and are thus perhaps mask any external criticism that may have been directed towards its own professional standards. However, in comparison with the degree of external criticism of the British press (which often came from within the press itself, the NUJ in particular) these comments represent the wider picture of public and parliamentary opinion at the time. On an international level, the ethical standards of the New Zealand press evidently have been comparatively high based on accounts given in existing records from outside of the industry.

[4] While the overall lack of competition in the New Zealand press was seen to foster difficulties of its own, namely a general lack of incisiveness in newspaper journalism as chapter two highlighted, the prevalent market conditions allowed for the maintenance of comparatively high ethical standards. Indeed, the tabloid style of newspapers notable of the British press, which were borne out of the commercialisation of the British press in the mid-nineteenth century, did not generally make their way to the New Zealand scene. The New Zealand *Truth* was perhaps the closest exception to this and was the target of some criticism, for instance in the events leading up to the establishment of the NZPC in the mid-1960s and early 1970s, as was overviewed in chapter two.

interference characteristic of the regulatory history of the British press.[5] Thus, press self-regulation has evolved in divergent contexts in the two countries. In New Zealand, the comparative absence of the pressures that faced British press may account for why the adoption of a code of ethics did not figure centrally on any policy-making agenda of the press in this country until comparatively late in the twentieth century. This might be what one calls a 'don't fix what ain't broke' approach to the internal regulation of ethical and professional standards. Indeed, the first code of ethics to appear in New Zealand was some thirty years later than in the UK.[6]

5.1 Journalism ethics and the New Zealand Journalists' Association

The context in which the New Zealand press operated during the first half of the twentieth century before a code of ethics emerged, or self-regulation was formalised, was one in which there was little external criticism directed at the ethical standards of the press. This said, it was clear that the NZJA did not completely overlook all matters of an ethical nature in the area of journalistic performance. Professional and ethical issues were frequently debated at the meetings of the NZJA, with its monthly bulletin keeping its members up-to-date with both developments at

[5] This said, there were calls from within the public for the establishment of a press council-type body as early as 1949 (the year the first royal commission reported in the UK) as chapter two indicated, as well as a newspaper code of ethics in the 1960s discussed below.

[6] It has been suggested that the first New Zealand journalism ethics code probably existed as early as the 1920s or 1930s. This claim was based on a view that because New Zealand was a leader in the area of journalism training in relation to Australia and the UK, it was probably also in the area of ethics codes (Tucker, J. 1998. Critical Issues in the Media. Media Ethics Two: Codes. 24 August 1998. Online: School of Communication Studies, Auckland Institute of Technology. Available: http://www.ait.ac.nz/ depts/journ/invest/eth_3.cbj.html. 19 January 2000). That a code for New Zealand journalists did not appear in New Zealand until well after this time is corroborated firstly by written records from the 1960s (often written by journalism or social science academics) that recommended that adoption of a code for New Zealand journalists. Such proposals would have been highly unlikely if there had indeed been such a code already in existence. In addition, the minutes of the NZJA make clear that when it did take the initiative to adopt a code in the 1960s (discussed below), it was unprecedented in the New Zealand context. The idea that there may have been a code in the inter-war period in New Zealand may also have been based on that fact that a journalism trade union existed in this country before the NZJA. In 1901, a Canterbury Journalists' Union was formed but only operated until 1908 because it was plagued with difficulties. It seldom met, failed to attract much membership from within the country's journalists, and thus attained little in the way of its founding aims of an industrial nature (NZJA. 1933, p.10. *New Zealand Journalists' Association 1912-33: A Record of the First Twenty-one Years*. Wellington: NZJA; and NZJA. 1962, op. cit., p. 17). Therefore, it is unlikely that it would have managed to implement a code of ethics in the seven years it existed.

home and abroad concerning the ethical issues facing journalists and the development of ethics codes by other journalism unions overseas.[7]

Both of the NZJA's two official histories offer little information about the association's early efforts to implement an ethics code. The only reference to these was made in the NZJA's 1962 publication:

> There have been sporadic, and worthwhile, attempts for years to introduce a written code of ethics for New Zealand journalists. And one will undoubtedly yet be adopted. But the most important point is that most of the abuses in other countries which call for such a code, are, and have always been, absent here. In fact, every editor, every sub-editor, and just about every reporter would admit to the existence of a very strong, but unwritten, code of ethics in operation now.[8]

This reaffirms the message of the statements above; that because of the perceived high standards of ethics of the New Zealand press, a formal written ethics code was seen to be unnecessary.[9] In addition, the existence of a 'strong unwritten code' was identified elsewhere as "contributing to the air of respectability of the New Zealand press".[10] However, as the above excerpt indicates, there were in fact early efforts within the NZJA to introduce a code, although these were apparently not a result of concerns about ethical standards as the 1941 initiative illustrates.

Proposals for the NZJA to adopt a code of ethics

One of the NZJA's first proposals to adopt a code of ethics occurred during the Second World War in 1941 at the same time that the former AJA was considering a code for its members. As the AJA rationalised,

> ... the Australian Journalists' Association should adopt a Code of Ethics to direct the professional conduct of its members, to strengthen those who feel they should object when they are called upon to do things that are not credible to journalism ... and to restrain those who may not regard their conduct as

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[7] For instance, that of the NUJ in 1936 was well documented, as was the progress of the Australian Journalists' Association's (AJA) code, adopted nation-wide in 1944 (see *The New Zealand Journalist.* April 14 1936, vol. 12, no. 4, p. 1. 'A code of conduct for journalism'. Wellington: NZJA; and *The New Zealand Journalist* January 12 1943, vol. 9, no. 1, p. 2. 'Ethics code adopted in N.S.W. Wellington: NZJA).

[8] NZJA. 1962, op. cit., p. 63.

[9] In spite of these comments, other early literature on the New Zealand press suggests that a particular problem was political bias or partisanship in the editorial content of newspapers, as has been the case in the UK during the twentieth century. In 1962, however, it was suggested that political bias was no longer a problem in the New Zealand press, and thus the need to have a written code of ethics had diminished (NZJA. 1962, op. cit., p. 34).

[10] Parry, G. 1968, p. 29. *Behind the Headlines.* Dunedin: J. McIndoe.

> incompatible with the honour and interests of the profession and the Association.[11]

There are parallels here with the reasons given by the NUJ when it was considering adopting its code in the 1930s as to the value of a code; in order to protect journalists, and the honour of the profession. However, the NZJA's attitude was mixed. Some members considered that "[t]here should be nothing but support for the adoption of a similar code by the N.Z.J.A., but whether it would have any practical value is another matter".[12] As this comment indicates, there may have been questions as to the efficacy of a code of ethics in forwarding its primary aims of an economic and industrial nature. Nonetheless, it was suggested that the NZJA could adopt the code framed by the British NUJ, which was clearly formulated with the interests of the union and its members in mind.[13]

That a code of ethics for journalists was considered at all during wartime when many journalists and association members would have been occupied with the war effort is significant. As noted in chapter three, the issue of wartime censorship raised concerns about press freedom, when the powers allotted to the Director of Publicity were perceived in one particular instance to have been abused.[14] A code of ethics was perhaps seen within the NZJA as a means of protecting this freedom by demonstrating that it had set itself written standards for the voluntary restraint of its members. The following excerpt offers further insight:

> Activities other than those aimed at raising award rates and conditions continued [during the war], perhaps with more zeal than in peacetime because those who remained active in the [provincial] unions and the Association regarded themselves as trustees, and because in wartime the ideals that journalists are supposed to follow tend to be challenged on the home front.[15]

As this statement indicates, the proposal may have been driven by the perceived threat of war censorship. It also suggests that those who remained engaged in the activities of the NJZA during the war regarded themselves as 'trustees', perhaps in a similar manner to the way that the NUJ saw itself as the "guardian of the profession's

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[11] *The New Zealand Journalist*, January 12 1941, vol.7, no.1, p. 5. 'State Control'. Wellington: NZJA.
[12] ibid., p. 5.
[13] See Appendix One.
[14] See chapter three, p. 79, note 2.
[15] NZJA. 1962, op. cit., p. 26.

honour".[16] Nevertheless, the code proposed within the NZJA in 1941 did not eventuate.[17]

The 1960 suggestion for a Code of Ethics

It was two decades later before any serious consideration was given within the NZJA to the adoption of a code.[18] At the association's annual conference in September 1960, J. M. McClanaghan, a representative of the Southland branch of the association, moved that "the NZJA give consideration to the matter of a code of ethics".[19] This motion was carried, and by November that year a code committee led by T. P. Walsh (president of the Southland branch) had been formed to consider the possibility of adopting a code further. A comment made later in the *New Zealand Journalist* illustrates the context in which interest in adopting a code re-emerged:

> The greater the status of our profession or craft the greater must be the rewards for its members. Therefore, it is with great concern that I hear not much progress seems to have been made with the proposal to adopt a code of ethics for New Zealand journalists. Perhaps the need is not great, but there is no reason why we should not be vigilant ... The principle is much the same as that for doctors (B.M.A.), accountants and lawyers. They see their members' conduct is kept on a high plane. Why should we leave ourselves open to the too-often-heard charges of misreporting? And that irritating 'What can you expect? He's only a reporter'.[20]

It was also maintained that the NZJA would "get a much better hearing from the Court of Arbitration if it had a written code of ethics that was given teeth with a Court of Honour to administer it".[21] Because 1961 was an important year for the

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[16] Mansfield, F. J., op. cit. p. 17.

[17] The records of the NZJA council meetings around this time indicate that it was not before 1960 that any proposals for a code actually made it to the agenda of the NZJA council meetings, as discussed below.

[18] By 1962, both the NZJA and the Newspaper Proprietors Association had considered adopting codes of ethics "to safeguard their respective standards" (NZJA. 1962, op. cit., p. 34). That the NPA was working on its own code during the early stages of the NZJA's development of a code of ethics was also recorded in the minutes of the NZJA's dominion council meeting held in April 1962 (Minutes of the NZJA Dominion Council Meeting. 26 April 1962, p. 3). This is noteworthy when considered in relation to the British experience where the NPA decided much later in 1989 to establish an 'editors' code' (discussed in chapter four). While the reasons for the New Zealand NPA's early decision to adopt a code remain unknown, it may have been influenced by the NZJA's 1960 initiative to adopt a code (which would of course have excluded employers and editors). The NPA code never eventuated nonetheless as is further explained below.

[19] Minutes of the NZJA Annual Conference. 23-24 September 1960, p. 6.

[20] *The New Zealand Journalist.* April 30 1961, vol. 26, no. 3, p. 3. 'Code of ethics'. It was also proposed that editors, chief reporters, and chief sub-editors belong to the NZJA "...just to carry the association's card to indicate they subscribed not just to the association but to the code. And the code could well be printed on the cards themselves" (ibid., p. 3).

[21] ibid., p. 3.

NZJA in the arbitration court,[22] it is of little surprise that the idea of a code to enhance the position of the association therein re-emerged around this time.[23] Enhancing the professional status of journalism was seen by the NZJA as "part of its job as an industrial union".[24] Warren Page, who was a member of the Wellington branch and was later to become the NZJA's president, recalls that:

> ... [The NZJA's initiative to adopt a code] was partly recognition of the need for us to increase our worth for industrial bargaining purposes, and partly the wish to move ourselves from craft to professional standards and recognition. A code of conduct was part of being professional.[25]

Furthermore, like the 1941 incentive, issues of press freedom and freedom of expression also drove the initiative to adopt a written code of ethics. A code of ethics would also "strengthen journalists' ground in fighting the growing trend towards news suppression in the divorce and coroners courts".[26] Interestingly, charges of 'misreporting' suggest that accuracy in reportage had been called into question; a code was seen necessary to quash such allegations. Thus, by June 1961, a sub-committee of the NZJA council had prepared a draft code. Unveiling the proposal in the union's news bulletin *The Journalist*, it was stated that "the need for a Code of Ethics has long been recognised by the J.A. council".[27] The proposed draft, borrowed from the AJA almost verbatim, was re-printed in *The Journalist* with the notification that it was to be considered at the next meeting of the council. It was clear that a significant degree of consideration had gone into the matter of how the code would be administered.

There would be an 'ethics committee' for each constituent branch of the association, each comprising five members all of whom must have belonged to the NZJA for at least five years. The ethics committee would rule on written complaints from journalists about alleged breaches of the code. Complaints from members of the public would be considered by the NZJA executive in the first instance, and referred to the relevant district ethics committee. Where a majority vote of the committee ruled

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[22] NZJA. 1962., op. cit., p. 11.
[23] The code did not eventuate before the NZJA's 1961 appearance in the arbitration court, which was successful in securing a significant wage increase for journalists nonetheless. This perhaps contributed to a decreased sense of urgency within the union that a code was, for the meantime, unnecessary for the industrial motives for having a code earlier espoused (ibid., p. 11).
[24] NZJA. 1962., op. cit., p. 55.
[25] Page, W. 23 March 2000. Personal Correspondence.
[26] *The New Zealand Journalist.* April 30 1961, op. cit., p. 3.
[27] *The New Zealand Journalist.* June 30 1961, vol. 26, no. 4, p. 6. 'N.Z.J.A. to adopt code of ethics', pp. 6-7.

that a member had violated the code's provisions, the committee would have the power to warn, rebuke, or censure the member concerned. A critical ruling and the nature of the censure issued may be made known to the employers or editor of the journalist concerned,[28] as a sanction of critical 'peer review'. These proposals, along with the proposed code, were subsequently circulated to the constituent branches for their comments "with a view to its ultimate adoption".[29]

However, after this time the introduction of the code seems to have lost its earlier momentum. Recalling the 1961 efforts of the NZJA to adopt a code, Jack Kelleher, who was the association's president at the time, suggests two possible reasons why this may have been the case.[30] There was the possibility that the NZJA's branches failed to provide satisfactory reports to the executive council on their enthusiasm for a written code of ethics. Alternatively, if sufficient response was attained, there may have been dispute over aspects of the code's proposed enforcement. Indeed, others may have contended that it was not the role of the association to 'enforce ethics', but rather to look after the industrial interests of its members. Consequently, the idea for the NZJA to adopt a code of ethics temporarily 'faded away'.[31] The existing records of the NZJA confirm Kelleher's recollections as to why, once drafted, the code took significantly longer than that of the British NUJ to be implemented. There had been an overall lack of feedback from the constituent associations about the draft code circulated almost a year earlier; only the Southland branch had expressed a (favourable) response, and it thus was decided that the draft be re-circulated to the constituent branches.[32]

The second distribution of the draft code received significantly more response from the provincial unions. The opinions expressed about the idea to adopt a code at the NZJA's 1962 annual conference varied between complete acceptance and complete opposition.[33] An Auckland delegate, K. J. Steed, believed that there was a need for a code of ethics, but if any such code was to be pursued then it needed to be

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[28] ibid., p. 7.
[29] Minutes of the Annual Conference of the NZJA. 29-30 September 1961, p. 8.
[30] Kelleher, J. 15 March 2000. Personal Interview.
[31] ibid.
[32] Minutes of the NZJA Dominion Council Meeting, 29 May 1962, p. 4.
[33] Minutes of the NZJA Dominion Council Meeting, 4 September 1962, p. 4.

accepted by both the NZJA and the NPA.[34] That reaching an agreement on the form and content of a code would be difficult was a stance taken by Dunedin delegates. Similarly, Canterbury and Westland delegates thought "there was a need for ethics, which existed at present, but that it was too difficult to express these in the form of a written code".[35] A Nelson delegate, C. R. Lavery, anticipated that the "reinforcement machinery for a code of ethics would be very difficult [to construct]". As a result of these divergent views, the NZJA council considered that the matter could not progress further without a fresh mandate from the next annual conference.[36]

The draft code was referred back to the executive council, which was then instructed to study the statement of principles of the International Federation of Journalists (IFJ) "with a view to a set of principles being circulated to the NZJA branches for comment".[37] Accordingly, at the next council meeting in October 1962, a committee was re-appointed to further "investigate the general subject of a code of ethics and/or a set of principles".[38] However, by September 1963, the NZJA's code committee had made little progress, after which time the issue of whether a code would be adopted was temporarily sidelined.[39] In fact, it was not until the annual conference of September 1966 that the proposed code received any further attention.[40]

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[34] Minutes of the 50th Annual Conference of the NZJA, 21/22 September 1962, p. 7. This point was illustrated in the Australian context when the AJA was preparing to adopt its first code in the early 1940s. Chadwick explains that Australia's newspaper publishers were opposed to the AJA code "... from the outset. They saw it as an intrusion into their areas of discretion. They implied that journalists, as employees, were subject to their employers' ethical standards and not to any collective standards which their union/professional body may adopt" (Chadwick, P. 1994, op. cit., p. 171). This issue arose in the New Zealand context in the early 1990s when pressure was on the NPA to develop a code, yet it cited the existence of the journalists' code as a defense that such a proposal was unnecessary (as noted further below).

[35] NZJA Minutes, op. cit., 21/21 September 1962, p. 7.

[36] NZJA Minutes. 4 September 1962, op. cit., p. 4.

[37] NZJA Minutes. 21/22 September 1962, op. cit., p. 7.

[38] Minutes of the NZJA Dominion Council meeting, 1 October 1962, p. 4.

[39] This pause in activity came after the committee's investigation of the newly developed code of the British Institute of Journalists (IoJ) in addition to that of the AJA and the principles of the IFJ (Minutes of the NZJA Dominion Council Meeting, 24 September 1963, p. 3).

[40] In the intervening years there were (what were evidently perceived to be) 'more urgent' issues that the NZJA concerned itself with between 1963 and 1966 thereby slowing progress towards the adoption of a code. In 1963, following the imprisonment of two British journalists for failing to disclose their sources, the NZJA took steps toward formalising the union's stance on non-disclosure. Although this issue was seen as "closely related to that of an ethics code", no progress was made concerning the draft code itself (Minutes of the NZJA Dominion Council Meeting, 25 March 1963, p. 4). Later in 1963, the NZJA became concerned with issues of press freedom that were brought to the fore with the introduction of the Indecent Publications Bill, taking action to promote its amendment (Minutes of the Annual Conference of the NZJA, 27/28 September 1963, p. 15). Furthermore, as chapter three highlighted, between 1964 and the end of 1965 a central concern of the NZJA was the News Media Ownership Bill and the perceived threat to press freedom that this Bill also embodied. In fact, these threats to press freedom may have even precipitated the return of the code onto the NZJA's agenda in order to demonstrate a commitment to 'voluntary restraint'.

While much of the NZJA's attention was focussed on industrial matters during the 1960s, professional matters were taking on increasing importance in their own right, with some members even "responding more positively to calls upon professional pride and aspirations than they did to traditional union concerns".[41] There were also concerns within the NZJA that professional and ethical standards required codification with "something of more general application than the in-house standards fluctuating from newspaper to newspaper according to the energy and ability of the editor of the time".[42]

In addition, with television emerging as a new rival for the newspaper industry, and with radio broadcasting becoming better organised, there were unprecedented competitive pressures facing the newspaper industry. As Warren Page recalls, "the challenge was to win the trust of readers through professional standards".[43] Thus, the 1960s witnessed increasing pressure on the NZJA to codify its ethical standards, with support for a code also being voiced from within the public.[44]

In 1964, a comment from outside of the press industry raised the question "[i]f journalists want higher status and a more responsible voice, must they not evolve more exacting professional standards and a code of ethics which they can enforce...?"[45] Not long afterward, when the first major calls for a press council in New Zealand were expressed, there were further indications of public pressure for a code for New Zealand journalists in 1966. In a published survey response about public attitudes towards the ethical standards (among other matters) of the New Zealand press, a proposal was made for a code of ethics with some self-regulatory system to accompany it: "Why not a code of ethics for journalists with a disciplinary committee open to the public?"[46] The observable public interest in an ethics code for

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[41] Page, W., op. cit.
[42] Page, W., op. cit.
[43] ibid.
[44] As chapter two noted with reference to the public calls for the establishment of the New Zealand Press Council, following the implementation of the Ombudsman Act in the early 1960s there was a growing trend within New Zealand for more citizen involvement in public affairs, which the Act was intended to promote. This included the ability to air grievances to the body concerned. This development extended to the private sector and the New Zealand press industry was early to respond to this changing culture (NZPC. 1997, op. cit., p.5).
[45] Cleveland, L. 1964, op. cit., p. 41.
[46] 'Our daily press'. March 1966. In *Consumer*, no. 26, p.20. As chapter two noted, there were suggestions from within the public as to the development of a disciplinary committee to rule on alleged journalistic abuses in this country as early as 1949, the year the first Royal Commission on the Press reported in the UK.

journalists may even have prompted the return of the issue on the NZJA's agenda later that year.

This time, the preparatory stages of the code's progress were effected much more quickly. The NZJA's annual conference held in September 1966 resulted in the appointment of a new committee charged with re-considering the adoption of a code of ethics,[47] an initiative promoted by the newly elected president Ian Templeton.[48] By August 1967, a new draft had been prepared and circulated by the code committee to NZJA members and the provincial unions for consideration, after which it was amended by the council and referred back to the branches for approval.[49] The content of the code as well as the "wider question of the desirability of such a code" was then left to be discussed further at the annual conference the following month.[50]

The NZJA adopts a code of ethics

At the annual conference in September 1967, the NZJA's president, Ian Templeton, initiated discussion about the proposed ethics code.[51] There were three main areas debated. The first concerned whether or not a code should be adopted at all, and secondly, if so, what the contents should consist of. The third area debated was whether such a code would be accompanied by an enforcement mechanism. There were a variety of views expressed on these matters in a similar manner to the discussion of five years earlier. A Nelson delegate, A. B. Barclay, believed that the adoption of a code would "improve the status and image of journalists in the community". Indeed, some of these reasons were similar to those given by the NUJ in parallel circumstances; others were less so. Additional reasons advanced for the NZJA's adoption of an ethics code revolved around the more pragmatic calculation that "if journalists did not produce their own effective code of behaviour then there was a strong risk of a set of rules – possibly with strong disciplinary powers – being imposed from the outside".[52]

There was much debate on the notion of an ethics committee with disciplinary powers. Auckland delegate, R. Taylor, expressed that while his branch "opposed the

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[47] Minutes of the NZJA Dominion Council Meeting, 31 October 1966, p. 2.
[48] Minutes of the NZJA Dominion Council Meeting, 5 December 1966, p. 2.
[49] Minutes of the NZJA Dominion Council Meetings, 1 May 1967, p. 2; 12 June 1967, p. 1; and 10 July 1967, p. 1.
[50] Minutes of the NZJA Dominion Council Meeting, 7 August 1967, p. 1.
[51] Minutes of the 55th Annual Conference of the NZJA, 15-16 September 1967, p. 2.
[52] *The New Zealand Journalist*. September 1967, vol. 32, no. 5, p. 1. 'Ethics code adopted'.

idea of a code with disciplinary powers", it acknowledged that "a code would be preferable than having a press council imposed upon it by legislation".[53] Canterbury/Westland delegate, R. S. Lindsay, opposed the adoption of a code on the grounds that it would in fact "be more likely to lead to a [statutory] press council than forestall it", and subsequently moved that the code not be adopted, a motion which was lost.[54] A concern was expressed that "if the Ethics Committee had powers over journalists this could lead to the code being used for political or other undesirable purposes".[55] Auckland representatives were in favour of a code in principle but were opposed to the idea of an ethics committee with disciplinary powers. It was then moved that the code should be adopted provided that the ethics committee had "only investigating and advisory powers".[56] This motion was accepted.

There was further discussion about the content of the code, which was modelled on the code of the Australian Journalists' Association (AJA). A motion to include a clause stipulating the right of journalists to refuse to carry out an assignment if it involved intruding on private grief, which was absent from the AJA code, was carried.[57] Other concerns were less easily resolved. Warren Page recalls that one clause in particular was the topic of some degree of controversy. The clause concerned, which was derived from the AJA code, stated that a member "shall not on any occasion take an unfair or improper advantage of a fellow member of the Association". This was contentious due to a "perceived conflict between the code's requirement to assist fellow members versus the practicalities of hard competition for advantage over rivals".[58] Page recounts that "some of us were not prepared to give up any exclusive story or angle our luck or initiative had taken us".[59]

While in the end there appeared to be a general acceptance that this clause would not have to be taken so literally,[60] this particular debate may have underpinned the general preference for the proposed code being "a voluntary one with no machinery in place for its enforcement".[61] After the conference had debated and

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[53] Minutes of the 55th Annual Conference of the NZJA, 15-16 September 1967, p. 2.
[54] ibid., p. 2.
[55] ibid., p. 2.
[56] ibid., p. 3.
[57] *The New Zealand Journalist*, September 1967, op. cit., p. 1.
[58] Page, W. op. cit.
[59] ibid.
[60] ibid.
[61] Wilton, T. 28 March 2000. Personal Correspondence.

amended the draft code, it was adopted in a revised form.[62] Its adherence was to be overseen by an ethics committee without disciplinary or censuring powers but could make recommendations on the action to be taken for any breach of the code to the NZJA council.[63] In a television interview screened at the time, Ian Templeton stated that the code formed a "basic set of common sense rules generally already adhered to by journalists" which would be "of particular value to youngsters beginning their career".[64] By the end of 1967, an ethics committee had been appointed comprised of the NZJA's president Ian Templeton, the vice president Desmond Fitzgerald, and council member B. W. Mills, and the code distributed in card format to members.[65] These events were followed not long afterward by the beginning of ideas about the implementation of a press council, as chapter three noted.

Thus, after seven years of deliberation, the NZJA had adopted a written code of ethics; the first journalistic code of ethics in New Zealand. Unlike in the UK context, where a consensus on the NUJ's adoption of a code in 1936 was readily attained, this took significantly longer in the New Zealand context. The delay may have had to do with the lack of unity of the body and its constituents, which was reflected in the diversity of views within the NZJA about the idea of a code of ethics when it was initially proposed. While the NUJ also comprised several branches,[66] there was a great deal more tension between those of the NZJA with the geographical regions often acting almost independently.[67]

In addition, there was evidently a widespread perception both inside of the NZJA and outside of it that a written code of ethics for journalists in the New Zealand context was unnecessary, as indicated above. The different operating conditions of the

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[62] The code adopted by the NZJA in 1967 is reproduced in Appendix Two of this thesis.
[63] *The New Zealand Journalist*, September 1967, op. cit., p. 1.
[64] ibid., p. 1.
[65] Minutes of the NZJA Dominion Council Meetings, 2 October 1967, p. 3, and 6 November 1967, p. 2; and Parry, G., op. cit., p. 29.
[66] Although later in the twentieth century the NUJ was, according to Snoddy, "increasingly riven by factions" undoubtedly related to its role in the BPC, among other internal matters (Snoddy, R., op. cit., p. 202).
[67] The Auckland branch eventually broke away from national award proceedings from the NZJA to form the Northern Journalists' Union (NJU), but the move was threatened years before it finally eventuated. The Auckland branch considered that because the metropolitan employers in the region were more prosperous, Auckland should have a separate pay scale to the rest of the country's journalists. If Auckland did pay more, this would force other employers to do so in order to prevent a drift of journalists northwards. The rest of the NZJA branches were unimpressed by this and wanted to retain a 'unified approach' (NZJA 1962, pp. 41-42). The News Media Ownership Bill may have served to unify the branches of the NZJA in its opposition to the Bill, thus created an atmosphere where a consensus about adoption a code could be reached. A code may have been seen to help guard against the imposition of further statutory controls either at the structural.

New Zealand press in relation to the British experience was perhaps a central reason for the apparent lack of urgency in the NZJA's adoption of an ethics code. While the NUJ's adoption of an ethics code in the 1930s was a means of protection for journalists in the face of increasing demands to carry out in assignments that were 'repugnant to their sense of dignity', the efforts of the NZJA took place in a different context. The New Zealand code was perhaps driven more by the changing culture in which the New Zealand press was operating and the NZJA functioning at the time, with an increasing public interest in the conduct of journalists and demand for their accountability as indicated above. As the 'lesser of two evils', it was with the adoption of a code of ethics that the NZJA responded.

Ultimately however, the NZJA shared the NUJ's primary reason for the adoption of a code. This can be understood with reference to the main role and functions both bodies performed. In both cases, a code of ethics was perceived to have benefits for industrial bargaining purposes, with a code of ethics promoting the professional status of journalism, and thus supporting increased economic rewards for its practitioners.

The NZJA code is backed with enforcement provisions

The voluntary code adopted in 1967 was operated until 1974, when the merger between the provincial branches (excluding the Auckland branch which operated as the Northern Journalists' Union) took place. The NZJA was renamed the New Zealand Journalists' Union (NZJU), and the code adopted by the former association was incorporated into the NZJU's rules. A breach of the code could now be subject to disciplinary procedures under the new rules. A violation could be used as grounds for dismissal from employment for which the union could refuse to pursue grievance on behalf of the member concerned.[68] A member could be expelled from the NZJU after a second breach of the code.[69] At the 1972 annual conference, the in-coming president Bob Fox had stated that "[o]ur long term aim must be to build up journalism as a profession. We must set ourselves standards". This view perhaps motivated the decision to back the code with enforcement provisions. An interview conducted with

[68] NZ (excluding Northern) JU, 1975. *Rules: Incorporating all amendments to the end of August 1975.* Wellington: The Union.

[69] Neville, H. 1975, p. 14. 'The press in New Zealand, papers and opinions (part two)'. In *New Zealand Listener*, 9 August 1975, vol. 79, no. 1862 pp. 12-14. However, these provisions have rarely been employed since (Tully, J. 1992a, op. cit., p. 146).

Bob Fox (then president of the NZJA) by the *New Zealand Listener* in 1975 on the incorporation of the code into the union's rules records that

> [the journalists] have avoided militancy in the past, on the grounds that it was ungentlemanly ... but later realised, according to president Bob Fox, that 'good guys come second'. The result [of implementing an enforceable code] was a leap in pay, the appointment of a full-time union secretary, [and was driven by the accusation] ... that the journalists were neglecting professional attitudes to concentrate on threatening and crude bargaining.[70]

Subsequent revisions of the code developed by the NZJA

At the 1986 meeting of the national council of the New Zealand Journalists' Union,[71] a suggestion was made to incorporate a clause in the code ruling out journalists' acceptance of 'freebies'. Brent Edwards, who moved the motion, argued that the code should rule out such practices so as to acknowledge the negative implications of 'sponsored news' on journalistic independence.[72] The notion of a complete ban on freebies was not well received by a number of journalists at the subsequent annual conference of the NZJU. Some contended that freebies were both an important 'perk of the job' and gave the less wealthy newspapers access to stories otherwise unavailable to them.[73]

The November 1987 edition of *The New Zealand Journalist* recorded that an amendment had been agreed upon, with "the right to refuse free travel, gifts and other personal advantages which would be seen to compromise the integrity of journalists" incorporated as a new clause into the code.[74] However, this particular clause never appeared in the code. There appears to have been something of a compromise between those who advocated a complete ban on the acceptance of freebies, and those who did not,[75] which was reflected in the amendments tabled in 1988 just prior to the union's 1989 merger when it became JAGPRO.

The revised code aimed to alert journalists to the fact that freebies can compromise journalistic independence and the integrity of a newspaper, rather than to rule them out entirely. Two new clauses addressed the issue. The first read "[t]hey

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[70] ibid., 1975, p. 14.
[71] By this time, the NJU (Auckland) was part of the national union having joined in 1979 (*The Word*, Nov/Dec 1994, op. cit., p.4. 'PPMU the sum of many parts').
[72] Edwards, B. 1992, p. 2. 'Freebies: An ethics tester'. In *The Word*, October/November 1992, vol. 59, no. 5, pp. 2-3.
[73] ibid., p. 2.
[74] *New Zealand Journalist*. November 1987, p. 2. 'You can say no'.
[75] Unfortunately, efforts to clarify this with the former JAGPRO president have been unsuccessful.

shall not allow their professional duties to be influenced by any consideration, gift or advantage offered and, where appropriate, shall disclose any such offer". The second proscribed that journalists "... shall not allow advertising or commercial considerations to influence them in their professional duties". The existing clause ruling out the acceptance of bribes by journalists was altered to require that journalists "... shall not allow their personal interests to influence them in their professional duties".

The 1988 revision of the NZJU code followed the AJA's 1984 revision of its own code, with the wording of many changes replicating those of the AJA. In addition to the AJA's new provisions on freebies, the NZJU incorporated its anti-discrimination requirements. As Hirst explained of the AJA revision, this clause was driven by the social movements of the 1960s and 1970s pressing for the acknowledgement of minority and other rights.[76] In addition, the existing clause on intrusion into private grief of the NZJU code was re-worded and expanded to provide for "the right of the journalists to resist compulsion to intrude" on both private grief and personal privacy.[77] Other minor amendments to the code in 1988 included the removal of gender exclusive language, the acknowledgement of the broadcasting journalists (some of whom were by now members and thus covered by the code), and the requirement that 'harmful inaccuracies' be corrected. When the NZJU became JAGPRO in 1989, the code was adopted in the same form.[78]

However, early in the existence of JAGPRO there was a view that these changes, particularly concerning the issue of freebies, were inadequate. Brent Edwards, who was by now the national president of JAGPRO, (and responsible for the 1988 initiative to address the question of freebies in the code), wanted to see further tightening of the existing provisions:

> When we accept a freebie we immediately allow a commercial consideration to influence our professional duties ... The question we need to ask is whether the trip or event we are going to is newsworthy. If it's not newsworthy enough for the paper to pay its own way then it shouldn't be covered ... There is no place for freebies in the media. By rejecting them we declare openly the media

[76] Hirst, M. op. cit., p. 72. The amended NZJU code (currently operated in the same form by the EPMU) can be found in Appendix Two to this thesis.

[77] The origin of the NZJU code is clear from the fact that it is largely formulated in terms of the 'rights of the journalists' (much like the original NUJ code). The wording of the revised privacy clause in the NZJU's code was the same as that of the AJA code's new clause on privacy although before 1984, the AJA code did not cover the issue of privacy at all (ibid., p. 74) so it is possible that the direction came in part from the NZJA's 1967 code.

[78] The code revised in 1988 is included in Appendix Two to this thesis.

> is not for sale and there is no way we open ourselves up to the likelihood of being influenced by 'any consideration, gift, or advantage offered' ... The only way we can maintain our independence and professionalism is to uphold tough ethical standards. At the moment we fail that test.[79]

In 1990, the annual conference thus agreed that the council should be directed to formulate a new clause on the issue to 'toughen up' on the use of freebies by journalists.[80] However, a ban on freebies altogether was not enacted as the current version of the code confirms,[81] although a revision has been mooted following the recent Australian initiative.[82] The fact that the code has remained unchanged since 1988 may be related, at least in part, to the position in which JAGPRO (like other unions) was placed following the Employment Contracts Act 1991.[83] This legislation served to create for JAGPRO similar difficulties to those experienced by the NUJ in the 1980s, with a decline of union coverage and thus its ability to play a role in the promotion of professional and ethical standards of journalists.[84] These processes thus placed increased responsibility on the NZPC to effectively fulfil this role.

5.2 The NZPC: Attitudes towards codes of practice

Consideration to whether the NZPC would utilise a code was given by the subcommittee of journalists and proprietors who had collaborated to plan the council's establishment.[85] Using the BPC as its prototype, the NZPC reiterated the preference for a system of case law as opposed to a formal written code.[86] This

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[79] Edwards, B. 1990, p. 3. 'Time to toughen up on freebies'. *The Word*, vol. 57, no. 12, p.3.
[80] ibid., 1990, p. 3.
[81] Nonetheless, the level of concern about the issue within JAGPRO itself is significant, representing the type of 'self-criticism' urged by both the US Hutchins Commission, and the successive government-initiated inquiries into the British press over the last fifty years.
[82] Wilton, T., op. cit.
[83] The 1991 Employment Contracts Act (ECA) removed compulsory union membership with its principles of 'freedom of association' meaning that there would no longer be benefits of union membership for employees (Walsh, P. 1997, p. 279-280. ''Employment policy'. In Miller, R. (ed.). *New Zealand Politics in Transition*, pp. 277-286. Auckland: Oxford University Press. The decline in the regulatory role of the journalists union perhaps contributed to the appearance of internal codes in this country after 1991, where journalists were no longer required to be union members and thus adhere to a shared set of ethical guidelines. Although the Press Council was operating, its jurisdiction did not (and does not even today) extend to all newspaper and magazine publications in New Zealand. Furthermore, it operated without a set of written guidelines right up until 1999. These points are discussed further below.
[84] The recent implementation of the Employment Relations Act 1999 may hold some promise for unionism in New Zealand more generally, although it is unlikely that it will completely reverse the situation created post-1991.
[85] Perry, S., op. cit., p. 7.
[86] NZPC. 1998, p. 8. *The Press and the People: 26th Annual Report of the New Zealand Press Council, 1998*. Wellington: The Press Council.

decision is interesting, perhaps even surprising, given the fact that the New Zealand press had undertaken significant examination of the British scene. By the mid-1960s when a press council was first being deliberated in New Zealand, the British press had already received five threats of statutory restraint, underpinned by the failure of the BPC to adopt a written code of ethics.[87] Circumstances in Britain had already forced the BPC to evolve in its attitude towards written guidelines; by the late 1960s, it had formed two of its declarations of principles. Yet not even a 'middle ground' such as this was a part of the NZPC's mandate when it began operation in September 1972.[88]

On the other hand, the NZPC's failure to adopt a written document may be less surprising. It will be recalled from the previous chapter, the BPC was enjoying a relatively successful period between 1964-69, commanding a (relative) degree of authority and commitment from the industry. This was precisely the period in which the BPC was being assessed from the New Zealand perspective. To the outsider, unaware of the underlying uncertainty about press self-regulation in the UK at this time, the Devlin-led BPC perhaps appeared as a shining example of press self-regulation which the New Zealand press sought to emulate.[89]

In its first annual report, the NZPC claimed it was able to "... avoid some of the pitfalls which initially stood in the way of the success of the movement in the United Kingdom".[90] The NZPC had been constituted with an independent chairman and with a dominance of non-industry members, two of the early criticisms of the

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[87] These included the 1953 Private Members Bill, which provided the impetus for the establishment of the General Council of the Press, and the 1962 Royal Commission out of which the BPC was borne as a reconstituted version of the General Council. Concern about the lack of authority that the BPC displayed in the area of privacy intrusion resulted in three parliamentary Bills seeking to legislate on the press throughout the 1960s. Furthermore, when the final plans for the NZPC were being made, the UK Younger Committee on Privacy had been convened, issuing its report in 1972 the year the NZPC began operation.

[88] Because the code developed by the NJZA was already operating, a code that covered most of New Zealand's working journalists in the print sector, it was possibility felt (as was the case in the British context) that another code was unnecessary for the NZPC.

[89] The then secretary of the BPC did point out to the New Zealand press one potential problem of not having a code, advising the NZPC to "[g]et authority in the Rules for publication of accounts of the Councils' work, because with no written code of ethics ... the Council would have to have some regard for precedent. The record of this should be readily available to both public and press" (Perry, S., op. cit., p. 13). This would also protect the NZPC should a defamation lawsuit be lodged against it where if in a report the NZPC repeated an alleged defamatory decision it would be "harder to defend the repetition of it in a report not formally required than it would be to defend the original statement" (ibid., p. 13). An amendment made to the Defamation Act in 1974, however, extended privilege to "fair and accurate reports of the proceedings, or the results of the proceedings, in any inquiry held in accordance with the rules of any association formed for the purpose of promoting and safeguarding the standards of the New Zealand press", which included the NZPC.

British model. Yet a formal code of practice was not among the 'pitfalls' of the BPC that the New Zealand model sought to avoid. A comment made by the NZPC is revealing:

> A Press Council ... has the difficult task of trying to maintain the delicate balance of forces that is needed to make standards effective without being suppressive. Success in this field, we think, can only come from experience and not from the application of a formula set in advance.[91]

Arguably, this reflects a view of a formal written document as a constraint, rather than as a useful mechanism both for a press council to be equipped with in adjudicating complaints, and for guidance to the newspapers and journalists whose ethical standards it monitors. Such a 'suppressive' route would not be welcomed by the press, and was thus seen as undesirable. It was perhaps in part because of this view that the NZPC carried on the tradition of the BPC, and with it, the inevitable 'pitfalls' that come in the form of parliamentary interference.

It was not until the mid-1990s that the NZPC first gave any serious consideration to formulating a set of written guidelines on which to judge complaints on newspapers. As highlighted above, this was allowed because the standards of the New Zealand press were seen to be comparatively high. There was neither the degree of competition that created difficulties for its system of voluntary restraint, nor were there the ensuing threats of statutory alternatives. That was until the debate surrounding the Privacy Act brought the NZPC lack of a written document to parliamentary attention.

'Act or be acted on': The NZPC adopts a statement of principles

As the previous chapter noted, the news media were excluded from the provisions of the Privacy Act when it was passed in 1993. However, this exemption came with provisos where the select committee concerned "took on face value the claims of the print media that it would beef up the Press Council to address privacy complaints more effectively and to head off the tabloid-style snooping" widely criticised in the British context.[92] "Further and more effective self-regulation" was

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[90] New Zealand Press Council. 1973, p. 1. *The Press and the People: 1st Annual Report of the New Zealand Press Council, 1972-3*. Wellington: The Press Council.
[91] ibid., p. 1-2.
[92] Harris, S. 1993. 'Watchdog watches the media'. In *National Business Review*, 30 July 1993, p. 21.

necessary to show that the exemption from the act was legitimated.[93]

Similar concerns were expressed outside of parliament about the lack of written guidelines for the New Zealand print media. In 1994, a view was expressed at a national seminar on broadcasting standards that

> [n]ewspaper and magazine publishers, who have the privilege of self-regulation, should realise that they cannot go on indefinitely without a code of practice, particularly in terms of privacy. Inaction will surely result in the initiative being taken by others with a more regulatory perspective.[94]

In 1995, there were signs that such warnings were being acknowledged when the NZPC conducted its first major review of its procedures and regulations. The NZPC adopted a rule that in the cases of any complaint involving breaches of privacy, it could require any newspaper found to have been in breach of good practice to carry out its own internal audit of its proceedings. It could also require newspapers to publish the results of that audit.[95] The NZPC also updated its constitution and rules, and expanded in size. However, the development of a written document was not among the 1995 changes. It reiterated the view that "neither the establishment of guidelines for newspaper editors to follow, nor the policing of such guidelines were part of the council's job".[96]

However, the pending review of the Privacy Act was anticipated to occur in 1998, five years after its implementation. Arguably, the knowledge of this contributed

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[93] *New Zealand Parliamentary Debates. Privacy of Information Bill: Report of the Justice and Law Reform Committee.* 18 March 1993, p. 14133. 43rd Parliament 1991-1993, 23rd March - 27th April, pp. 14133-35. Wellington: Hansard, GP. Further at issue here was the fact that the magazine industry had not joined the Press Council, which critics pointed out left the entire press industry open to criticism about a lack of commitment to self-regulation, and thus to heavy handed government intervention, especially in the area of privacy (Tucker, J. cited in Fountain, B. 1995, p. 39. 'Self regulate or be regulated says former editor'. In *The Independent*, 1 December 1995, p. 39). This apparent anomaly remains much the case today as is pointed out below, and contrasts with the British situation where the whole of the newspaper and periodical industry are obliged to self-regulate under the PCC system (Belsey, A., 1995, op. cit., p. 94). However, the placement of the magazine sector under the jurisdiction of the NZPC would inevitable pose as the ultimate challenge for New Zealand's system of press self-regulation. This is where the magazine industry (especially the 'woman's magazine sector) is increasingly competitive and more likely than the rest of the print media under the Press Council's jurisdiction to push ethical boundaries, with practices of chequebook journalism and privacy intrusion already on the increase (Tully, J., 1992a, op. cit., p. 150). This would inevitably shake the perceived success of the NZPC as an arbiter of ethical standards of the press, as the former BPC's (and PCC's) relationship with the tabloid press would suggest.

[94] Tully, J. 1994, p. 136. 'The Public Face of Privacy'. In Ballard, P. (ed.). *Power and Responsibility: Broadcasters Striking a Balance*, pp. 130-136. Wellington: The Broadcasting Standards Authority.

[95] NZPC. 1995, p. 3. *The Press and the People: 23rd Annual Report of the New Zealand Press Council, 1995.* Wellington: The Press Council.

[96] NZPC. 1996, p. 4. *The Press and the People: 24th Annual Report of the New Zealand Press Council, 1996.* Wellington: The Press Council.

to the NZPC's decision to embark on the production of a written document at the instigation of its newly appointed chair Sir John Jeffries,[97] as announced in the NZPC's 1997 annual review:

> The Council, after a thorough examination of the opposing viewpoints, has reached the conclusion that the Council should publish its own written document. That document will probably take the form of a statement of principles along the lines of the Australian practice rather than a rigid Code of Practice that exists in the United Kingdom.[98]

The Privacy Commissioner had begun urging newspapers to establish a voluntary code of practice, noting that newspaper editors, exempt for the Privacy Act, had refused a binding code of practice. There was no compensation available to complainants to the NZPC as there was for breaches of privacy by radio and television journalists, nor was there a complaints system for magazines.[99] These recommendations took place in the wake of Princess Diana's death and the ensuing debates about press self-regulation in Britain, thus serving to highlight that the New Zealand press was no more immune than that of the UK to calls for more effective self-regulation. New Zealand newspaper editors were heard to defend the degree of responsibility practised by the New Zealand newspapers, and thus the argument that there was 'no need' for a code for the New Zealand press. However, Bruce Slane retorted with the quip that "some of the quality newspapers in London could say the same thing".[100] Slane thus proceeded to propose a 'sensible and practicable' direction in which the NZPC could be reformed, which was based on a hybrid of the PCC and the New Zealand Broadcasting Standards Authority (BSA).

This was the immediate background to the formal announcement in February 1998 by Sir John Jeffries at a media ethics conference in Auckland that the NZPC would be "considering a code of practice or a statement of principle".[101] It was also

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[97] Jenkins, G. 18 September 2000. Personal Correspondence.

[98] NZPC. 1997, op. cit., p. 7.

[99] *Private Word: News from the Office of the Privacy Commissioner*, February 1998, issue no. 22. 'Press code proposed'. Online: Office of the Privacy Commissioner. Available: http://www.privacy.org.nz/ smedia.html. 24 March 1999. The Privacy Commissioner also proposed the creation of a system of newspaper ombudsmen like that adopted by the UK press amid the sitting of the 1991 Calcutt committee.

[100] *Private Word: News from the Office of the Privacy Commissioner*. Sunday supplement for 18-1-98. Online: Office of the Privacy Commissioner. Available: www.privacy.org.nz/smedia. 5 May 1999.

[101] *Private Word*, February 1998, issue no. 22. 'Press code proposed'. Online: Office of the Privacy Commissioner. Available: http://www.privacy.org.nz/smedia.html. 5 May 1999. The announcement at a conference attended mainly by academics, media critics, and government officials was perhaps one way of subduing the criticism from these quarters of the lack of a Press Council code.

the context in which New Zealand two main publishers, INL and Wilson and Horton also expressed their intentions to form their own codes for their respective constituent newspapers.[102] Discussed further below, these decisions arose out of similar circumstances to those in which the British NPA chose to develop its 'editors' code' in 1989 amid the development of the BPC's code.

In between times, the review of the Privacy Act was published in late 1998. As the previous chapter noted, while the exemption for newspapers was to remain, the view was nonetheless expressed that the NZPC needed to strengthen the existing system of self-regulation. The report reaffirmed the suggestions that the Privacy Commissioner (among others) had made earlier which emphasised the need for a code of practice that adequately addressed the issue of privacy.

By the late 1990s, the NZPC was the exception among self-regulatory bodies in not having written guidance for the press and public, a fact which the NZPC itself recognised in its decision to form a written document.[103] It was also motivated by the view of many complainants and critics that the NZPC's "... credibility and effectiveness have been impaired by the absence of a firm statement of the principles to which it was committed and of the criteria whereby it judges complaints".[104] The NZPC's 'statement of principles' was the product of eighteen months of deliberation and research by a working party comprised of representatives of the NZPC's constituent bodies led by the council's chair.[105] The emergent document code was not a code of practice in the same sense as the PCC's 2-page code of practice. Rather, it took the form of a broad set of guidelines, rather more like the BPC's declarations of

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[102] *The Press*, October 23 1997, ed. 2, p. 11. 'Balance on privacy rights, information freedom wanted'. At the time the NZPC's 'Statement of Principles' was being drafted, the magazines of the Wilson & Horton, and INL publishing groups were placed under the jurisdiction of the NZPC effective from January 1999 (NZPC. 1999, p. 7. *The Press and the People: 27th Annual Report of the New Zealand Press Council, 1990*. Wellington: The Press Council). When the New Zealand Press Council was formed in 1972, magazines were outside of its remit, in contrast to the British model (as pointed out above) as well as other self-regulatory systems such as the Australian version formed in 1976. In spite of this development, one of the largest magazine publishers of magazines available in New Zealand, Australian Consolidated Press (ACP) remained outside the NZPC's remit (though it falls under that of the APC). This, of course, creates difficulties for effective self-regulation in New Zealand, with the NZPC thus vulnerable to external criticism.

[103] NZPC. 1999, op. cit., p. 6; *The Evening Post*, 1 May 2000, ed. 3, p. 13. 'Press Complaints tally 75'.

[104] NZPC. 1999, op. cit., p. 6.

[105] Mediacom Press Release from the New Zealand Press Council. 22 June 1999, 3:21pm. Online: Mediacom. Available: http://www.scoop.co.nz/stories/GE9906/S00036.htm. 12 August 2000.

principle which were drawn on in the formulation of the NZPC's document.[106] The council stated it was "intended to support guidance already available to them [journalists] in other forms".[107]

The NZPC explained the decision as to the form that its 'code' would take in its 1988 annual report:

> There are two basic models that could be used. Firstly, only the broadest of powers be given to a council and then it is left to work out through exercise of its jurisdiction the framework of how it will act. This loose system has a very distinguished lineage in the common law developed over the centuries. This is how the United Kingdom model started and which the New Zealand Press Council adopted. The other model is to have a comprehensive and strict set of black letters more akin to statutes and is called a Code of Practice, and that is where the Press Complaints Commission has finally arrived at. The Press Council examined that model but has declined to go down that path basically because it is unnecessary in New Zealand and may be too inflexible. However, the important lesson is that Britain travelled from the loose system to the strict system, and that is an argument for the necessity of a guiding written document.[108]

In relation to the perceived benefits of the former of these two models, the NZPC further concluded that

> ... it ought to provide a written document and has preferred a Statement of Principles as most likely to give the public the better result. A Statement will give greater particularity for users of the Press Council, and will help the Council fulfil its three Objectives and provide guidance to editors of publications as to how and where the Council will place emphasis in its mission.[109]

The 13-point statement of principles appeared in August 1999 and was to be reviewed after it had been operative for one year to determine "whether it worked on practice

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[106] Jenkins, G., op. cit. Jenkins explained that while no one existing document was used specifically as a model for the councils set of principles, the Australian Press Council's 'Statement of Principles' as well as the declarations drawn up by the former BPC, "were obviously considered". Attention was given to the codes for radio and television supervised by the Broadcasting Standards Authority (as the Privacy Commissioner had recommended) and to the codes of practice and ethics drawn up by individual newspapers and the journalists' union (NZPC. 1999., op. cit.). The NZPC has stated that "some of the wording was the subject of quite vigorous debate and controversy" (Mediacom, op. cit.). However, the specific details of this debate were not elaborated on any further than the response that "every issue was debated until there was consensus" (Jenkins, G., op. cit.).

[107] NZPC. 1999, op. cit., p. 7.

[108] NZPC. 1998., op. cit., p. 8. Unlike the PCC system, complaints need not be framed in terms of the NZPC's statement of principles, but complainants do have the option to do so as discussed further in chapter seven.

[109] ibid., p. 8.

and whether any changes are required".[110] At February 2001, a formal review of the statement has yet to be published.

Parallels can be drawn between the former BPC's development of written self-regulatory guidelines and the NZPC's adoption of its statement of principles. The BPC maintained its view that a written document was unnecessary until circumstances of mounting external pressure and criticism forced a change in this attitude. That 'complacency is the enemy of self-regulation' has also been illustrated in the evolution of the NZPC's stance on codes of ethics, illustrating how self-regulation "... tends to dawdle for years, then bursts into a sprint when the spectre of statutory regulation is pressed into spines".[111] The NZPC continually emphasised the 'good behaviour' of the New Zealand print media to justify its long-standing view that a formal code of ethics was not needed. Yet it rapidly changed its position after external criticism of its credibility and effectiveness without any such document. Evidently, a written document was not as seen 'necessary' as a means of being vigilant and proactive in the maintenance of professional standards, as the Privacy Commissioner had urged, but rather as a means of deflecting such interference.

Indeed, when presented with the 'opportunity' to devise a formal code of practice with enforcement strategies, the NZPC decided against this route on the grounds that it was 'unnecessary'. Rather, it chose to pursue more of a 'middle ground' in developing a broad set of principles more akin to the declarations the former BPC. Like its British counterpart, the NZPC thus appears to have attempted the compromise between mounting parliamentary pressure on the one hand, and the prevailing view of a more detailed code as a 'constraint' on the other.

The preamble to the 13 principles emphasises the importance of freedom of expression.[112] As the previous chapter noted, a perceived imbalance between the interests of freedom of expression and the promotion of ethical standards was central to the BPC's demise, with the PCC subsequently established solely with the latter role. This indicates that while the two duties might be compatible for the NZPC, it

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[110] Mediacom. 1999. Press Release from the New Zealand Press Council. 22 June 1999, 3:21pm. Online: Mediacom. Available: http://www.scoop.co.nz/stories/GE9906/S00036.
htm. 12 August 2000.

[111] Chadwick, P. 1994, op. cit., p. 182.

[112] This, of course, would be credible if there were not so many vacuous references to the 'public interest' used to defend behaviour that falls outside certain of the principles. The failure to define the concept allows the potential for any breach of the principles to be defended in the interests of general 'freedom of expression' and 'public interest' arguments. This is discussed further in chapter seven.

ought to demonstrate a more proactive commitment to promoting both equally. With these factors in mind, it may not be long before the NZPC is forced to strengthen its guidelines if the experience of the former BPC is anything to go by.

5.3 The INL Code of Ethics

As noted above, an interesting development during the period in which the NZPC's written document was being devised was the formation by the country's two main newspaper and magazine publishing companies of written ethics codes for the editorial staff of their respective publications.[113] These decisions were also made against the background of parliamentary and public pressure for the adoption of a code for New Zealand journalists.[114] Like the development of the British NPA's 'editors' code' in 1989, INL's 1997 initiative gained momentum with the threat of privacy legislation in the pending 1998 review. According to an INL spokesperson, it was recognised within INL that "it would be preferable for the industry to do its own self-policing than have a code imposed by officials or government".[115] Also like the British NPA, INL moved ahead of the industry's self-regulatory body and proceeded to adopt a code of ethics independently.[116] This initiative arose out of doubts within

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[113] As noted above, it was around this time that Wilson and Horton (New Zealand's other main newspaper and magazine publisher) expressed its intent to follow INL in developing a code for editorial staffs. However, despite numerous requests for information, a very limited degree of response means that its progress cannot be covered here. According to staff at the New Zealand Herald, it appears that the code never went any further than an initial idea. Furthermore, Bill Southworth, Executive Director of the New Zealand Journalists' Training Organisation suggests that the 'standard code' used by newspapers (including those owned by Wilson and Horton) is that of the journalists section of the EPMU (Southworth, B. 25 October 2000. Personal Correspondence). This given, Wilson and Horton may have believed that the creation of an additional code was unnecessary.

[114] In addition to the code of the NZJA, there were other codes in existence before this time; namely, the in-house codes of the *Nelson Mail* and the *Southland Times* (Cropp, A. 1997, p. 180. *Digging Deeper: A New Zealand Guide to Investigative Reporting.* Wellington: New Zealand Journalists' Training Organisation). Having since become part of INL, however, both these newspapers' respective codes have presumably been superceded by the INL code.

[115] Page, W., op. cit.

[116] Interestingly, in the New Zealand context it was not the NPA that took the lead in developing a code in the face of external criticism, but instead an individual publishing group. While there have been instances where the New Zealand NPA has considered adopting a code (see NZJA 1962, p. 34), the NPA has since abandoned any such idea. Recommendations to the NPA in the context of the Privacy Act debate in the early 1990s did not make it onto the agenda of the NPA itself. The Journalists' union (JAGPRO at this stage) was among those in support of the notion of the NPA formulating a code, recognising the crucial role of publishers in a system of self-regulation. It was noted that the publishers had resisted recognition of the journalists' code because it "cut across management prerogative". Yet same time, the NPA was reported to have cited the journalists' code (and the existence of the NZPC) as evidence that self-regulation was effective as it stood (Tully, J. 1992b. 'Bosses need ethics too'. In *The Word*, vol.59, no. 2, p. 4). Citing the 'dangers' of ethics codes from a legal perspective, the NPA has also drawn on US cases noting how codes have been used "by clever lawyers to show that a reporter acted improperly or breached accepted reporting practices" (Cropp, A. op. cit., p. 180).

INL as to whether the NZPC would be able to receive industry-wide agreement on the form and content of any code that it decided to pursue, particularly the privacy clauses that the commissioner was urging.[117]

The INL code was drafted by a small group of INL's senior newspaper and magazine editors, and circulated throughout the INL group for comment. After some revision, it was approved across the INL group.[118] Following its dissemination in late 1997, Rick Neville, the chief operating officer for INL who instigated the initiative,[119] made a similar point to Page as to the functions of the INL code. Noting the unifying effect of the INL code, Neville suggested that "[t]he code of ethics is important as it will tie all our journalists, whether they work on a big daily, a small paper or a magazine, to a new benchmark of professional behaviour".[120]

While the INL code of ethics applies to the editorial staffs of about eighty New Zealand newspapers and magazines,[121] the NZPC nonetheless remains at the centre of press self-regulation in New Zealand. This point is acknowledged in the preamble to INL's 12-point code of ethics, which reaffirms its affiliation to the council's objectives and values, with its final clause advising editors to "publish any Press Council decisions as soon as practicable". That INL, as New Zealand's leading publisher, has affirmed its support for the NZPC in its code sets a useful precedent for the future of press self-regulation in this country.

Part two of this thesis has explored the development of print media codes of ethics in Britain and in New Zealand over the twentieth century. In each of the two cases, the discussion began with an overview of each of the codes developed by the respective journalists unions; the NUJ and the NZJA (as it was called when its code was first devised). There were parallels between the development of the code of conduct by the NUJ and the code of ethics by the NZJA. The catalyst for the formation of codes in both cases concerned the mandate to protect the working

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[117] Page, W, op. cit. Warren Page, the current Group Training Manager for INL, suggests that the idea also came about "because with so many journalists opting to work outside union coverage, there was a perceived need to have them aware of their editor's expectations in terms of ethical conduct" (ibid.). Interestingly, it took the imminent Privacy Act review (quite some time after the ECA 1991) for INL to recognise this.

[118] Hard, S. 12 January 2000. Personal correspondence.

[119] ibid.

[120] Independent Newspapers Ltd. 1997. Press Release. 6 November 1997. Online: INL. Available: http://www.inl.co.nz/pressrel.htm. 12 August 1999.

[121] *The Evening Post.* 6 November 1997, edn. 3, p. 3. 'Code of ethics'.

journalists from any demands that might be made from editors or proprietors, which were, to quote the NUJ, "unreasonable to the journalist's sensibilities".[122] The other main reason highlighted here was to advance the industrial interests of each of the two bodies, which was a fundamental reason for their existence.

As explored above, the desire to inject social responsibility into the British press has been validated by a perceived 'crisis of ethics' in British newspaper journalism. Circumstances in New Zealand have been different where an overall lack of external pressure on the New Zealand press has reduced the perceived need for ethics codes. It has been only recently that there has been evidence of a growing desire by government officials in New Zealand to encourage vigilance within the press in relation to its ethical standards. Indeed, it was only in 1999 that the self-regulatory body of the New Zealand press developed its first guiding document for the professional conduct of the newspapers that it oversees, which evolved out of a 'crisis of credibility of self-regulation' fuelled by parliamentary pressure.

While the history of press self-regulation in Britain has differed from that of the New Zealand press, the outcomes concerning the codes of ethics of the self-regulatory bodies have evidently been much the same. In both Britain and New Zealand the development of codes has tended to be reactive, reflecting a limited aspiration in the press to strengthen its self-regulatory structures and guidelines 'voluntarily'. Rather, the development of ethics codes has been the standard response of the press to demands for 'internal reform', which may be accompanied by threats from the parliamentary sphere concerning the future of voluntary self-regulation. Having evolved ultimately as 'public relations' or 'window dressing' mechanisms devised to protect the press against statutory intervention, the codes of both the British print media thus suggest a divergence between the theoretical principles of social responsibility theory, a contention illustrated further in the following chapter.

[122] Mansfield, F.J., op. cit., p. 17.

PART THREE

The interface between the theory and practice of voluntary restraint

CHAPTER SIX

The application of social responsibility theory in practice: An analysis with reference to the British and New Zealand experiences of press self-regulation

> The Hutchins report provided an influential ideological guide for the development of post-war journalism, but one that was critically grounded in the voluntary enforcement of the social responsibility contract by the media themselves. Thus, the doctrine is vulnerable. It can be undermined by conditions that induce publishers and media managers to seek to exempt themselves from the onus of self-enforcement.[1]

In the above excerpt, Sessions Step makes a critical observation about the interface between the theory of social responsibility outlined in chapter one of this thesis, and the practice of 'voluntary restraint' illustrated above of the British and New Zealand print media. Indeed, others have suggested that many of the normative issues that were articulated by the 1947 Hutchins Commission remain central to current debate on the performance of the press today.[2] This raises questions about both the application and the applicability of the social responsibility theory, as this chapter aims to highlight. The apparent divergence between the principles of the social responsibility theory on the self-regulation and independent monitoring of the press and their application in practice has been an underlying theme of this thesis.[3] With reference to the British and New Zealand experiences of press self-regulation, the following seeks to explain and account for the 'politics of voluntary restraint'; the tension between interests in a 'socially responsible' press, and the interests of the press in protecting its self-regulatory status.

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[1] Sessions Step, C. 1990, p. 189. 'Access in a post-social responsibility age'. In Lichenberg, J. (ed.). *Democracy and the Mass Media*, pp. 186-201. Cambridge: Cambridge University Press.

[2] Such assessments have predominantly focussed on structural issues relating to access and diversity (ownership and output) in the media (see generally Negrine, R, op. cit.; Sessions Stepp, C, op. cit.; and McQuail, D. 1994, op. cit., McQuail, D. 2000, op. cit.). Some of the points raised in these works are considered below. However due to the scope of this thesis, this chapter focuses on normative issues of press performance, particularly the concept of 'voluntary restraint' and the efficacy of this principle in the context of print media self-regulation in Britain and New Zealand.

[3] This description of the social responsibility theory is given in Bromley, M., op. cit., p. 333.

6.1 Does the practice reflect the theory?

The following is structured in order to examine four central tenets of social responsibility theory that relate to the conception of 'voluntary restraint' in press performance and their application in practice.[4] Firstly, this chapter considers whether the role of the contemporary press promoted by the theory has been embraced. In doing so, the following assesses whether the 'dual role' of the press identified by the Hutchins Commission has been effectively addressed. Secondly, the extent to which the theory's interpretation of 'press freedom' has underpinned the evolution of press self-regulation in Britain and New Zealand over the twentieth century is considered. In doing so, the notion of self-regulatory codes of ethics as manifestations of the theory is examined in relation to other apparent functions they may serve for those who develop them. Thirdly, social responsibility theory's view of self-regulation as the most preferable option for press regulation and reform is considered in relation to the difficulties that its application has faced in practice. Finally, the theory's justification of external interference in self-regulation is examined in terms of how this has manifested itself in the British and New Zealand experiences, for what reasons, and with what outcomes.

Principle One: The press as 'business industry' versus 'public trust'

A tension between the role and functions of the press by social responsibility theory and those promoted in practice is fundamental to an understanding of the politics of voluntary restraint. As Sessions Stepp argues:

...[I]t can be argued that the press commitment to social responsibility,[5]

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[4] Those tenets referred to throughout this chapter are not explicitly labeled thus in existing accounts of the theory, but rather have been drawn from the central ideas behind the theory and its main principles for the purposes of the present discussion.

[5] Concerning the response of the US press to the Hutchins report, Theodore Peterson suggested that "[a]lthough the press was generally hostile to the report, its criticisms were not directed to several of the primary assumptions of the report. Evidently few if any of the media took issue with the Commission on the fundamental point that the press has a social responsibility, for example, or even the function of the press in a democratic society" (Peterson, T., 1963, op. cit., p. 85). However, other commentators indicate that the report was less influential. Some of the questions raised by the press at the time are illuminating: "How could it be determined if the press accepted its responsibilities and what could be done if the press refused to do so? Who should decide when and how the government should intervene in the affairs of the press?" (Jaehnig, W., op. cit., p. 102-3). Indeed, Snoddy suggests that the influence of the Hutchins report on the US press may have been overstated: "... if newspapers in the USA are much less sensational now than in the 1940s, this has less to do with the Hutchins Commission than the lack of competition [in the US press]" (Snoddy, R., op. cit., p. 162). This comment hints at one of the central differences located in this thesis between the histories of press self-regulation in Britain and New Zealand, which is considered further below.

> which deepened following Hutchins and became entrenched in the language of journalistic ethics, may stand on increasingly unsteady pillars. In the modern market place, journalism becomes more like a conventional enterprise and less like a quasi-public social franchise. It becomes bigger and riskier business ... and more subject to control by managers schooled in profit making than by editors passionate for fierce journalism.[6]

As this statement indicates, many of the perceived difficulties of the press today go to the heart of the tension between the 'dual role' of the twentieth century press as a private business industry driven by profit motives, and the press as a quasi-public trust with 'social responsibilities'. This conflict was a central concern of the Hutchins Commission and the later theory, which urged the press to balance its commercial objectives with its stewardship obligations of 'social responsibility'.[7]

The 'bias' of the press as 'big business'

The Hutchins Commission noted that

> [t]he major part of the ... press is large-scale enterprise, interlocked with the system of finance and industry; it will not without effort escape the natural bias of what it is. Yet, if freedom is to remain secure, this bias must be known and overcome.[8]

That this 'bias' has in fact not been addressed is arguably central to an understanding of the politics of voluntary restraint illustrated in the British experience of press self-regulation. As contended in previous chapters, many of the difficulties of press self-regulation in Britain correlate to the highly competitive context within which the operation of social responsibility theory's model of voluntary self-regulation takes place. Yet the focus for improvement of the press has most commonly centred upon the strengthening of self-regulatory structures and guidelines, rather than on the market conditions and the prevailing commercial imperative. That wider pressures may undermine such a self-regulatory framework is perhaps the key to understanding why the application of many of the social responsibility theory's performance principles has been problematic in the British context.

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[6] Sessions Stepp, C., op. cit., p. 193.

[7] Gibbons discusses the concept of 'stewardship' in the context of the social responsibility theory in more detail, in particular the idea that ownership interests should not run counter to stewardship interests or the pursuit of citizenship related objectives such as universal access and diversity of output (Gibbons, T., op. cit., 213).

[8] Commission on Freedom of the Press, op. cit., p. 129-30.

The 'bias' of the British press appears to have impinged on the practical mechanisms that the social responsibility theory advanced for resolving the tension between the role and functions of the press as a 'private business' and as a 'public service'. The theory advocated non-statutory ethics codes as a primary mechanism for 'voluntary restraint' which would be adopted and applied by the press in recognition of its public service functions and 'social responsibilities'. However, such codes have often proved futile as the British experience appears to highlight, having functioned as little more than the 'piously-framed paper codes' denounced by Hutchins in 1947.[9] Therefore, the practical 'accountability mechanisms' advanced by the theory have not appeared to function in the anticipated manner because of the broader operating context in which codes have been adopted and applied.[10] This is particularly illustrated in the British 'tabloid phenomenon' highlighted in previous chapters where codes of ethics have done little more than to mask libertarian understandings of press freedom to which the press remains attached.[11]

Principle Two: Reconciling 'press freedom' with 'press responsibility'

According to social responsibility theory, 'press freedom' and 'press responsibility' are congruent concepts; press freedom involves a commitment to self-imposed and upheld sets of professional and ethical standards. As Glasser explains this 'positive' conception of the term 'press freedom':

> ... [I]n short, the journalist's principal and overriding responsibility is to assure the integrity of the press by seeing to it that the press is at all times free to conduct itself in accordance with its highest [professional and ethical] ideals. At the very least, this means that a free press is a press free to act with regard for—and with reference to—the general welfare of its community.[12]

However, the 'antithesis' between the concepts of freedom and responsibility, and autonomy and accountability does not appear to have been overcome as the Hutchins Commission urged.[13] Rather, it appears that 'press freedom' has predominantly continued to be interpreted, at least in some sectors of the British press, as the freedom to operate a business in the marketplace without restriction or

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[9] Hocking, W. E., op. cit., p. 226.
[10] Jaehnig, W., (op. cit., p. 106) makes a similar observation.
[11] A similar point was made by Cunningham, R. P., op. cit., p. 60.
[12] Glasser, T., op. cit., p. 93.
[13] Commission on Freedom of the Press, op. cit., p. 130.

restraint.[14] Pointing to an apparent divergence between the social responsibility theory's conception of the term 'press freedom' and that commonly applied, Lichtenberg contends that there is a misunderstanding as to

> ... what a modern democratic society's commitment to freedom of the press means and should mean ... Freedom of the press should be contingent on the degree to which it promotes certain values ... Freedom of the press, in other words, is an instrumental good: It is good if it does certain things and not especially good ... otherwise.[15]

Evidently, this has impinged on attitudes within the press towards codes of ethics. This was illustrated in the British context in the dominant response of the tabloid press to the former BPC's 1966 declaration of principle, as chapter four noted.[16] Indeed, the reaction of the press to notions of 'imposed restraints', even Calcutt's proposed voluntary code,[17] was a great deal more hostile as chapter five highlighted. McQuail explains that

> [m]uch difficulty has ... arisen over the institutional forms in which press freedom has been embodied. In many contexts, press freedom has become identified with property rights and has been taken to mean the right to own and use means of publication without restraint or interference from government. Freedom to publish is accordingly, seen as a property right that will safeguard as much diversity as exists and is expressed by free consumers bringing their demands to the marketplace.[18]

Without diverging into further discussion of the obvious difficulties of such a view in practice,[19] the apparent prevalence of this concept of 'press freedom' is worth

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[14] As it was noted in chapter two, a causal relationship between the comparatively 'unfriendly legal atmosphere' within which British journalists operate, and the (often questionable) ethical standards of the press has been suggested (see Dring, P., op. cit., pp. 311-315; Belsey, A. 1995, op. cit., p. 96; and Snoddy, R. op. cit., chapter 9 'The press in the USA'). Brought within the scope of the present discussion, it may be seen that the demonstrable failure of the British press to embrace social responsibility's interpretation of press freedom as carrying responsibilities has had to do with the lack of a 'constitutional commitment' to protecting press freedom. Thus, there is less of a commitment to 'press responsibility'. If this is the case, it will be interesting to note whether the recent incorporation of the right to freedom of expression into UK domestic law will have any effect.

[15] Lichtenberg, L. 1990b, p. 104. 'Foundations and limits of press freedom'. In Lichtenberg, J. (ed.). *Democracy and the Mass Media*, pp. 102-135. Cambridge: Cambridge University Press.

[16] Likewise, upon its creation the NZPC suggested that to enact such 'constraints' so early on in its operation would be likely to disrupt "the delicate balance of forces that was needed to make standards effective without being suppressive" (NZPC. 1973, op. cit., p. 1).

[17] This point is illustrated further in the following chapter.

[18] McQuail, D. 1994, op. cit., p.129.

[19] This is a view reflected by the dominant perspectives in the British press industry, for instance in the market liberal view of Rupert Murdoch that "market competition is the principal condition of press freedom" (McGregor, J. 1992, op. cit., p. 35). The central argument against this is that the idea of anyone being able buying and operating a newspaper is, in practice, erroneous, as noted by Frost (Frost, C, op. cit. p. 103).

considering as a means of understanding the divergence between the theory and practice of voluntary restraint illustrated in previous chapters. In the British case, professional self-regulation has evidently been dictated to by the particular market conditions, commercial imperatives, and associated dominant understandings of 'press freedom' perpetuated by the industry's proprietors and managers.[20] As chapter two noted, enacting 'restraints on press freedom' in the form of ethics codes has predominantly only been viable under market conditions of comparatively mild competition.[21] Commercial imperatives have thus shaped whether or not a balance between freedom and responsibility is attempted in the press. These factors have had the effect of undermining an industry-wide commitment to the social responsibility ideal.[22]

The case of the British Press Council

The central difficulty of the former BPC illustrates the contention that a balance between freedom and responsibility has not been attained in the British press. As chapter two noted, at the heart of the criticisms of the body was its perceived lack of independence and authority as a regulator of press standards. The 1990 Calcutt Committee saw the 'twin role' of the BPC to promote press standards while protecting press freedom as an inherent difficulty, so much so that the PCC was to be implemented with only the former of the two functions. That the BPC was viewed as a "watchdog with two heads barking in opposite directions" suggests that its two functions were not balanced in the manner advocated by the social responsibility theory.[23] In other words, there was an 'antithesis' between press freedom and press responsibility, which far from being addressed was in fact a central factor in the BPC's eventual demise.

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[20] While sectors of the press in both Britain and New Zealand have embraced and striven towards professionalism and in doing so, evidently recognised the responsibilities that come with relative autonomy, these efforts have often been hampered by wider and often more powerful forces and processes. This argument is continued below.

[21] Bailey, G., and S. Williams, op. cit., p. 352 ; and Tunstall, J. 1996, op. cit., p. 396.

[22] Self-regulation has been widely viewed in economic terms, reliant on libertarian ideas about the role and duties of the press. According to Rupert Murdoch, self-regulation is an 'investment' where the PCC's route of redress against breaches of its code is "a major cost saving" as opposed to the legal route for newspapers, not to mention those aggrieved (Montalbano, D. 1997. 'British media evaluate ethics'. Online: The Detroit News. 12 October 1997. Available: http://www.detnews.co./1998/diana/9801/07/10120063.htm. 6 November 2000).

[23] The metaphor was coined by Morgan (op. cit., p. 139).

By contrast, the NZPC was established with, and has to date retained the twin objectives concerning the promotion of professional and ethical standards, and the protection of press freedom. The comparative success of this formula in the New Zealand context might be understood with reference to the lack of competitive pressure on the New Zealand press, which has allowed a balance between freedom and responsibility to be more effectively attained in practice.[24] In other words, it may be seen that the 'dual role' of the NZPC has gone comparatively unquestioned in the New Zealand context because the market conditions in which the press operates have been more conductive to assimilating freedom and responsibility than in Britain.

Principle Three: Codes of ethics and the notion of 'voluntary restraint'

A central question raised by the Hutchins Commission was "whether press performance could any longer be left to the unregulated initiative of the issues". The commission resolved that "the policy of laissez faire in this field must be reconsidered".[25] The emergent theory emphasised the need for an established regulatory framework, which would ensure that certain standards of press performance were acknowledged and upheld. The social responsibility theory placed the onus for the regulation of press performance with the press itself rather than with the state or other such alternative avenues.

The development of non-statutory ethics codes were a crucial means of upholding the 'social responsibility contract'. Such codes were a means whereby the 'social responsibilities' of the press and the standards of performance required to attain them could be stated and followed. Self-regulatory codes of practice were mechanisms for advancing an increased sense of professionalism within the press, in promoting a notion of public service and accountability to the public in press performance. The activities of the press would thus be constituted by a shared set of ethical norms which would help foster the necessary self-criticism therein. The theory also accorded to codes an important practical role; such devices were the cornerstone of a collective system of independent monitoring and self-regulation of professional standards by the press itself.

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[24] See Tully, J. 1992a, op. cit., p. 143-4, 147-8.
[25] Hocking, W. E., op. cit., p. 225.

As chapter one indicated, some of social responsibility theory's normative precepts relating to self-regulatory ethics codes are demonstrably reflected in a contemporary context. For instance, the promotion of high ethical and professional standards within the press is frequently one of the principal duties of self-regulatory bodies in a number of countries, including Britain and New Zealand. Similar themes and ideas relating to the functions and duties of journalists can be found in the content of many journalistic ethics codes. Certainly, the very existence of such media councils operating self-regulatory codes of ethics might be deemed physical or practical manifestations of the social responsibility theory.

The development of the social responsibility theory also witnessed the proliferation of self-regulatory regimes utilising ethics codes throughout western journalism. Indeed, the birth of the theory and its normative precepts also appears to have provided much inspiration, both inside as well as outside of the press, to accept that the press ought to acknowledge certain social responsibilities, and for the notion that these should be codified. As it has been noted elsewhere, the ideas contained in Peterson's writings have "... lubricated the debate about journalistic ethics, and echoed through the literate and professional codes for journalists throughout the twentieth century".[26]

In addition, the ideology that has underpinned such developments has involved a transition from the nineteenth century 'publish and be damned' mentality to one that has arguably progressed in the direction of social responsibility theory, with an acknowledgement of a 'public interest' in the practice of journalism.[27] As indicated in previous chapters, this progression has been reflected in a number of processes and practical initiatives, and is often reflected in the content of many codes themselves. Indeed, "an increased reliance on code of conduct and practice ... [has] set new paradigms, affecting the assumptions made about the role of journalists in society".[28] These factors may be drawn on to argue that the social responsibility

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[26] Sessions Stepp, C. op. cit., p. 187-8.

[27] While this may be the case, the employment of this term has widely been used to justify actions along utilitarian lines as the debates around the time that the Hutchins Commission was convened indicated (see Lambeth, E. 1992, p. 8-9. *Committed Journalism: An Ethic for the Profession* (2nd ed.). USA: Indiana University Press). This point is explored further in the conclusion to this thesis.

[28] Stephenson, H., and M. Bromley. 1998, p. 7. 'Introduction'. In Stephenson, H. and M. Bromley (eds.). *Sex, Lies and Democracy: The press and the public*, pp. 1-10. Essex: Addison Wesley Longman Ltd.

theory has progressed beyond a mere set of normative principles about the role and performance of the press without practical expression.

However, it is the apparent *context* in which ethics codes have tended to be developed and the manner in which they are subsequently *applied* that needs to be considered more closely in assessing the application of social responsibility theory in practice. It might be argued that neither the adoption nor the application of such ethics codes and other internally devised regulatory structures have demonstrably occurred in what might be considered the 'genuine spirit' of the social responsibility theory. To paraphrase the point made by Petley (reproduced above in chapter four),[29] self-regulatory ethics codes have been developed with functions more akin to an 'insurance policy' to avert threats of statutory restraints, and as devices to protect (libertarian ideas of) 'press freedom'. This has resulted in an uneven and fleeting application of social responsibility's principles relating to ethics codes.[30]

'Professionalism' and Internal reform

Social responsibility theory reflected certain ideas about how ethics codes were to be enacted and operated. A consideration of these may offer further insight into the patterns highlighted in chapters four and five above. Underlying the central performance principles of the theory was the notion of a 'professional spirit' as an integral part of the independent regulation of professional and ethical standards. As the Hutchins Commission elucidated this concept,

> [t]he profession ... has a conscience. That is what makes it a profession ... We suggest that the press look upon itself as performing a public service of a professional kind. Whatever may be thought of the conduct of individual members of the older established professions, like law and medicine, each of these professions as a whole accepts a responsibility for the service rendered by the profession as a whole, and there are some things a truly professional man*[sic]* will not do for money.[31]

In balancing freedom with responsibility and accountability, the press was to view itself as a 'profession' and to perform accordingly. This involved a commitment to certain specified standards of service to the public, with internally devised accountability mechanisms to promote such standards. Journalistic codes of behaviour

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[29] Petley, J., op. cit., p. 156.
[30] McQuail makes a similar point (McQuail, D. 1994, p. 151-2).
[31] Commission on Freedom of the Press, op. cit., p. 78- 92.

were one of the central 'professionalising strategies' advanced by the theory. As such, they were the cornerstone of a self-regulatory system, and part of a 'performance policy' for the press with the promotion of social responsibility a central aim.

For some commentators, the very fact that the press appears to have *responded* to public and parliamentary concerns about its practices and performance in the form of establishing media councils and operating ethics codes indicates an acknowledgement and commitment to the normative principles of social responsibility theory. Kieran, for instance, contends that

> ... the attention paid to ethical issues tends towards the pragmatic and typically framed in response to particular press scandals, worries raised by certain pressure groups, or perceived government interference ... [However] such responses necessarily involve certain normative commitments that often remain unexamined...[32]

Such a view implies that the implementation of self-regulatory structures and guidelines by the press is 'evidence' in itself of a desire to re-evaluate and strengthen its system for effective voluntary restraint.

However, this overlooks the wider processes and contextual factors that are central to an understanding of the nature of 'internal reform' of press self-regulation in contexts such as the UK. In doing so, it fails to take into account how the development of ethics codes has largely been motivated by 'normative commitments' within the press that contrast with those of the social responsibility theory. In other words, the press has been effectively *forced* to accept social responsibility's normative values because of perceived threats to (libertarian ideas of) 'press freedom'. To the extent that it has been externally motivated, 'internal reform' of press self-regulation in Britain has involved a commitment to 'social responsibility' not from within the press itself but from outside of the industry, usually within parliament. In responding to parliamentary concerns, ethics codes have been devised as mechanisms for the industry's mutual self-protection in the face of threats of more stringent regulatory alternatives.[33]

Central to the social responsibility theory's understanding of 'professionalism' were the notions of self-judgement and self-criticism which the press would engage in

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[32] Kieran, M. 1997, p. 3 *Media Ethics: A Philosophical Approach.* USA: Praeger Publishers.

[33] This is a similar interpretation of the role and functions of ethics codes to theorists of the power school of sociology, noted in chapter one.

to improve its self-regulatory structures.[34] Indeed, the 'professional spirit' envisaged by the Hutchins Commission involved the proactive and systematic development of ethics codes by the press *by its own volition.* However, for the most part, ethical guidelines have not evolved out of self-criticism and self-reflection, and in the manner of the 'professionalising strategies' envisaged by the Hutchins Commission. Rather, external criticism has been the central catalyst for internal reform including the development of ethics codes by the British press.[35]

While in New Zealand ethics codes have been developed less in response to the perceived 'abuses' of the press, the recent development of the NZPC's statement of principles after twenty-five years without a written document can be understood with reference to the trends located of the UK experience. That the NZPC operated for so long without any written code may thus be explained by the fact that prior to the 1990s, the New Zealand press did not face the same degree of external pressure as the British press to strengthen its self-regulatory system. Complacence brought parliamentary criticism, which resulted in the NZPC producing a written document. This pattern, too, departs from social responsibility theory's conceptions of 'professionalism' and internal reform.

Arguably, the development of a 'professional spirit' in the press has been undermined by the continuation of libertarian understandings of press freedom in both Britain and New Zealand. As Chadwick explains, "[m]any journalists automatically resist any constraints on their freedom of action ... tradition says resist regulation. And while journalists might self-regulate as individuals, a consensus about self-regulation has always been elusive".[36] An overall lack of a consensus about the nature of press freedom is perhaps at the core of the observable failure of the press as a unit to engage in the professionalising strategies of mutual self-criticism and self-discipline in the manner of the theory. An apparent conflict about the legitimacy of

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[34] Hocking, W. E., op. cit., p. 181.

[35] Although made in the context of the US press (specifically, the failure of its national media council), the simile articulated by Richard Cowen that "journalism has rejected attempts at organised criticism just as the body rejects transplants" seems applicable here. (Cowen, R. 1997, p. 11 'Saving the press from itself'. In *The Nation*, May 12 1997, vol. 264, issue 18, p. 11. New York: Nation Co.) As Bertrand also observes, the press as a whole tends not only to be adverse to the notion of self-criticism advocated by social responsibility theory, but also demonstrates a reticence to external criticism (Bertrand, C. J., op. cit., p. 122). These tendencies explain the reactive nature of the internal reform of self-regulation observable in the British and (to a lesser extent) New Zealand contexts. Arguably, there is a perception that the enacting or strengthening of mechanisms for self-restraint equates to an 'admission' on behalf of the press of its 'faults'.

[36] Chadwick, P., 1994, op. cit., p. 167.

'restraints' on the press, and the nature of such restraints if they are to be enacted at all, has affected the role that ethics codes have come to play in a contemporary context. This has contributed to a situation where codes appear to be viewed more widely as 'codes of constraint' rather than 'codes of professional honour'. This appears to be one of the central differences underlying the development and application of the NUJ's code of conduct, and the ethical guidelines devised by Britain's press self-regulators during the post-war period. Similar parallels were also drawn between the NZJA and the NZPC.[37]

'The press' as the source of internal regulation and reform: The 'dynamics of difference' and the notion of 'voluntary restraint'

In conceiving of 'the press' as the most preferable avenue for reform and as something of a collective agency to enact change, the social responsibility theory's application has met some key obstacles. Evidently, the theory did not anticipate the potential effects of a diversity of interests and perspectives within 'the press'.[38] Specifically, it appears to have overlooked how power relations in the press might influence the degree to which a 'professional spirit' would, or could be adopted and collectively promoted within the press itself and which 'professional values' would be promoted. As indicated above, there remain pervasive and fundamental questions of whether the press should function in the manner of a private business enterprise with commercial priorities and responsibilities to shareholders or as a quasi-public service with a professional and ethical basis and responsibilities to the public. The experience of the British press indicates that where 'the press' is located as the reforming agency, certain perspectives and interests are favoured over others. This has negative implications for the efficacy of industry-wide self-regulation based on the social responsibility theory's model.

Social responsibility's understanding of 'professionalism' was, in effect, a key rejection of libertarian ideas of 'press freedom'. However, there are apparent reasons

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[37] However, the evolution of the journalists' union codes also to a certain extent revolved around the pragmatic. The reasons for the NZJA's code had much to do with its industrial objectives where having a code of ethics was seen to have the potential to enhance the status of journalism as a profession. Moreover, as self-regulation has evolved in both Britain and New Zealand, codes have been increasingly driven by the desire to protect the autonomy of the press. It can be seen then, that neither the union codes nor the self-regulatory guidelines have been developed completely in line with social responsibility theory in promoting fundamentally the public interest in a 'socially responsible press'.

[38] McQuail makes a similar observation (McQuail, D. 1994, op. cit., p. 126).

why this has not taken root within the press. There are observable power relations between constituent groups of the hierarchically structured commercial press illustrated in countries such as Britain.[39] This very factor renders the balancing of perspectives about the role of the press and its responsibilities much more problematic in practice than the social responsibility theory appeared to account for. The perspectives and interests of newspaper owners and employers, for whom the practice of publishing newspaper equates to a private business venture, tend to set the 'professional agenda'. This is often at the expense of alternative sets of interests and ideas about the role of the press represented that are by journalists' unions due to the relative lack of power and influence of this interest group.[40] As it has been noted previously, the discord between proprietors and journalists is often the key to understanding the central difficulties of press self-regulation in a number of countries.[41]

The 'dynamics of difference' observable within a press industry such as Britain's thus has wider implications for the manner that social responsibility is applied in the press. By way of illustration, professional issues and concerns about the

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[39] In the New Zealand context, an illustration of the power relations in the press might be identified in both the underpinnings and outcomes of the News Media Ownership Bill of 1964 (discussed in chapter three). It was the Newspaper Proprietors Association which appealed to the Holyoake Government to restrict foreign ownership of media. This measure was said to be necessary to pre-empt the possibility of excessive competition between newspapers and thus a reduction in quality. Arguably, these arguments masked the real reasons for the NPA's appeal where its interests lay ultimately with retaining the corporate structure of the national newspaper market allowed by the NZPA as chapter three indicated. In spite of the numerous arguments mounted by the NZJA (among others) against this perceived protectionist policy initiative the Bill was passed. This episode is indicative of the relative power of proprietorial interests in the New Zealand press industry. It is also interesting to note that some of the contesting perspectives in this circumstance were each underpinned by elements of social responsibility theory. For instance, some of the arguments for the legislation were based on the idea that excessive competition would be deleterious to the ethical standards of the New Zealand press, with the resultant output tending more towards the sensational. In addition, where the proponents of the Bill foresaw the entry of foreign ownership as *limiting* diversity in the press with the potential absorption of New Zealand media by foreign companies, those against the Bill employed the same argument applied in reverse. It was contended that (based on traditional libertarian ideas) competition would increase diversity and thus quality as explained in chapter three. However, that both arguments were couched in terms of the diversity principle is resonant of the social responsibility model in terms of its emphasis on diversity of ownership.

[40] Certainly, to generalise about the commitment (or lack thereof) to a 'social responsibility ideal' by particular sectors of any press industry exclusively would be problematic. However, one may surmise that the reported attitude of Rupert Murdoch (owner of a number of tabloids and some broadsheets in the UK and elsewhere), who "regards journalism as really a brand of the entertainment business, and thinks that people buy a paper not to be instructed or edified or to know about the world, but to have a laugh", is not an aberration in the industry (see Watkins, A. 1997. Rupert Murdoch Information Page. Review of the PBS Documentary 'Whose*[sic]* afraid of Rupert Murdoch?' Available: http://www.csun.edu/~kab42291/review1.html. 27 January 2001).

[41] This comment was made in the context of the Australian history of press self-regulation in Chadwick, P., 1994, op. cit., p. 170.

ethical standards of the British press were central to the early activities of the NUJ. As chapter two highlighted, the NUJ was a central force in the institution of the first royal commission on the press in order to gain support for its idea of a professional self-regulatory regime for the press. However there was a degree of opposition and resistance to the idea of professional self-regulation from the industry's proprietors. An overall lack of enthusiasm from within this sector of the industry has been attributed to the delay that followed the commission's 1949 report in the implementation of a industry-wide system of press self-regulation. [42]

The industry's leading proprietors initially resisted self-regulation until the threat of statutory control provided the real impetus for collaboration and co-operation. This trend continued through the intervening years when, in 1980, the NUJ ended up withdrawing its representatives from the BPC which at this stage it viewed as little more than a 'publisher's poodle', as chapter two illustrated. It is conceivable that underlying these processes were conflicting ideas and perspectives about the role and priorities of the press between the constituent groups in the press industry in Britain. This view has had implications for how the self-regulation of professional and ethical standards has been maintained.

Power and profit: The place of 'professionalism' in the press

Furthermore, it was only under significant external pressure and under relatively mild competitive market conditions that the British press undertook any collective reform of press self-regulation in which the industry's proprietors effectively had the final word. This appears to go some way towards accounting for the pattern of internal reform of the contemporary press. In addition, the fact that success of press self-regulation is so heavily dependent on the support of the industry's owners and publishers places self-regulatory bodies themselves in a difficult position in terms of undertaking proactive measures to press regulation and the development of ethical guidelines. As Collins and Muroni capture this difficulty: "There is an inverse relationship between the effectiveness and independence of self-regulatory bodies, as their ability to act depends on the consent of regulated firms". [43]

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[42] Robertson, G., and A. Nichol, op. cit., p. 522.
[43] Collins, R. and C. Muroni. 1996, p. 176. *New Media New Policies*. UK: Cambridge Polity Press.

Thus, press self-regulation in Britain has been significantly shaped not so much by the social responsibility model as by those powerful interests in the industry that often tend to conflict with the core principles of the theory. Where the dominant interests in the press have commercial motives which work to maintain 'freedom of enterprise', it is perhaps not surprising that the internal reform of self-regulation towards a social responsibility ideal has been largely reactive. Press proprietors are prepared to invest over a million pounds in the PCC each year, not so much for the promotion of a 'socially responsibility' press, but because it offers a form of insurance against new laws to impose social responsibility on a commercially-oriented press.[44]

Both the industry-wide adoption of a professional spirit and the application of social responsibility theory have thus been dictated to by the wider context in which the operation of the commercial press takes place. Thus, in spite of a number of developments to the system of press self-regulation at the professional level over the years including the implementation of sets of ethical guidelines, the current model (the PCC) finds itself facing the same sorts of difficulties as its predecessor. While different in its form and functions to the BPC, it operates in the same context nonetheless, one in which a "...market dominated culture has dispensed with social responsibility" with priority given to profit over ethics, and circulation over public responsibility.[45] This conflict has implications for the form codes of ethics take, as McQuail suggests:

> [I]t is clear that attempts to codify press responsibility cannot overcome the fundamental differences of perspectives and interests between the various participants in the media institution and between the different social and political systems in the world.[46]

The current climate of practice, and the journalistic culture it fosters, thus has negative implications for the application of social responsibility theory's model of voluntary restraint. Contrary to the social responsibility model then, the processes of the market and commercial imperatives act as the primary forces regulating the professional standards of the press. The overarching question, then, concerns whether a social responsibility model is in fact applicable to the contemporary commercial

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[44] Robertson, G., and A. Nichol, op. cit., p. 520.
[45] Frost, C., op. cit., p. xiv.
[46] McQuail, D. 1994, op. cit., p. 126

press. This is a phenomenon characteristic of the contemporary media landscape more generally. As McQuail contends,

> ... most media operate on a day to day basis with little conscious regard for the norms...[of social responsibility theory]. The desirable goals are reached or not, and the evils are avoided or not, according to the working of particular media market circumstances, and the professional ethics, creative goals and routine decisions of those who work in the media [and the relative force of such interests].[47]

Principle Four: The role of governments in the regulation of the press

These issues raise questions as to whether the difficulties in the application of 'social responsibility' have been fostered at the policy level with the characteristic 'policy of no policy' for the press in countries such as Britain.[48] Indeed, the social responsibility theory is based on the principle that the freedom to self-regulate is a privilege rather than an inherent right. While the theory took the normative stance that the press should operate independently, it stipulated that where necessary governments "may initiate and aid efforts to explore possibilities of self-administered standards".[49] It thus followed that if the press was not perceived to be upholding the 'social responsibility contract' on its own accord, and voluntary restraint thus seen to be ineffective, then government intervention was legitimated by the theory as being in the public interest in a 'socially responsible press'.

On the surface, this premise has been pertinently reflected in the history of press self-regulation in Britain over the twentieth century. As chapter two highlighted, successive UK governments have acted to 'encourage social responsibility' in the press through the establishment of various commissions and committees to inquire into the press. However, these efforts have been largely ineffective, hence the inevitable return of criticism about the degree of 'social responsibility' practised by the press. In accounting for the reoccurrence of this 'cycle of self-regulation', some might point to the failure of governments to address some of the core problems of press self-regulation in Britain. While British governments have attempted to promote social responsibility at the professional level, deeper issues have tended to be overlooked.

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[47] ibid., p. 152.
[48] The phrase was coined by Seymore-Ure, C., op. cit., p. 206.
[49] Hocking, W. E., op. cit., p. 129.

A paradox of press policy?

Recommendations made to address the structural and economic 'problems' of the press industry, which have implications for the degree to which social responsibility's goals can be effectively applied within the press, have not featured prominently on the policy agenda of successive British governments. In other words, the market liberalist paradigm underpinning press policy has failed to locate as potential 'problem' the effects of a highly competitive press industry on ethical standards. This trend suggests a conflict between expectations of a 'socially responsible' press, and the ideology underpinning press policy in many western countries.[50] It also suggests that the limited application of the principles of social responsibility theory extends outside of the press. As the Hutchins Commission saw the role of government in the press:

> Without intruding on press activities, government may act to improve the conditions under which they take place so that the public interest is better served – as by making distribution more universal and equable ... Such legal measures are not in their nature subtractions from freedom, but like laws which help to clear the highways of drunken drivers, are means of increasing freedom, through removing impediments to the practice and repute of the honest press.[51]

This statement indicates that the social responsibility theory justifies government intervention in both the structure and economics of the press in order to remove impediments to the practise of 'social responsibility'. For some, it may be in these areas that the fundamental creases in Britain's system of press self-regulation

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[50] In the UK (among other countries), the role of the state in the press at the economic and structural levels has been limited presumably to permit as wide a latitude to market forces as possible in the regulation of the press. Yet the efficacy of press self-regulation has continually been questioned during the twentieth century, and thus the correlation between competition and press standards ultimately overlooked. In other words, while the *expectations* of press performance have moved in the direction of social responsibility theory, a market liberalist paradigm has evidently prevailed in other areas.

[51] Commission on Freedom of the Press, op. cit., p. 127-8. While this thesis is not directly concerned with issues of access and diversity in ownership and output, they were central to the structural aspects of social responsibility theory and thus noteworthy here. Some critics suggest that the because the normative concerns about access and diversity in the media remain at the forefront of debate about the contemporary press today, both the theory's application and its applicability is limited. For instance, Negrine argues that the exacerbation of concentrated ownership patterns (among other such structural tendencies) with the resultant restrictions on access and diversity in the press renders claims of a transition to the social responsibility idea doubtful. He argues that "[t]he failure to achieve many of these desired objectives has been apparent...It is, therefore, difficult to believe in the transition of the newspaper from the libertarian model to the social responsibility one" (Negrine, R., op. cit., p. 37).

could be ironed out.[52] However, successive UK governments have paid minimal attention to market conditions, including both ownership patterns and the excessive competition in the press.[53] The failure to adequately acknowledge a correlation between the excessive competition in the press and effective press self-regulation implies a view informing press policy that, ultimately, the press is an industry like any other; 'just another business'. This means that the application of ethics codes in the spirit of social responsibility is left open to the influence to structural dynamics and market failures.

A so-called 'crisis of ethics' evidenced in the news-gathering practices and subsequent output of the British press as a "daily news menu based on personalities, scandal and sensationalism",[54] is therefore a much deeper and more complex issue. That it is inextricably linked to the structural arrangements of the British press, and more to do with the "... economic accident which links the function of reporting, interpreting, and commenting on news with the running of a large-scale, highly capitalised industry...",[55] observed by the 1938 PEP report needs to be acknowledged.

This argument appears to be supported with reference to the New Zealand situation. The near-monopoly operating conditions and lack of competitive pressure in the New Zealand press have allowed the application of voluntary restraint in a manner more compatible with Peterson's model during the last century. However, while a 'crisis of ethics' has yet to find its way to the New Zealand scene, this situation may change as competition inevitably increases as other media forms take root. Therefore, in both Britain and New Zealand, there is evidently a need for increased awareness of

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[52] As it has been suggested elsewhere, little has ever been done to amend those "ineffectual laws relating to monopolies" in the UK (Weymouth, T., and B. Lamizet, op. cit., p. 49). (This issue was also referred to in chapter two, p. 54, note 66). Indeed, an attachment to the freedom of the press principle underlies the 'policy of no policy' for the New Zealand press also (among other countries) with implications for New Zealand's patterns of press ownership (see chapter three above p. 100, note 93). An exception to this in the New Zealand context may be located in the News Media Ownership Act 1965, which provided for a decade of restriction of ownership on the grounds of foreign entry to press market. However, this has since been repealed by the Commerce Act which treats newspapers as any other industry and does not include social objectives in restricting concentrated ownership (see chapter three, p. 85, note 29).

[53] McQuail suggests that today "[t]here is probably less fear of media monopoly despite concentration tendencies, because the potential for competition is greater" (McQuail, D. 1994, op. cit., p. 153). As chapter 3.6 noted, the British press remains both concentrated in its ownership and highly competitive; a situation of oligopolistic competition.

[54] Jaehnig, W., op. cit., p. 107.

[55] PEP., op. cit., p. 34.

the wider influences on the practise of social responsibility by the print media for the future.

6.2 Beyond normative theory

Of course, a fundamental difficulty with the application of social responsibility is the very expectation that such a theory can be effectively translated into practice. In addition to the difficulties located above as having influenced the application of the social responsibility theory, the reality that 'a theory is merely a theory' must be borne in mind. That its applicability, and indeed, its application, will also be heavily influenced by the particular context in which it is drawn upon is an issue raised by McQuail on the applicability of normative theories generally:

> While most of the ideas ... [of social responsibility theory] are still relevant to the general debate about the role of the media in society, the attempt to formulate consistent 'theories of the press' is nonetheless bound to break down. This is not just because of underlying differences of interests and political ideology which are present in any society. The frameworks offered have generally derived from a simple outdated notion of the press as providing (mainly political) news and information. They have failed to come to terms with the great diversity of mass media types and services and with changed technology and times.[56]

[56] McQuail, D. 2000., op. cit., p. 155. While this chapter is concerned with the performance elements of the normative theory of social responsibility as they relate to the print media, the factors that McQuail locates as complicating the wider application of the normative theories of the media generally are worth summarising here. By virtue of changes in both historical context and in the media itself, it may be questioned firstly whether the specific responsibilities that the social responsibility theory laid out are even relevant for the print media today. On a broader level, the proliferation of media to encompass a number of different forms and channels creates difficulties for the application not only of social responsibility theory. As McQuail suggests, this proliferation (or 'abundance') of media means that determining the roles and responsibilities of media will be increasingly complicated (McQuail, D. 1994, ibid., p. 133). A related difficulty for normative theory is convergence between media; the fading of once-clear boundaries between traditional media forms such as the print and broadcast media, on which distinct regulation or public policy was based (ibid., p. 134). The fact that media are increasingly transnational in their ownership, production, and reception (among other dimensions) also creates difficulties for the application of a normative framework to a national media system (ibid., p. 14). A further challenge to the relevance of normative theory today is the phenomenon of conglomeration. The existence of multi-media enterprises which cross national boundaries makes domestic media policy or regulation less feasible (ibid., p. 134). These trends have been accompanied by a loss of national consensus about what to expect from the media in their public role (ibid., p. 134). This is perhaps reflected in the regulatory history of the British press, which has been characterised by much uncertainty as to the preferable policy option for the press (as illustrated in chapter two above). Throughout this, there was an apparent transition in the dominating ideology about the role of the press in social and political life, as such structural changes took effect. This transition will undoubtedly be complicated by the factors McQuail identifies during the twenty-first century.

If social responsibility theory's ideas about press performance do indeed remain relevant, but its means of achieving them less so, then this suggests that "... there must be something new to enable the press to fulfil the responsibilities laid on it ... by the Hutchins Commission to be a socially responsible press".[57] This contention has been borne out by the above discussion, although to consider potential alternative means of doing so is beyond the scope of this chapter.[58] Nevertheless, the issues raised herein may offer a direction in which future debates about the degree of 'social responsibility' practised by the print media might turn. As this chapter has indicated, some of the core difficulties with the theory's application today have been related to the intersection of certain ideologies with economic, commercial and other pressures of the contemporary press. Where social responsibility theory did not account for many of these (or failed to provide the means for their resolution) it is clear that any alternative framework would need to do so. Calabrese concurs: "Attacks on decadent journalism, combined with new proposals for responsible journalism that focus on the profession while paying no attention to the political-economic environment in which journalists operate, are myopic to say the least".[59]

In terms of the application of self-regulatory ethics codes in the spirit of social responsibility theory, difficulties have arisen due to an apparent conflict in ideas about

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[57] Cunningham, R. P., op. cit., p. 60. Like McQuail's comment reproduced above, this reflects a view that the norms of the theory remain relevant in the contemporary context but that the practical mechanisms for promoting them require strengthening. Cunningham's proposed alternative lies with ethical theory proper. He suggests that the moral basis of codes needs further examination and consideration in their development and operation (ibid., p. 60). An extension of the idea is explored in the remainder of this thesis.

[58] Negrine suggests that the 'policy of no policy' approach to press regulation needs to be re-assessed for the future; "[t]he patterns of economic and other pressures make it unlikely that the media will acquire 'duties and 'obligations' unless they are forced to acquire obligations" (Negrine, R., op. cit., p. 37). The question may also be raised as to whether the UK should consider restricting competition in the press as some other European countries have done. Others prefer the continuation of the voluntary route for promoting social responsibility. Sessions Stepp advances the notion of a 'Professional Responsibility Model' as an alternative model to social responsibility. The PRM is the basis of a new strategy for enforcing the goals of social responsibility with the norms 'instilled at the professional level' (Sessions Step, C., op. cit., p. 197-198). In effect, the model advanced here is underpinned by a view that favours the professionalisation of journalism in a manner advanced by social responsibility theory. The new model would look to journalists to circulate and promote professional standards and a professional image of themselves at the level of the newsroom. However, a central problem with the model is that it overlooks the wider context in which the application of an 'acquired professionalism' among journalists would have to take place; a central impediment that the application of the social responsibility theory has faced. It is thus uncertain whether the professional responsibility model could do more to attain such a consensus then the social responsibility one.

[59] Calabrese, A. 2000, p. 55. 'Political space and the trade in television news'. In Sparks, C., and J. Tulloch (eds.) *Tabloid Tales: Global Debates over Media Standards*, pp. 43-61. USA: Rowman and Littlefield Publishers, Inc.

the roles and duties of the press and of journalists. The current journalistic culture is one in which codes of ethics tend to be seen as a 'constraint' on press freedom, which impinges on their development, their application, and their overall role in a self-regulatory system. The interface between the theory and practice of social responsibility thus elucidated, there are questions that arise as to the future of voluntary restraint for the print media. The overarching issue that this chapter has raised is that irrespective of whether the normative theory can be seen as applicable today, the cycle of 'complacence, criticism, and code development' illustrated by the British and New Zealand experiences of press self-regulation needs to take a different turn for the future. This is a contention explored in the remainder of this thesis.

CHAPTER SEVEN

An analysis of the structures of journalistic self-restraint

> When codes of conduct are drawn up, those who draft them seldom aim to give comprehensive guidance on the full range of ethical decisions that may face those working in the profession; normally, they confine their attention to matters dealt with in previous codes, plus any new issue that is a current source of public disquiet.[1]

Codes of ethics reflect the context out of which they emerge. This hypothesis, put forward at the beginning of this thesis, is directly addressed in the present chapter. This thesis has explored the apparent divergence between the theoretical principles underlying the concept of 'voluntary restraint', and the practice thereof. Building on the observation made in the extract above, this chapter argues that this divergence is reflected in the content of the ethics codes to have emerged out of the politics of voluntary restraint, in both what they do and do not contain.

This chapter does not offer an exhaustive, clause-by-clause content analysis of the codes considered in this thesis.[2] Rather, it focuses of the elements of the codes that provide an illustration of how the context in which they have evolved can be seen to undermine their resultant value as ethical decision-making tools for journalists, and thus their ability to function as instruments for genuine accountability to the public. Given their position within their respective systems of print media self-regulation, the code of practice of the PCC and the Statement of Principles of the NZPC form the basis of this chapter and the argument it aims to illustrate. The codes of the NUJ and the NZJA (now operated in an updated form by the media section of the EPMU) are

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[1] Harris, N. G. E., 1992, op. cit., p. 73.

[2] The intention of the present chapter is to cover only the four main codes of the British and New Zealand print media. In this respect, the following does not seek to present an extensive content analysis of all existing journalism codes in the two countries. Although the company-wide journalists' code of ethics of the New Zealand newspaper and magazine publisher INL was considered in chapter five, its content is not discussed in this chapter. Certainly, a discussion of this code in addition to that of the NZPC, and the EPMU code for journalists would offer further insight into the nature of the existing ethical structures in place for New Zealand journalists. It may also allow for further comparison with those of the British press. Unfortunately however, the scope of this chapter does not permit a discussion of such additional codes.

also considered as illustrations of 'subsidiary' ethical structures for journalists in Britain and New Zealand respectively.[3]

7.1 Codes of ethics and the politics of voluntary restraint reconsidered

As key 'policy documents' for the print media, codes of ethics ought to function as significantly more than 'evidence' of the legitimacy of a self-regulatory regulatory regime to outsiders. Codes should also serve to aid journalists in the ethical decision-making that is inevitably faced in their work. Where codes of ethics reflect a genuine effort to aid journalists in resolving ethical dilemmas, and thus promoting adherence to the associated standards of professional conduct, increased credibility for a regulatory framework based on the concept of voluntary restraint is likely. However, both the British and New Zealand experiences of press self-regulation highlight a piecemeal approach to internal reform through which the primary ethical structures and guidelines for journalists have been developed and subsequently revised. The cyclical character of press self-regulation in Britain over the twentieth century is particularly illustrative of this, where the development of self-regulatory codes has been largely reactive, having occurred primarily in response to external pressure and threats of 'imposed reform'. In the longer term, the 'internal reform' thus undertaken by British press has done little to address the concerns that initially inspired it.

The notion of ethics codes functioning as mechanisms for journalistic self-restraint, and effective self-regulation has thus been tainted by the apparent reality of

[3] There are apparent differences between the character of the journalists' union codes in Britain and New Zealand, and those devised by the self-regulatory bodies in the two countries. Although an indepth discussion of this is beyond the scope of this chapter, these differences are noteworthy. The union codes seek to inform the behaviour of the individual journalist, and the two codes thus reflect more of the 'individualistic approach' common among many US codes for journalists. On the other hand, codes of the self-regulatory bodies reflect an attempt to establish a regulatory framework intended to apply to the broader journalistic environment (Dring, P., op. cit., p. 351). Both the NZPC and PCC codes make references to certain requirements that fall outside of the individual journalist's remit, albeit to differing degrees. In contrast to the principles of the NZPC, the PCC code's clauses are concerned predominantly with the journalist's conduct, but its preamble places the code within the context of the self-regulatory framework 'to which the [press] industry has made a binding commitment'. The preamble requires 'editors and publishers to ensure that the code is observed rigorously', and that 'editors co-operate with the PCC as swiftly as possible in the resolution of complaints'. However, in spite of the apparent differences between the nature of the four codes, for the purposes of the following discussion they are assessed in terms of the guidance they give to editorial staff generally in the news and information gathering, and publication aspects of journalism.

their purpose as a means to allay criticism of press performance, or their self-regulatory structures. More recently, this pattern has manifested itself in the New Zealand context of press self-regulation. These trends raise overarching questions about the level of press commitment to, and the credibility of, a system of self-regulated restraint. This is reflected in the content of the emergent codes themselves.

7. 2 Codes of ethics and the values of journalism

There is for journalism, like any other occupational group, a set of core professional and ethical values. Truth-telling and accuracy, for instance, are constitutive ends of journalism itself,[4] and underlie a number of the ethical standards that journalists ought to strive towards, as many journalists would concur.[5] In addition to truth-telling, some point to qualities like humaneness, fairness, and independence as core journalistic values.[6] Klaidman and Beauchamp, authors of *The Virtuous Journalist*, also highlight the importance of such characteristics as trustworthiness, and non-malevolence as those towards which journalists should strive in their work.[7] Because these values lie at the heart of the majority of ethical dilemmas that journalists face in their work, it follows that journalistic codes need to be framed around such values as truthfulness, fairness, and independence, in order to function as useful ethical decision making tools for journalists.

Of course, there may be constraints on the simultaneous fulfilment of these values at any one time. Constraints of time, resources and space, not to mention the competitive pressures brought to bear by a market-dominated culture of journalism, may militate against the fulfilment of certain journalistic values and the ethical issues

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[4] O'Neill, J., op. cit., p. 19.

[5] It may be argued that the truth-telling value and its manifestations like accuracy are less relevant for all sectors of the press today. Britain's tabloid press may come to mind here, given the nature of the product they produce. However, it is arguable that truth-telling and accuracy remain crucial journalistic values for even the tabloid press. As Sparks contends, "it is certainly not the case that the tabloid press is seen to be less concerned with the accuracy of its reporting than are the serious newspapers" (Sparks, C. 2000, p. 9. 'Introduction: The panic over Tabloid news'. In Sparks, C. and J. Tulloch. 2000. *Tabloid Tales: Global Debates over Media Standards*, pp. 1-40. USA: Rowman and Littlefield Publishers, Inc.). According to Engel, this hinges on the pragmatic rather than purely the ethical; tabloid newspapers in fact need to be just as, if not more concerned with accuracy than the 'quality' press where, because of the nature of the material they report on, they are more likely to end up in court. (See Engel, M., 1997, p. 303. *Tickle the Public: One Hundred years of the Popular Press*. London: Indigo).

[6] Lambeth, E. B. op. cit. Such ideas were expressed by the social responsibility theory about the role and duties of the press.

[7] Klaidman, S. and T. Beauchamp, 1987, p. 19. *The Virtuous Journalist*. New York: Oxford University Press.

they embody at given times.[8] By the same token, for a code to offer an exhaustive or finite list of the full range of ethical issues embodied therein together with their 'solutions' is virtually impossible.[9] Therefore, a code that is formulated in terms of core values potentially offers more assistance in the weighing up of competing rights and interests in context. This is the essence of the ethical decision making involved in the practice of journalism,[10] and thus the cornerstone of ethical journalism itself.

A code of ethics such as that of the US Society of Professional Journalists (SPJ) provides a useful frame of reference for an analysis of the ethics codes focussed on in this study.[11] It is one of the few well-formed journalistic codes with its individual clauses arranged in terms of four cardinal values; truth-telling, minimising harm (that is, showing respect for the rights and interests of others), independence, and accountability. The core ethical and professional responsibilities of journalists are elaborated on under these four headings. For the purposes of the following discussion, these values provide a useful basis from which to assess the content of the British and New Zealand print media considered here.

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[8] ibid., p 31.
[9] ibid., pp. 19-20.
[10] Kieran, M. 1997, op. cit.
[11] As tacitly indicated above, US journalism has evolved in a very different context than that of Britain, and of New Zealand, resulting in divergent views of the relationship between journalism and ethics (Dring, P., op. cit., p. 312). This has to do with the relationship between US journalists to the first amendment where overall, journalistic professionalism has taken on quite a different meaning than elsewhere. As Dring observes, "[t]he historical background to the sense that the responsibility for the maintenance of journalistic ethics falls on the individual journalist in the United States of America is, of course, in part because of the constitutional protection afforded to freedom of the press. This, and a greater perceived sense of freedom of information than in the United Kingdom, leads to a different journalistic environment" (ibid., p. 313). In the US there has been a much closer connection between the practice of journalism and the ethical perspectives derived from moral philosophy (ibid., p. 313), which is reflected in the prolific publication of journalism ethics textbooks often by professional associations of journalists in the US, which have not made their way to either of the British or New Zealand contexts. Although hybrids of trade unions and professional associations for journalists have existed in the latter two countries, they are not comparable to those of the US, where discourse on journalism ethics has been a great deal more abundant, and often more productive. This has influenced the context in which most US codes have been drawn up and revised. For instance, the current version of the SPJ code (see Appendix Three) was revised in 1996 to see that it followed more closely the spirit of the SPJ's 1994 ethics handbook *Doing Ethics in Journalism* (Fitzgerald, M. 1995. 'The debate continues'. In *Editor and Publisher*, October 28 1995, vol. 128, no. 43, pp. 11-12.). The current version was developed by the SPJ's Ethics Committee comprising a range of industry representatives, with input from academics and media ethicists (Buckman, R. 1996. 'SPJ oks ethics code'. In *Editor and Publisher*, August 3 1996, vol. 15, no. 31, pp.31-2.).

1. Truth-telling

'The public's right to know' is a frequently invoked principle in journalism, yet few journalistic codes elaborate sufficiently on the axiom as it relates to the nature of the information itself, how it should be gathered by journalists, and how it should be presented to the public. Indeed, the concept of truth-telling embodies a great deal more than the reportage of certain facts accurately.[12] As manifestations of the truth-telling principle in journalism, the following section considers the how the issues of distinguishing between fact and comment, the distortion of information and pictures in presentation, and the use of deception in information gathering are covered in the codes.

Truth-telling in presentation

Distinguishing between comment and fact is a central element of the truth-telling principle, and is crucial to the journalist's impartiality and professional integrity in the presentation of reliable information to the public. The SPJ code urges journalists to *'distinguish between advocacy and news reporting. Analysis, opinion-bases pieces, or commentary should be labelled and not misrepresent fact or context'*. The important issue highlighted here is that commentary or analysis should not be presented in the guise of factual or impartial information, rather than be refrained from at all.

The relevant clause of the PCC code states that *'newspapers, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact'*. Without the inclusion of any explicit labelling requirements for partisanship, comment or speculation in newspaper reporting, the code undermines the primacy of the journalistic requirement to provide information that the public can duly rely on.[13] Rather, the framing of this clause suggests that the British press (the national dailies in particular) is not willing to compromise its manifest tradition of partisanship for the sake of such important values as truth-telling and impartiality.

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[12] Klaidman, S., and T. Beauchamp., op. cit., p. 30. Certainly, further elements of the notion of truth-telling as a journalistic value may be considered in a more exhaustive discussion of journalistic ethics codes. The following aims to acknowledge the significance of additional standards and ethical principles within the confines of the scope of this chapter.

[13] The difficulty for the public with this is that, unless otherwise stated, we ordinarily assume it is factual information (as opposed to speculation, or commentary and so fourth) that is being presented. We thus rely heavily on a newspaper to explicitly distinguish between fact and comment when the original article is published.

The relevant clause of the NUJ code urges its members to *'avoid the expression of comment and conjecture as established fact'*. This clause too, could benefit from the inclusion of a labelling requirement. The New Zealand codes are even weaker: the NZPC requires that *'publications should, as far as possible, make proper distinctions between reporting of facts and conjecture, passing of opinions and comment'*.[14] While an improvement on the EPMU code (which contains no explicit reference to this issue at all), the vague 'as far as possible' qualification trivialises the importance of the impartiality and truthfulness objectives of news journalism.

Journalistic codes should also warn against the more insidious issue of distortion of information in presentation. This is an area that particularly highlights the weaknesses of the codes' right of reply requirements, which tend to be confined to material or factual inaccuracies. The PCC code cautions editorial staff to *'take care not to publish distorted material'*.[15] That journalists should merely 'take care' not to published distorted material significantly undermines the importance of the truth-telling principle. The PCC code continues: *'whenever it is recognised that a significant inaccuracy, misleading statement or distorted report has been published, it should be corrected promptly and with due prominence'*. This suggests that rather than ensuring that material is accurate prior to publication, it is acceptable to wait until an 'inaccurate, misleading, or distorted report' it is brought to the newspaper's attention.

This limitation is compounded by the code's weak 'opportunity' to reply requirements, which simply reads: *'A fair opportunity for reply to inaccuracies must be given to individuals or organisations when reasonably called for'*.[16] Not only is this confined to factual inaccuracies; the use of the phrase 'when reasonable called for' implies that it might be acceptable for a newspaper to refuse to correct even a

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[14] The NZPC's document also includes a principle on 'advocacy': *'a publication is entitled to adopt a forthright stance and advocate a position at any time'*. While legitimate, it does not require a publication to alert readers to the nature of such reportage, and thus undermines the journalistic objectives of truth-telling and its manifestations in a manner similar to the PCC code.

[15] If a code is to be of assistance, it should also clarify what the term 'distortion' encompasses. A code's provisions on avoiding the distortion of information may extend to headlines, quotations, and other editorial content, which should not be presented so as to deliberately misrepresent, oversimplify, highlight or emphasise certain material out of context, as the SPJ code clarifies for its members.

[16] This clause is a departure from the spirit of the right to reply requirement proposed by the Calcutt committee (ibid.): *'individuals or organisations should be given a proportionate and reasonable opportunity to reply to criticisms or alleged inaccuracies which are published about them'* (Home Office. 1990., op. cit.). While the framing of this clause is far from perfect, it is a step ahead of the PCC's version given that it extends the right of reply requirement to criticisms as well as 'alleged inaccuracies'.

published misstatement of fact.[17] This undermines the importance of right of reply duty, which is fundamental to both the truth-telling and the fairness principles in the publication aspect of journalism and the ability of the public to place trust in what they read and in journalism more generally.[18]

The NUJ code is the most expansive of the four on the distortion issue in its requirements that journalists *'shall strive to eliminate distortion ... [and avoid] falsification by distortion'*. The code continues to state that *'a journalist shall not lend himself/herself to the distortion or suppression of truth because of advertising or other considerations'*. This is an important point to cover in a code for journalists practising in a media environment where advertising considerations may impinge on editorial content, thus undermining journalistic impartiality in the presentation of news information.[19]

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[17] Robertson, G., and A. Nichol, op. cit., p. 530. Complaints to the PCC about breaches of the code's accuracy clause are illuminating here. Between 1996 and 1999, almost 70% of complaints have concerned the code's accuracy clause. (See Press Complaints Commission. 1996b; 1997b; 1998a; and 1999d. Annual Report. Statistics and review of the year 1999. Online: The PCC. Available: http://www.pcc.org.uk /99/statistics_review.asp. 5 January 2001). As Rupert Murdoch has defended this trend, "[t]he problem in the UK...is that national newspapers are under such intense competitive pressure...that editors don't take enough time to check things – they feel they can't afford to hold a story over for an extra day. And it's not just the tabloids..." (cited in Snoddy, R., op. cit., p. 127). Where the code fails to offer adequate protection in the basic area of accuracy, it is perhaps not surprising that a number of individuals have chosen to take their concerns to the British courts rather than the PCC, as the code itself indicates. Newspapers are to *'report the outcome of an action for defamation to which they have been a party'*. In spite of the PCC's proclamations of the 'accessibility of self-regulation' to the public, this suggests quite the opposite; that the route offered by the PCC and its code for 'right of reply' has not proved the preferable option of those aggrieved by the British press. This, however, undermines the notion that self-regulation provides adequate redress for the 'ordinary person' whose options are confined to the PCC as opposed to the courts.

[18] Although right of reply perhaps has more to do with the policy of a newspaper rather than the prerogative of the journalist working for it, it is a crucial element of the accuracy, fairness, and accountability values for journalists and thus should be covered in codes. As the relevant clause of the SPJ code indicates, the right of reply issue also hinges on values of diversity and comprehensiveness in reportage. It directs journalists to *'diligently seek out subjects of news stories to give them the opportunity to respond to allegations of wrongdoing'*. Certainly, the initial incorporation of the perspectives of those individuals or organisations about which an article is concerned can be seen to capture the spirit of both the truth-telling and fairness principles more closely. If a journalist or newspaper waits until after the offending article is published, then the 'damage is usually done' for the person(s) concerned. This may not be easily remedied in a later article, especially where codes tend to weaken the corrections mandate. Where the timeliness of an issue is paramount, the 'prevention is better than cure' dictum should be reflected in codes of ethics for journalists if the promotion of journalistic accountability is to be legitimately seen as one of their fundamental purposes.

[19] As a manifestation of the truth-telling principle, codes should also require newspapers to distinguish between editorial content and advertising, as the SPJ code requires, stating that journalists must *'distinguish news from advertising and shun hybrids that blur the lines between the two'*. The rise of the 'advertorial' indicates that this is an area in need of elaboration in such codes, both in the UK and in New Zealand. (For further discussion of this phenomenon in the New Zealand context, see Wilton, T. 1992. '"Advertorials" and the sponsorship of the news'. In In Comrie, M., and J. McGregor (eds.). *Whose News?*, pp. 189-197. Palmerston North: Dunmore Press).

However, the NUJ code's right of reply provisions manifest similar difficulties to the PCC code. Corrections and apologies are confined to 'harmful inaccuracies', and although it provides for 'right of reply to persons criticised', this is offered merely when 'the issue is of sufficient importance'. This begs questions as to what exactly constitutes a 'harmful' inaccuracy, or an issue of 'sufficient importance', and, indeed, who will make these judgements. Like the right of reply clause of the EPMU code, which is almost identical, this is unacceptably weak.

On the issue of distortion of information, the NZPC's first principle states that: publications *'should not deliberately mislead or misinform readers by commission, or omission'*. In its clause on headlines and captions, the NZPC offers some further advice: *'headlines, sub-headings, and captions should accurately and fairly convey the substance of the report they are designed to cover'*. This is a step ahead of the other codes, particularly the EPMU code which merely advises journalists to guard against *'... distorting [facts] by wrong or improper emphasis'*. However, concerning right of reply, the NZPC's document also relies on vague, question-begging language. It states that *'where it is established that there has been published information that is materially incorrect then the publication should promptly correct the error giving the correction fair prominence. In appropriate circumstances the correction may be accompanied by an apology and a right of reply by an affected person or persons'*. While like the PCC code the NZPC makes provisions for the 'prompt and prominent' requirement, its requirements for corrections and right of reply are restricted to 'material inaccuracies',[20] and fails to explain the types of circumstances that apologies and right of reply 'may' be given.[21]

All four of the code's provisions for avoiding distortion in the presentation of information, together with their right or reply and corrections clauses contain loopholes which a publication could abuse to exonerate itself in order to retain its credibility. This may be seen to reflect more the reticence of journalists and

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[20] The NZPC's set of principles covers the issue of the treatment of readers' letters, which the other three codes do not address presumably because they are directed more towards journalists for whom the issue is usually outside of their mandate. It states that: *'selection and treatment of letters for publication are the prerogative of editors who are to be guided by fairness, balance, and public interest in the correspondents' views'*. This gives little practical guidance and reflects more the fact that the NZPC has received a significant number of complaints concerning the abridgement of letters in the past, as a survey of the NZPC's past adjudications highlights.

[21] In order to reflect the technological 'reality' of current journalistic practice, codes could also require that in addition to publishing corrections, material held electronically is corrected also (The Press Wise Trust. 1999d. op. cit.).

newspapers to admit to their faults than a genuine commitment to the truth-telling and fairness principles. This fails to acknowledge the likelihood that a newspaper's willingness to correct errors promptly and dutifully will in fact promote its credibility, rather than necessarily diminish it. Indeed, adequate right of reply and corrections requirements need to be provided for in codes of ethics if, indeed, they are to function as genuine instruments for promoting accountability, rather than as vacuous and self-serving 'public relations' tools.

Digital manipulation

Given the potential for the digital manipulation of images in contemporary practice, a code of ethics should clarify what is and is not permissible practice. The PCC code cautions newspapers to *'take care not to publish ... distorted material including pictures'*. However, in a context where digital technology is increasingly a part of newspaper and magazine production, that journalists should merely 'take care' to avoid the publication of distorted material is clearly insufficient. There is little attempt to place the issue of digital manipulation in the context of accuracy and truth-telling as core professional values for journalists, or to establish boundaries as to when digital manipulation may or may not be ethical.

This is one of the key strengths of the NUJ code. Clause 11 states that *'no journalist shall knowingly cause or allow the publication or broadcast of a photograph that has been manipulated unless that photograph is clearly labelled as such'*. The clause continues to establish some useful boundaries for journalists: *'Manipulation does not include normal dodging, burning, colour balancing, spotting, contrast adjustment, cropping and obvious masking for legal or safety reasons'*.

While the NZPC's statement of principles warns editors that *'they should not publish photographs or images which have been manipulated without informing readers of the fact and, where significant, the nature and purpose of the manipulation'*, it is weakened by the failure to establish any criteria for permissible 'manipulation'. That the EPMU code fails to address the issue at all clearly indicates it needs updating so as to be relevant to the current climate of journalistic practice.

Deception

The truth-telling principle abounds in further elements such as honesty and trustworthiness, which also arise in the information gathering aspect of journalism. The SPJ code, for example, advises journalists to *'avoid undercover or other surreptitious methods of information gathering when traditional open methods will not yield information vital to the public. Use of such methods should be explained as part of the story'*. This sets a reasonable standard for journalists in avoiding the use of deceptive practices, incorporating the all-important 'transparency principle' in journalism, which is relevant to a number of aspects of journalistic conduct. That is, if 'ethically dubious' means of information gathering have been utilised for some justifiable reason, then the public must be informed in the interests of truth-telling, honesty, and integrity.[22]

A significant proportion of the current PCC code is concerned with issues relating to misrepresentation and deception, which is not surprising given that such conduct has been the subject of much adverse criticism in the past. Clause 11 specifies that *'Journalists must not generally obtain or seek to obtain information or pictures through misrepresentation or subterfuge. Documents or photographs should be removed only with the consent of the owner. Subterfuge can be justified only in the public interest and only when material cannot be obtained by any other means'*. The subterfuge requirements of the PCC code extend into a further clause on the use of listening devises, which arose out of criticism about the interception of particular telephone conversations of royal family members. Clause eight states that *'Journalists should not obtain or publish material obtained by using clandestine listening devises or by intercepting private telephone conversations'*. The subject of identification is further covered in the code's clause entitled 'hospitals', a direct consequence of controversy about an episode that occurred mid-Calcutt 1, where two *Sunday Sport* journalists surreptitiously gained access to the private hospital room of actor Gordon Kaye to take photographs and to interview the actor.

The PCC code acknowledges the possibility of a 'public interest' in deception, which applies to all of the clauses relating to the issue. When it comes to the resolution of ethical issues requiring the balancing of competing values, interests or rights in context, the attempt made in the PCC code to define what the 'public

[22] The importance of transparency is also recognised in the INL code of ethics included in Appendix Two to this thesis.

interest' constitutes is admirable. This is especially where the definition given appears to incorporate the main areas in which the public interest principle may legitimately outweigh other competing values.[23] Unfortunately though, a perusal of some of the PCC's rulings where the 'public interest' has been invoked to defend deceptive practises (among other clauses) indicates the public interest 'defence' is often abused by journalists and editors obviously seeking to exonerate themselves from an adverse adjudication from the PCC.[24] This perhaps being the case, some may say that a code that reflects an explicit attempt to define the 'public interest' is more valuable than a code which does not, as the other three codes illustrate.

For instance, the NUJ code directs journalists to *'obtain information, photographs and illustrations by straightforward means'*, stating that *'the use of other means can be justified only by over-riding considerations of the public interest'*. If the 'public interest' is to be invoked to defend unethical practises, then arguably the term needs to be qualified and elaborated on. The NZPC is more explicit in its requirements that *'editors should generally not sanction misrepresentation, deceit or subterfuge to obtain information for publication unless there is a clear case of public interest and the information cannot be gained in any other way'*. Like the other codes,

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[23] Nonetheless, there are difficulties with some of the wording in the 'public interest exceptions' given in the PCC code, for instance in the third public interest justification of 'preventing the public from being misled by some statement or action of an individual or organisation'. There has obviously been an attempt to include cases of substantial degrees of hypocrisy where, for instance, a politician proclaiming conservative family values is found to be engaging in adulterous activities, thus offering some justification for publication. However, there is much scope for the abuse of this exemption, where, for example, prying into a person's past in an attempt to uncover some scandal which is later found in the end to have been non-existent. As Robertson and Nichol point out, this has justified both conduct and the publication of stories where the wider public interest in doing so has been highly questionable (ibid., p. 532). Indeed, the difficulties with the PCC's definition of 'the public interest' pertinently illustrate what McQuail calls the 'elasticity of the public interest', which is "never fixed but always changing, developing and subject to negotiation". Hence, the difficulty in codifying the concept itself is related to the tendency that the term, as it is tends to be conceived of, tends only to be meaningful in context (see McQuail, D. 1992. *Media Performance: Mass Communication and the Public Interest.* London: Sage; and McQuail, D. 1994, op. cit., pp. 135-136).

[24] Evidently, criticism of the excessive use of vacuous 'public interest' defenses by sectors of the press in the lead-up to Calcutt 1 suggests that the inclusion of such a definition was not completely 'internally-inspired'. Some critics may see little value in the PCC's public interest 'exemption', particularly those individuals who at some time or another fall prey to the snooping tabloids. Rather it may be seen as a manifestation of the self-proclaimed 'right' of the tabloid press to give the public 'what it wants', as the 'public's right to information' dictum has frequently been manipulated by tabloid editors in the past. This hinges on another issue underlying the debate about press standards in Britain, which this thesis is not directly concerned with; the degree to which the backlash against press excesses is driven by public opinion, as opposed to predominantly from within parliament, which has yet to be certified. As Feintuck points out, "[t]he extent to which [the tabloids] reflect the degree or nature of the public interest ... is uncertain..." (Feintuck, M., op. cit., p. 142). However, that the tabloids enjoy a huge readership in Britain may suggest (or at least be used to defend) the latter interpretation (as highlighted in Rooney, D., op. cit.).

this does not incorporate the 'transparency principle', which is an important element of the honesty principle.

More importantly, the NZPC's use of the phrase 'clear cut case of public interest' is clearly more problematic than it is useful; it is an oxymoron itself as there will rarely be any such 'clear cut' situation. The very purpose of a code should be to aid journalists and editors in balancing 'public interest' claims with other sets of rights and interests. It may thus be argued that a code that relies on unqualified references to the 'public interest' is of little aid. These difficulties say little about the degree of consideration that went into formulating a document that would prove useful to journalists seeking to resolve competing claims of the 'public interest', and the use of deceptive practices (among others).

The parallel clause of the EPMU code also fails to offer much guidance on the issue of deception. The code advises journalists to *'use fair and honest means to obtain news, pictures, films, tapes, and documents'*. It continues to instruct journalists to *'identify themselves and their employers before obtaining any interview for publication or broadcast'*, which means that the code covers both issues of deception and identification (albeit fleetingly). However, no reference is made to cases where there may be a legitimate public interest in the use of deception or misrepresentation to gain material, as the other three codes attempt to do. This deficiency appears anomalous when set alongside the code's preamble which proclaims *'the public's right to information as an overriding duty of all journalists'*, which without any qualification or context is essentially vacuous. Rather than promoting ethically conscious journalists, this means that the identification requirements of the code, as well as any of the practices the code's clauses rule out can be superseded if the journalist chooses to manipulate this major loophole.

On the subject of deception, the PCC code is the most expansive of the four codes in that it covers a range of activities that constitute unethical practice. This said, it is undermined by the way these related issues have been inserted haphazardly into the code, rather than being set out in a more connected manner, perhaps under a more general heading of deception and misrepresentation. This would enable the relationship between each of the existing clauses, and their relevance to the issue of identification as a journalistic principle, to be more effectively highlighted. Indeed, the reactive manner in which the PCC has codified ethical standards for journalists is reflected in much of the code. The way that the code's individual clauses are framed,

and way the code is laid out remains one of the central problems with the document. Viewed in its entirety, the PCC code might be seen as little more than a maze of 'do's and (mostly) don'ts', which have been inserted in an ad hoc response to particular scandals and abuses, rather than the deliberation about journalistic practices around core values required for the creation of a well-formed code.

2. Fairness

As a US media ethicist captures the fairness principle in journalism, "the pursuit of truth is not a license to act unprofessionally or unethically in ways that will cause great harm".[25] Indeed, while seeking and reporting truth may be a fundamental duty of the journalist, fairness to news subjects, sources, and readers must be considered in doing so. This offers a moral basis for a number of issues that arise in information gathering and its presentation. The following considers the issue of privacy (particularly as it relates to public figures) in information gathering, and the treatment of minority groups (including the recognition of social and cultural diversity) in reportage as elements of the fairness principle.

Privacy and the issue of public figures

The SPJ code succinctly places the issue of privacy intrusion in the context of the fairness principle when it advises journalists to *'recognise that gathering and reporting information may cause harm or discomfort'*. This encourages journalists to treat individuals not merely as 'news subjects', but as human beings with rights to privacy that journalists should respect in undertaking their news gathering and publishing duties.

Defining privacy itself has plagued not only the PCC during its existence, but also those seeking to legislate on the issue in the UK. Indeed, circumstances have forced a substantial evolution of the code's definition of privacy over the last decade,[26] particularly its definition of private property, an especially relevant area for public figures and their rights to privacy. In order to escape some of the anomalies of

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[25] Steele, B. 1998. 'Talking Ethics: Competition versus Consideration'. 21 October 1998. Online: The Poynter Institute. Available: http://www.poynter.org/research/me/compete_2.htm. 12 January 2001.

[26] The scope of privacy is presently defined as *'private and family life, home, health and correspondence'*. This "...offers no protection to individuals in their business capacity or to any public or private company..." (Robertson, G., and A. Nichol, op. cit., p. 532). This anomaly is compounded by the fact that the 'public interest' definition given in the code, which may be invoked in defence of a breach of the code's privacy requirement, makes reference to both individuals *and* organisations.

previous versions, the current version of the PCC code defines private places purposefully broadly as *'public or private property where there is a reasonable expectation of privacy'*. While this reflects an attempt to remove some of the loopholes apparent in previous versions of the code, which listed specific places that were deemed 'off limits' for journalists, there are manifest problems in the more general approach presently preferred. As Feintuck confirms, the sweeping definition of 'private places' means that "[t]he code remains somewhat vague and subject to interpretation regarding those places where privacy can 'reasonably' be expected".[27] This is particularly problematic where the code does not explicitly address the issue of privacy as it relates to public figures.

The SPJ code makes a useful distinction between the status of public and private person when it comes to the right to privacy. Journalists are instructed to *'recognise that private people have a greater right to control information about themselves than do public officials and others who seek power, influence or attention. Only an overriding public need can justify intrusion into anyone's privacy'*, prohibiting *'pandering to lurid curiosity'*. This provision highlights that while the right to privacy applies to both private citizens and public figures, the latter must accept a higher degree of public scrutiny in matters relating to their public role.[28] Of course, the issue is a vexed one and there are a number of facets of the issue that a code could address, including to whom privacy applies (what are 'public figures'?), and when (under what circumstances may be an invasion of privacy be justifiable?).[29]

Relevant to the issue of public figures, the PCC code's privacy clause states that *'everyone is entitled to respect for his or her private and family life, home, health and correspondence. A publication will be expected to justify intrusions into any individual's private life without consent'*. While this may be intended to capture both public and private figures, the PCC could well follow the SPJ on the issue of privacy and public figures in setting out the relevant issues more specifically. Given that

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[27] Feintuck, M., op. cit., p. 149.

[28] For further discussion of the issue of privacy and public figures, see Archard, D. 1998. 'Privacy, the public interest and a prurient public'. In Kieran, M. *Media Ethics*, pp. 82-96. London: Routledge.

[29] The BPC's 1976 declaration of privacy referred to the issue of public figures and thus the 1990 code committee of the PCC could have drawn on this. That the PCC's first adjudication concerned the issue (a breach by a code committee member) suggests that the PCC should have. The 1976 declaration stated that *'It should be recognised that entry into public life does not disqualify an individual from his [sic] right to privacy about his [sic] private affairs, save when circumstances relating to the private life of an individual occupying a public position may be likely to affect the performance of his[sic] duties or public confidence in him*[sic] *or his*[sic] *office'* (Press Council. 1991, op. cit., p. 247, italics added).

intrusion into the private lives of public figures (mostly entertainment personalities and members of the royal family) has been a central criticism of press performance in Britain over the years, the fact that that the PCC code makes no explicit reference to the issue is unsatisfactory.

While the PCC and the British press may argue that proportionally few complaints are made about a breach of the code's privacy clause, it appears that when they are made, they often relate to some highly questionable journalistic conduct. Had the PCC code been formulated in contexts where there was less external criticism about press performance and pressure for reform, the treatment of privacy (among other issues) might not reflect such reactive underpinnings. In spite of its comparative degree of detail, the PCC code does not reflect a coherent approach to the treatment of privacy issues in its code.[30] There are a number of privacy-related clauses interspersed throughout the document, which would benefit from both elaboration and integration.[31] Overall, the fairness principle needs elaboration to offer more assistance to journalists in balancing the right to privacy with legitimate notions of the 'public interest'.[32]

The other three bodies whose codes are examined here have not faced the same degree of pressure for reform as the PCC has concerning privacy-related issues, a fact reflected in their respective codes. Though applicable in the same context as the PCC code, the NUJ's document also fails to address the issue of privacy and public

[30] The restrictions on harassment given in the PCC code are also noteworthy here where public figures are predominantly the subjects of abuses of its requirements. The fact that the entire clause is captured by the code's 'public interest exemption' is highly problematic. The harassment and 'persistent pursuit' of individuals in 'private places' to gain material can potentially be justified (as can the publication of paparazzi material without checking how it was obtained) even if it does not result in a publication. This oversight not only reflects the context in which this clause was devised, it is also an unacceptably limited provision for an area of press performance that has proven to be a particularly difficult one in the past. The use of long-lens photography is a related issue which was incorporated into the PCC code following Calcutt 2's damning report on the state of press self-regulation in 1993. Certainly, the reference to long-lens photography is a useful one in reflecting the current climate of practice and the potential for the use (and abuse) by journalists. The other three codes fail to address this issue.

[31] The PCC code's clauses on harassment, listening devices, and hospitals (considered in the context of deception above) all deal with privacy related areas of conduct as do a number of other clauses in the code, for instance clause 5 (intrusion into grief or shock) and clause 6 (children). Similarly, the code's requirements on listening devices (discussed above in the context of subterfuge) could more effectively be incorporated into the privacy clause itself as an extension of physical intrusion.

[32] A significant flaw of the PCC code can be found in parts of the 'public interest' definition of the code by which it is captured. While the exceptions offered are legitimate, (given that they are interpreted the 'spirit as well as the letter' as the code's preamble advises) there are ambiguities which provide much scope for abuse. For instance, *'preventing the public from being misled by some statement or action of an individual or organisation'* is arguably a weak defence when considered in the context of core professional values of humaneness, decency, and sensitivity to news subjects.

figures, and invokes the phrase 'over-riding considerations of the public interest' to justify intrusion without further elaboration. Similarly, the EPMU code makes no attempt to elaborate on the term 'privacy' at all, and to whom it might apply and when, simply stating that journalists '*shall respect private grief and personal privacy and shall have the right to resist compulsion to intrude on them*'.

The privacy requirements of the NZPC's document are framed similarly to those of the PCC code: *'Everyone is entitled to privacy of person, space and personal information, and these rights should be respected by publications. Nevertheless the right of privacy should not interfere with publication of matters of public record, or obvious significant public interest'*. Because these requirements are confined to publication, they make no reference to the privacy issues involved at the level of information gathering,[33] or the specific activities that might constitute an invasion, such as intercepting private phone calls.

The NZPC's privacy principle is further undermined by its reference to an 'obvious significant public interest' where there is no attempt to explain what this might mean in the context of privacy and public figures nor privacy intrusion generally. An apparent increase in intrusive practices recently, notably in the magazine industry, suggests that the NZPC as the industry's self-regulatory body should take a more proactive approach to the issue, if the experience of the former BPC is anything to go by. As Chadwick points out that, in the context of privacy in particular, "[t]he British Press Council's reluctance to clarify its woolly principles into a more precise code was a factor in its downfall",[34] as was also noted in previous chapters.

That journalists should exercise particular care and restraint in both their newsgathering and publishing capacities when the interests of children are concerned is arguably a crucial ethical precept for journalists. The treatment of children (especially those of public figures) is an issue that is emerging as a particularly

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[33] A noteworthy feature of the NZPC's Statement of Principles is the target group that the code predominantly 'speaks to'. The principles relate to an editor's requirements, rather than those of the journalist, which distinguishes it from the other three codes discussed in this chapter. Perhaps because of this, the NZPC's set of principles cover mostly publication aspects of practice, and thus there is little guidance for journalists in their news and information gathering capacity. This is insufficient for a document that is supposed to provide guidance to (the majority of) New Zealand's press industry, including both journalists and editors. To the extent that its application is thus limited, it may not be long before the Privacy Commissioner decides to intervene again with further suggestions for the NZPC.

[34] Chadwick, P., 1994. op. cit., p. 176.

important one for the PCC as chapter three pointed out.[35] Clause 6 of the PCC code is particularly notable for the way that it has evolved in response to criticism of the media attention given to Princes William and Harry. This said, it sets an important precedent for the treatment of all children and their rights to privacy. It requires that *'where any material about the private life of a child is published, there must be justification for publication other than the fame, notoriety or position of his parents or guardian'*.[36] Combined with its additional provisions for information gathering involving children, this is a more helpful the other codes. With the exception of the NZPC's document (which unfortunately is confined to the privacy of children in publication), the other codes do not acknowledge the importance of the interests of children at all.[37]

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[35] In the PCC code, the treatment of children is dealt with in clauses 7 (children in sex cases), 10 (reporting of crime), and in the code's separate clause on children (clause 6). As chapter four indicated, since 1997 a breach to all three clauses can be justified by the 'public interest' definition in the code after an anomaly was exposed whilst the code was under parliamentary spotlight. It is unfortunate that it may take such circumstances for the PCC to attend to the code's various other anomalies concerning its 'public interest' defence in the future. The PCC has, however, made efforts to recognise in its code that children are a 'special case' through its recent inclusion of the note to the public interest definition that editors must demonstrate 'an exceptional public interest' to override the 'normally paramount interests of the child'. This suggests that the PCC may tow a harsher line in adjudicating on breaches of the code where children are concerned.

[36] Though the clause does acknowledge the right to privacy of children, it does not address some of the issues that arise concerning the question of parental consent. While certainly a vexed issue, a code for journalists could indicate that, even when parental consent is obtained for interviewing children or publishing their photographs, the interests of the child still need to be considered in some depth. There have been cases where parents have had an agenda of their own, financial or otherwise, for consenting to interviews or publication of material about their children which have clearly been contrary to the interests and welfare of the child in the longer term.

[37] The issue of intrusion into grief and shock is another illustration of the weaknesses of the codes concerning the fairness principle, particularly for the 'ordinary citizen'. While the relevant clause of the PCC code does not carry the (increasingly ubiquitous) 'public interest exemption', its 'sympathy and discretion' provision for dealing with victims of trauma significantly undermines the core principle of respect for the grieving and vulnerable. It thus rejects the Calcutt committee's proposal that victims of grief and trauma were only approached if there was an overriding public interest in doing so. None of the three other codes go any further than to suggest that approaching victims is acceptable if done so 'sympathetically'. This said, the NZPC's requirements on the topic extend to the publication of photographs which *'are to be handled with special consideration of the sensibilities of those affected'*. However, this offers no justification for the taking of photographs in the first place, let alone their publication. By placing the issue of such intrusion in the broader context of minimising harm, and treating of all individuals as human beings with overriding rights to be treated thus (regardless of their 'newsworthiness' at a given time) the SPJ code provides a lead which the other four codes could follow. Indeed, codes could also include provisions on the storage of such information or photographs. This is in view of their potential to be published at a later date if a newspaper decided to 'revisit' the event for some reason or another, with potential repercussions for those individuals and their families concerned.

Social and cultural diversity in reportage as an element of fairness

The prohibition of social stereotyping in reportage is merely one element of the journalistic requirement of reflecting the diversity of the particular society in which he/she works. The codes of both the British and New Zealand print media tend to focus on the more negative aspects of this issue, that is the avoidance of stereotyping, failing to elaborate on the positive requirements that form an important, if not fundamental part of the diversity principle for journalists. For instance, the PCC code's discrimination clause reads *'the press must avoid prejudicial or pejorative reference to a person's race, colour, religion, sex or sexual orientation or to any physical or mental disability. It must avoid publishing [such details] unless they are directly relevant to the story'*. This does not elaborate on the promotion of tolerance towards, and recognition of, cultural and social diversity through reportage, which is not only a desirable journalistic objective, but also evidently something that the 'nationalistic and xenophobic tabloid press' of Britain may benefit from.[38]

The NUJ's clause is a considerably more expansive given that it requires that *'a journalist shall only mention a person's race, colour, creed, illegitimacy, marital status (or lack of it),*[39] *gender or sexual orientation if this information is strictly relevant. A journalist shall neither originate nor process material which encourages discrimination, ridicule, prejudice or hatred on any of the above-mentioned grounds'*. This is valuable both because it cautions against discrimination and calls for vigilance in terms of the desirable outcomes based on the fairness principle. "By specifying the consequences [of journalistic practices] rather than the specific content, the code encourages an accountable attitude".[40]

The New Zealand codes are surprisingly bereft of reference to the issue of diversity and its various dimensions in New Zealand society. The NZPC's principle states that *'publications should not place gratuitous emphasis on gender, religion, minority, sexual orientation, race, colour or physical appearance unless the description is in the pubic interest'*. Framed in such a way, this clause is almost farcical; it is difficult to imagine many circumstances when 'gratuitous emphasis' on such details could be seen as 'in the public interest'. Certainly, if there are anticipated circumstances when reference to such attributes is necessary, for instance, in order to

[38] Weymouth, T., and B. Lamizet., op. cit., p. 44.
[39] Although one wonders how it is possible to lack a marital *status* altogether.
[40] Page, A. op. cit., p. 133.

provide sufficient information, context, or depth to a story, then a code should elaborate in this area.

The discrimination clause of the EPMU journalists' code advises that journalists *'shall not place unnecessary emphasis on gender, race, sexual preference, religious belief, marital status or physical or mental disability'*. As with the NZPC's document, the limitations of this clause go beyond the obvious ambiguity of the phrase 'unnecessary emphasis'. In addition to the difficulties with the wording of the discrimination clause in both of the New Zealand codes, there are additional shortcomings shared with the parallel clause of the PCC code as they fail to offer any elaboration on the issue of social and cultural diversity more generally. Notably a code for New Zealand journalists could include requirements for New Zealand-specific issues such as ensuring reportage does not contravene the spirit of the Treaty of Waitangi, and to promote its manifest principles of biculturalism.[41] Indeed, this is one of the more glaring omissions from the New Zealand codes.

3. Independence

The codes of the British and New Zealand print media discussed here are astonishingly sparse in their coverage of the principle of journalistic independence.[42] However, given that the issues related to journalistic independence have not received a great deal of external scrutiny in either of the two countries, this omission in their codes is probably of little surprise.[43]

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[41] A discussion of the various potential interpretations of the Treaty of Waitangi and its principles relating to the relationship between Pakeha and Maori in Aoteoroa is beyond the scope of this discussion. However, as a minimum perhaps, New Zealand codes for journalists should cover issues of biculturalism, as well as the ethnic and cultural diversity of New Zealand society today, offering guidelines for reflecting the interests and perspectives of the groups and their values. Related requirements in the context of diversity might even extend beyond reportage to those concerning the editorial staff working for publications.

[42] It is surprising that none of the four codes make any mention of the potential conflict of interest in affiliations, allegiances, or loyalties. This is especially alarming given the rise of practising journalists moonlighting as public relations consultants and the like (Cropp, A. op. cit.), where clearly the codes need to address the difficulties this can create for their independence and professional integrity.

[43] This is aside from the area of political partisanship discussed above in the context of the truth-telling principle. The issue of conflicts of interest is related to the value of independence. The closest the PCC code comes to dealing with the issue is in its 'financial journalism' clause, derived from the former BPC's principles on the subject (see Appendix Two). These requirements are comparable to those of the NUJ and EPMU codes, although the latter have more general application. The NUJ code warns journalists not to *'take private advantage of information gained in the course of his/her duties, before the information is public knowledge'*, and the latter code states that journalists *'shall not allow personal interests to influence them in their professional duties'*.

'Freebies'

The issue of 'freebies' provides an illustration of the potential compromises to journalistic independence that codes of ethics should address.[44] Of the four codes, only those of the NUJ and the EMU address the issue of freebies, although neither rules out their acceptance altogether. Clause 8 of the NUJ code requires that *'a journalist shall not accept bribes nor shall he/she allow other inducements to influence the performance of his/her professional duties'*.[45] The parallel clause of the EPMU code for New Zealand journalists reads that journalists *'shall not allow their professional duties to be influenced by any consideration, gift or advantage offered, and where appropriate, shall disclose any such offer'*.

While there is an attempt in both codes to point out the relationship between accepting freebies and journalistic independence and professional integrity, both suggest that, ultimately, the journalist's acceptance of a freebie is quite legitimate. As Tully suggests, "[a]nother version of this could be, convince yourself that you are not being influenced by the freebie and take it".[46] In other words, the issue of freebies is not sufficiently placed in the context of journalistic independence in order to promote awareness that the very act of accepting a freebie may be *seen* to undermine independence and thereby journalistic credibility. The relative value of the EPMU code here is in its advice to 'disclose any such offer' (and presumably also if it has been accepted) because it incorporates the 'transparency principle'. It may also encourage journalists to consider whether the freebie is worth accepting if it was known publicly that the freebie had been accepted, and whether the material would have been published had there been no incentive to do so.

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[44] As chapter five illustrated of the debates about the proposed revisions to the JAGPRO (now the EPMU) code in the 1980s, there are some who believe that 'freebies' in the context of journalism are simply a 'perk of the job', or a 'reward for good work'. However, this overlooks the ethics of the issue, in particular that accepting freebies may compromise the journalist's independence and impartiality, and the credibility of 'sponsored news'.

[45] As an issue related to the notion of conflicts of interest, the NUJ code also advises that *'a journalist shall not by way of statement, voice or appearance endorse by advertisement and commercial produce or service save for the promotion of his/her own work or of the medium by which he/she is employed'*. Given that in both the British and New Zealand contexts journalism and news personalities are increasingly choosing to front (albeit usually non-commercial) campaigns for such issues as child abuse and famine, the journalistic codes of both countries (print and broadcast media) should evidently cover such issues.

[46] Tully, J. 1992a, op. cit., p. 145.

Chequebook journalism

The issue of chequebook journalism, that is, the payment to persons for sharing their story with a media organisation in return for money, has a number of elements which are relevant to the independence principle. While perhaps more useful than the other three codes, which make no explicit reference to the issue of chequebook journalism at all,[47] the PCC code goes little further than to prohibit the practices that have been the subject of parliamentary inquiry in the past.[48] The PCC code's clause on the subject is derived from the former BPC's declaration of principle on payments to witnesses, criminals, and their associates.[49] However, the practice of chequebook journalism has become a more widespread phenomenon since the 1980s when the former BPC's declaration was last revised, and this fact should be reflected in the PCC code. At the least, the code should address the issue issues that arise with chequebook journalism in contexts outside of criminal trials, including payments to celebrities, and to victims and their families, and under what circumstances chequebook journalism is justified.

Indeed, that the PCC code's coverage of the issue is concerned only with the judicial elements of chequebook journalism reflects more the reactive manner in which the code has evolved over the last decade than a commitment to promoting such values as journalistic independence. While there may be legitimate cases where

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[47] The requirements of the NUJ code that journalists should use 'straightforward means', and those of the EPMU that journalists use 'fair and honest means' to obtain material for publication could, by some stretch of the imagination, be read as applying to the practice of chequebook journalism. It is unacceptable that the NZPC's document does not refer to the issue at all. This is particularly so given the increasing competition within the woman's magazine market which had led to an increased use of the practice. Although some of the main culprits remain outside the NZPC's remit, it should set a precedent for the publications to which its principles apply. Indeed, as chequebook journalism has the potential to become 'common practice' both inside and outside of the women's magazine sector, this is clearly an area towards which the NZPC should take a more proactive approach and establish some kind of precedent in a code for the New Zealand press.

[48] As noted in chapter two, legislation banning media payments to witnesses in criminal trials is currently being considered in the UK which suggests that there is limited faith in the ability of the PCC and its code to control the practice effectively. Presumably, this has much to do with the fact that the PCC does not have the power to monitor such practices and thus prevent them occurring, which questions (like the issue of privacy has in the past) the current scope of the PCC as merely a 'complaints body' without the power to preempt such conduct.

[49] Even in this context, there are gaps in the code's provisions. Firstly, as Robertson and Nichol point out, the clause does not distinguish between the types of witnesses; for instance, a witness to disputed facts and a witness to matters of formal record or character (where the interests of justice against payments are no so applicable). Secondly, the clause makes no provisions for investigative journalists who may discover a witness 'on the run', for whom a payment may be an incentive (Robertson, G., and A. Nichol, op. cit., p. 537). Thirdly, the clause has no requirements for payments to witnesses (and their associates) after a trial has ended. Yet there are a number of ethical issues that arise during a trial that do not necessarily 'disappear' after the trial is over.

the practice of chequebook journalism is justified (as the PCC code indicates), it fails to incorporate the 'transparency principle' in its requirements on the subject. In doing so, the fact that the use of chequebook journalism to obtain any information may undermine the cardinal journalistic requirement of truth-telling is overlooked.

If a newspaper offers money for a person's story, then there is the possibility that they will embellish or falsify it in order to increase its pricetag.[50] This raises further ethical issues relating to the accuracy, reliability, and credibility of the information presented to readers. Readers need to be alerted to the fact that such payments are made, and preferably, the amount that was paid, so that they are made aware that the degree of sensationalism of the story may be related to its pricetag.[51] The fact that such important issues relating to the ethics of chequebook journalism are not covered by the codes could presumably have been avoided had the bodies responsible for their development been more proactive, rather than waiting until an 'urgent need' to address them presented itself. This is particularly problematic in the cases of the PCC and NZPC. As the main arbiters of professional and ethical standards for the print media, it is imperative that the self-regulatory bodies ensure that their respective documents are relevant to contemporary practice.

7.3 Do the codes promote journalistic accountability?

The above discussion has been underpinned by the argument that if a code of ethics is to be of use to the journalist in the ethical decision making process, it needs to be based around key journalistic values of truth-telling and accuracy, fairness, and independence. A code whose requirements are framed around core values encourages consideration of the rights of news subjects, and information sources, as well as the rights of readers and the general public who are the recipients of the journalist's work. In doing so, such a code promotes accountability because rather than focussing merely upon the certain prohibitions or requirements in isolation, they are placed in a broader context which encourages an awareness of the potential effects of their actions.

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[50] The Press Wise Trust. 1995. op. cit.

[51] Robertson, G., and A. Nichol, op. cit., p. 540. Moreover, in paying for the 'exclusive right' to a person's account, not only does the issue of a diversity of information sources as an interest of the public come into play, the issues of fairness to colleagues does also. On a broader industry-wide level, legitimate notions of press freedom are undermined in buying up 'exclusives', especially where the ultimate purpose making such payments is to boost circulation (The Press Wise Trust. 1995. op. cit.). By the very nature of an 'exclusive', this puts other publications at a competitive disadvantage.

This chapter has highlighted the shortcomings of the British and New Zealand print media codes in this regard which can be attributed to the context in which these codes have emerged, particularly the two self-regulatory codes considered here. [52] The apparent limitations of the self-regulatory codes are particularly concerning because of the role that the codes are intended to perform in the self-regulatory process. Conceivably, because these codes have been driven by the pragmatic (namely the threat of 'imposed reform') rather than the ethical or moral (the desire to promote genuine journalistic accountability), the resultant documents are unduly limited in their content.[53] This undermines their potential to serve both as effective ethical decision making tools for journalists, and as mechanisms for journalistic accountability.

The administration of the codes and beyond

Some commentators argue that the degree of journalistic accountability promoted via codes and reflected in their content can be attributed to the "secrecy of the rule-making process".[54] Given that the written codes of self-regulatory bodies are the basis on which journalistic conduct is judged, and on which complaints and adjudicated made, public involvement at this stage of the self-regulatory process makes sense if it is to be genuinely publicly accountable. A related difficulty might be referred to as 'the secrecy of the adjudication process' via the PCC and the NZPC. This is an issue identified by Chadwick, who suggests that journalism's self-

[52] However, the EPMU and NUJ codes also tend to be limited in this respect. This may be attributed to the observations made in chapters four and five that these bodies also had their own particular 'self-serving' reasons for adopting codes (in promoting their industrial interests), which may be seen to undermine the demonstrable commitment to accountability to the public.

[53] For instance, rather than focusing on a specific issue such as privacy intrusion that is raised in the wake of some tabloid scandal, or the threat of statutory alternatives to the PCC code in some area of press conduct, the PCC could be more proactive in revising the code. This could include incorporating its 'case law' and the precedents it sets, and the principles developed when adjudicating on complaints, into the code itself. As Page notes, such a measure would enlarge on the guidance that the PCC code is able to give to journalists, who could thus learn from others' 'mistakes' as judged by the PCC. It would also benefit the public in awareness of PCC precedents and awareness of expectations for journalistic conduct (Page, A. op. cit., p. 133). Indeed, the NZPC's statement of principles could be similarly elaborated as new ethical issues arise, and as new precedents are set.

[54] Skene, L. op. cit., p. 120. The PCC does accept representations from members of the public about possible changes to its code. However, the reports of the code committee over the last few years indicate that these are rarely acted upon unless they are supported by parliamentary threats. The notion of public involvement at the stage when self-regulatory codes are drawn up makes much sense given that it is the public who are the recipients of the journalist's work. Indeed, if the print media demand openness in the process of public policy making, which for the most part they are granted, why should this principle not apply to the print media which also operate in the public domain and claim to do so 'in the public interest'?

regulatory bodies should hold open hearings so that their proceedings relating to complaints about breaches of their codes can be reported to the public.[55] The public might also be invited to attend such proceedings. These ideas are worthy of consideration in order to improve the self-regulatory process itself.[56]

The specific procedures for the administration of the two self-regulatory codes considered here also raise issues that relate to their potential as accountability mechanisms. The relative merits of the NZPC's document lie with the fact that complainants need not formulate their complaint in terms of the codified principles.[57] However, under most circumstances complainants to the PCC must specify which of the code's clauses they believe to have been breached. Aside from the myriad 'escape routes' the code offers there are a number of gaps in the code, with an array of ethical issues overlooked. This creates problems where if a potential complainant objects to some aspect of journalistic conduct that is not covered in the code of practice, the PCC can choose not to adjudicate on it. Conceivably, this difficulty does little for the 'loophole seeking mentality' that has been associated with more detailed codes,[58] and thus undermines the degree of accountability that the PCC and its code can be seen to promote.

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[55] Chadwick, P. 1994, op. cit., p. 179. A further proposal has been made that in addition to open hearings, the PCC could hold 'mediation' hearings where the complainant and the journalists involved can discuss the matter in the presence of a 'neutral third party'. This was a strategy adopted by the NUJ at the preliminary stage of disciplinary hearings over breaches of its code of conduct (see The Press Wise Trust. 1999d, op. cit.).

[56] In the British context, alternatives to the PCC as a non-statutory administrator of the industry's code have been suggested within the political arena (as chapter two highlighted) and by academics alike (see Humphreys, P. op. cit., Tunstall, 1996, op. cit., Curran, J., and J. Seaton, op. cit.). This indicates that its ability to promote genuine accountability has been widely questioned.

[57] However, this is an insufficient justification for the manifest omissions and limitations of the document more generally. This issue highlights an irony concerning the NZPC's set of principles, and the PCC code and the respective contexts in which they are each applied. The New Zealand press has been characterised in the past as relatively homogeneous in its range of publications (although it is significantly less so today) and thus the more easily identifiable benchmark for expected ethical standards. Yet the NZPC has chosen to operate a broad written document. On the other hand, the British press has in operation a single, and much more detailed set of guidelines, which applies across the spectrum of publications that it consists of. The NZPC justified its decision to adopt a broad set of principles in favour of a more detailed and substantial code with reference to the existence of other codes such as those of the EMPU and INL (NZPC. 1999, op. cit., p. 7). However, it might be argued that as the industry's self-regulatory body it could well have taken the opportunity to go much further than it did, thus setting a precedent for ethical conduct for the rest of the industry and for the other codes in operation.

[58] Harris, N. G. E. 1992, op. cit., p. 67.

Rethinking 'accountability' and 'the public interest'

Where the accountability of the self-regulatory process is concerned, the issues raised above are clearly important. Ultimately however, the difficulties with both the PCC's and NZPC's documents can be seen to run deeper than the limitations of their development and administration. This chapter has illustrated that the codes reflect a limited conception of what it means to be accountable to the public. As the PCC code highlights, this is linked to their tendency to focus solely on behaviours and practices alone without placing them in a wider context of the desirable journalistic values promoted through adherence to the code. Through the ad hoc incorporation into the PCC code of the ethical *issues* and specific *practices* criticised in the past, their normative context vis-à-vis why they should be avoided has been overlooked.

This limited conception of accountability is further illustrated by the nature of 'the public interest' embodied in codes which is evidently more about the specific actions and less about the wider consequences or potential effects of the action concerned.[59] The 'public interest' is invoked to justify ethically dubious actions, rather than as a reason to avoid them based on their potential impact on others. This perhaps accounts for the fact that simply amending codes has been likened to "painting over graffiti before the next offense is committed".[60]

That the current codes are informed by a limited conception of what it means to be accountable to the public, in turn, impinges on the whole self-regulatory process in which the codes play a central role. To paraphrase Belsey,[61] 'accountable journalism serves the public interest'. It is for this reason that we must re-consider the notion of journalistic accountability and how this might be more effectively translated into ethics codes. In concluding this thesis, the notion of a 'macro-level' conception of journalistic accountability is explored as a starting point from which to promote the

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[59] Perhaps ironically, this limited conception is particularly observable in the PCC code. Although there has been an attempt to define the concept of 'the public interest', this has been done within a narrow frame of reference. Indeed, the PCC code is a pertinent illustration of the difficulties of attempting to define the notion of 'public interest' in a way so as to avoid loopholes and the potential for subjective interpretation. While this may be an inherent feature of all ethical structures for journalists, it also may be conceivable that a broader view of the notion of the 'public interest' may help to counteract such difficulties as the remainder of this thesis explores.

[60] The Press Wise Trust. 2000b. Press Wise Bulletin No. 23. 24 July 2000. Online: Press Wise. Available: http://www.presswise.org.uk/bulletinarchive2.htm. 31 November 2000. The point was made specifically in the context of the PCC code, although it can be seen to have a wider application in this context also.

[61] Belsey, A. 1998, op. cit., p. 10.

development and application of ethics codes as genuine mechanisms for voluntary restraint for the future.

CONCLUSION

> So journalism is just a job in a market economy in which the usual pressures of work discourage practice based on ethical principles. But there is another reality in which journalism is a profession based on ethical principles, indeed constituted by ethical practice. However exaggerated the claims about this reality have sometimes been, it is not just a myth ... Nor is it an ideal never to be attained...[1]

In many ways, this comment recapitulates the story that this thesis has told. The reality that journalism is 'just another business' militates against both the adoption and application of codes of ethics in the spirit of professionalism. In drawing this thesis to a close, some consideration might be given to the 'alternative reality' conveyed above, and whether codes of ethics can play a legitimate role in the pursuit thereof. An overarching question that this thesis has raised is whether voluntary restraint via codes of ethics is a sustainable form of journalistic accountability. This thesis began by exploring the concept of voluntary restraint, including the functions that social responsibility theory placed upon ethics codes as 'professionalising strategies'. Codes were theorised as a means of promoting ethical conduct and accountability to the public, and thus as mechanisms for a professional self-regulation based on the principles of voluntary restraint.

Turning then to an assessment of the evolution of press self-regulation in the UK, chapter two illustrated the development of an ideology over the twentieth century that the privilege to self-regulate necessitates responsibility and accountability on behalf of the print media. Governmental policy on the press has reflected a progressive shift towards a stance that there are certain expectations and 'social responsibilities' that the press should fulfil. That the press is more than 'just another business' has been reflected in the changing government-press relations in both the UK and New Zealand over the twentieth century, where debates about the professional and ethical standards of the press have increasingly taken place in the parliamentary domain.

However, effecting a more 'institutionalised responsibility' whilst maintaining the status quo of press self-regulation has met some obstacles. Indeed, existing on

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[1] Belsey, A. 1998, op. cit., p. 8.

another plane has been an alternative view of the press as a commercially-oriented private enterprise, whose practitioners have a responsibility to create a commodity to be sold in the market. Herein lies 'the politics of voluntary restraint' illustrated in the evolution of print media codes of ethics in Britain and New Zealand, which can be understood with reference to the 'ethical contradictions of the newspaper industry',[2] namely the tension between the pursuit of profit and professionalism.

Professionalism, in this sense, is 'performance for public good',[3] which entails both a sense of 'social responsibility' and a commitment to public accountability. The notion of accountability is central here. If the print media wishes to retain for the future its privilege to self-regulate then it must respond to demands for genuine accountability. Indeed, this privilege is one that can be replaced by those who decide that to 'legislate accountability' is the only viable option left. Therefore, the press itself must take the lead in demonstrating a genuine commitment to professionalism and public accountability in order to show itself to be worthy of this privilege. Put differently, this means that the press must act to reconcile accountability with autonomy, where to preserve the latter, the press must actively promote the former. This contention provides a framework from which to consolidate the key issues, arguments, and themes to have arisen throughout this thesis.

A paradox of ethics codes and journalistic accountability: Can it be resolved?

The patterns identified in previous chapters of the evolution of print media ethics codes raise pertinent questions about the nature of journalistic accountability in Britain and New Zealand. In order to explore the possibilities for promoting further accountability within the press for the future, the concept itself must be considered. In effect, this thesis has illustrates what journalistic accountability is not. Journalistic accountability runs deeper than the development and administration of ethics codes in themselves. It is also a demonstrable recognition by the press that with power and privilege comes responsibility, which in turn necessitates accountability to the public. The relationship between the nature of journalistic codes and the issue of accountability to the public is illustrated by Page:

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[2] Keeble, R., op. cit., p. 24.
[3] Fullinwider, R., op. cit., p. 72.

> The issue of accountability ... hinges on whether the press can demonstrate that it does not secretly believe that it has a right to publish any information if it can find the right justification. This would mean that it entirely disavowed the consequences and this could be seen as irresponsible. The codes might currently be seen as an invitation to select the justification that fits. The real issue ... however, is what obligations a journalist has to society in general.[4]

Although these remarks were made with reference to the British codes focussed on in this thesis, they apply to those of New Zealand also, and highlight a paradox concerning the development and application of journalistic codes in a contemporary context. The issue of journalistic accountability, so far as ethics codes are concerned, appears to be much like the 'chicken or the egg' question, where answers as to which precedes the other are apparently elusive. As their rightful purpose, codes of ethics ought to promote legitimate notions of journalistic accountability. This follows from the role journalists perform, and the power that role embodies. Not only do the actions of journalists have considerable significance for others, but the role of the wider media institution commands power, and thus must demonstrate responsibility. The privilege of self-regulation adds a further dimension to this. Self-regulation is a two-way street; autonomy is only one side of the equation.

Yet for ethics codes to function as accountability mechanisms, it can be argued that those to whom they apply need to be genuinely accountable in the first place. For if journalists are not initially accountable, both the development and application of an ethics code will be undermined. Therefore, the development of a code within the press must be driven by a genuine desire to perform in the spirit of social responsibility, professionalism, and public service. This thesis has argued, however, that this tends not to be the case.

The development, application, and content of ethics codes: A paradox illustrated

A cycle of self-regulated reform characterises the regulatory history of the British press, which correlates directly to the context in which codes have been developed. That such codes have most commonly emerged as a response to external pressures and parliamentary demands for more effective self-regulation of press performance was a central conclusion arrived at of the British case. The majority of

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[4] Page, A., op. cit., p. 135.

the emergent codes and other such guidelines are more aptly described as 'government-induced' accountability structures for the press.

The New Zealand experience of voluntary restraint was assessed in terms of the central argument formulated of the British example; that is, the degree to which New Zealand print media codes of ethics have also emerged as an 'outcome' of the politics of voluntary restraint. Within the British press, self-regulatory guidelines have most commonly been developed to pre-empt the threat of statutory intervention. This conclusion was drawn of the New Zealand case, albeit in reverse. The relatively slower trend towards adopting ethics codes within the New Zealand press can be understood in terms of a comparative lack of parliamentary pressure. In both cases then, the externally driven nature of 'internal reform' suggests a limited commitment to genuine accountability to the public.

In both countries, an examination of the development of ethics codes within the two respective journalism unions provided an illustration of the different contexts in which journalistic codes may emerge. Chapters four and five highlighted a parallel between the evolution of the NUJ and NZJA codes. While these codes were less explicitly devised in response to the pressures faced by the self-regulatory bodies of the British and New Zealand press, the development of the two union codes can be understood in terms of the specific pressures journalism unions faced at the time. A mixture of industrial and professional concerns underpinned each of the union codes, although the relative weight of each differed in the two cases.

In comparison to the development of the formal self-regulatory guidelines, an irony is highlighted which concerns the role that the unions were established to perform. The NUJ and NZJA were fundamentally trade unions. Therefore their respective codes were, to differing degrees, developed to promote the industrial interests of journalists. On the other hand, the PCC (and its predecessor the BPC) as well as the NZPC were established specifically to promote professional and ethical standards in the print media of Britain and New Zealand respectively. Yet of the two union codes and those of the self-regulatory bodies, the latter have been more explicitly driven by reasons of self-protection in both Britain and New Zealand. Where public accountability is concerned, this would appear to represent a disturbing trend.

The processes driving the development of self-regulatory codes in the two countries can be seen to have had implications for their application. The operation of

codes by the print media is the second element of the paradox of journalistic codes and accountability pointed to above. If journalists are not genuinely accountable to the public, the 'justification that fits' approach will presumably be that which a code is looked upon by journalists. Far from promoting an 'accountable attitude', this fosters a loophole-seeking mentality in journalists which will impinge on the efficacy of ethics codes more generally. In many ways, this difficulty is reflected in the content of such codes. This contention was the central argument explored in the final chapter of this thesis.

Chapter seven argued that the content of the ethics codes of the British and New Zealand print media reflected the circumstances surrounding their development. While there were differences located between all four of the codes in this respect, they share in common a limited commitment to public accountability in their content. This is not so much in what they do contain (although of course this comes into it) as for what they do not contain. Chapter seven submitted that the way that these codes are framed reflects less of a commitment to accountability than a desire to be seen as 'accountable' for purposes of self-protection.

This argument applies particularly to the self-regulatory codes. Arguably, the concepts of self-regulation and accountability are inextricably linked. In practice however, the self-regulatory structures and the guidelines subsequently produced have largely been 'government induced' as opposed to internally inspired. This undermines the degree of genuine accountability they can genuinely promote in journalists. A paradox is thus highlighted in the relationship between accountability and ethics codes for journalists. An ethics code ought to function as an instrument for journalistic accountability, but without a genuine commitment within the press to the promotion of accountability in the first place, the ensuing codes appear as little more than 'public relations' tools.

A conclusion arising from the processes and patterns described in this thesis is that 'government-induced accountability' is not a sustainable form of the accountability required of the self-regulating print media. This is perhaps evidenced in the cycle of press self-regulation in Britain over the twentieth century, which is a pattern recently set in motion in the New Zealand context also. For this pattern to take a different course for the future, and for press self-regulation itself to prove sustainable, the concept of journalistic accountability and its genuine application needs further consideration. As a means of concluding this thesis, the following aims

to explore what the route to journalistic accountability for the future might look like, and whether codes of ethics can conceivably perform a role therein.

Accountability and the 'public interest'

At present, ethics codes for journalists tend to reflect limited conceptions about what it means to be accountable to the public. Page argues that many current codes reflect the Kantian axiom that 'all actions are good if they are performed with good intentions', which suggests that intentions are more important than outcomes.[5] In doing so, such codes fail to capture the spirit of genuine accountability where regard for the potential effects and the overall significance of the journalist's actions is crucial. This is through their failure to encourage awareness of the fact that all actions have outcomes of some sort for those involved in the journalists' newsgathering process, or those on the receiving end of them. To promote genuine accountability then, it may be submitted that journalistic codes must move beyond such narrow conceptions of what it means to be accountable to the public.

In the context of journalism, accountability may be considered in terms of the broader requirement to act in the genuine spirit of public service, professionalism, and in 'the public interest'. While acting in 'the public interest' is often a frequently cited axiom in journalistic codes, they tend to reflect a similarly limited understanding of the concept, as chapter seven illustrated. [6] In doing so, the notion itself is much like a double-headed sword concerning ethics codes. Vacuous references to the concept offer little assistance to those to whom a code is supposed to apply. However, attempting to define the concept can be just as problematic, where loopholes are the inevitable result as chapter seven also highlighted. This suggests that the concept of

[5] Page, A., op. cit., p. 131.

[6] The notion of 'the public interest' reflected in current codes tends to be based on the utilitarian dictum 'the greatest good for the greatest number'. Thus, the possibility for an individual to be negatively afflicted by a journalist's actions is seen as inconsequential. As Tucker suggests, "[t]he media are habitually seduced by John Stuart Mill's utilitarian principle of the greatest good for the greatest number, a philosophy which it can use to excuse the grossest intrusion and harm to individuals", (Tucker, J. 1998, p. 12. *Growing up in journalism: The evolution of ethical decision-making strategies used by novice workers in the New Zealand news media.* Unpublished MA Thesis (Communication Studies). Melbourne: RMIT University.). What is being proposed here is that an alternative conception of 'the public interest' needs to be explicitly promoted, one which brings the term within the scope of an 'effects-orientated' notion of accountability, that is, that the journalists' actions need to be justified in terms of the potential consequences for those directly affected, rather than in terms of utilitarian conceptions of the public interest.

'the public interest' in the practice of journalism requires reconsideration. In doing so, the concept might be brought within the scope of accountability.

Arguably, to be accountable does not necessarily entail that the specific responsibilities of the press need initially to be stated. For an ethics code to promote genuine accountability to the public, a precise definition of the 'public interest', and the relative weight of the concept in different circumstances may not be necessary either. Nor must each and every outcome or the effects of a particular journalistic practice be specified, which of course will be difficult even impossible to anticipate for every potential situation.[7] However, it is suggested here that the terms need to be conceived of in such as way so as to reconcile the notion of accountability and 'the public interest' in codes to promote more effectively their rightful purpose.

In this sense, the notion of 'the public interest' is an integral element of the concept of accountability. Both terms delineate the regard on behalf of the journalist that their behaviour will undoubtedly *have* consequences or effects of some sort which can be captured in terms of the core principles of truth-telling or honesty, fairness, and independence. Accountability is about recognising the significance of ones actions for those potentially or actually affected, including news subjects, news sources and the public more generally. To be accountable, then, requires a conscious and conscientious commitment to serving genuine notions of the 'public interest', which in this sense is underpinned by, and revolves around promoting these 'effects-orientated' values.

It may thus be feasible to imagine journalistic codes of ethics as playing a role in the promotion of journalistic accountability. As a starting point in this transition

[7] In the context of journalism today, the broader conception submitted here might even be preferable. As chapter six highlighted, the specific 'social responsibilities' or requirements of the press set out in the theory of the same name are increasingly less relevant for all media in a contemporary context. This is particularly where these relate predominantly to the sphere of news journalism. It is therefore submitted here that the specific duties of the media do not arbitrarily need to be established prior to the question of accountability. Rather, the term 'responsibility' is viewed in a broader sense of societal obligation to act with an ethical conscience that the role and power of journalists, and journalism confers. It is in view of this that genuine accountability to the public is necessitated. This discussion offers an interpretation of this concept, and the potential means through which this can be promoted.

towards a positive approach to encouraging accountability,[8] we might focus on the existing ethical structures for journalists. However, the pre-condition for this is that codes themselves are formed in the manner advocated at in chapter seven, in terms of core professional and ethical requirements, which are 'effects-based' rather than merely prescriptive and solely 'action-focussed'. Conceivably, this 'acquired accountability' may then feed into the journalist's internalisation of the ethical precepts and norms contained in such codes. As it has been contended elsewhere, "[a] well-constructed code ought to produce in journalists internalized competence".[9] Conceivably, 'internalized competence' in the ethics of one's profession goes hand in hand with the professional accountability required of journalists and of journalism more broadly.

The placement of 'prohibited behaviours' and other more positive requirements in a broader context of key journalistic principles such as honesty, fairness and independence would conceivably encourage in journalists an increased awareness and rationalisation of the on going significance of their actions. In doing so, a code of ethics has the potential to create in journalists a more 'accountable attitude' in undertaking their work. A professional consciousness is a crucial requisite for accountability in this sense. As Fullinwider concurs, such a code "... supports moral understanding by connecting a professional to a moral purpose, thereby helping professionals to see their practices as 'performance for public good'".[10] This is the basis of the conception of professional accountability being forwarded here, and may be the direction in which journalistic codes of ethics might be developed and revised for the future.

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[8] This is as opposed to the more 'negative' attempts to promote accountability in journalists illustrated in the British context. For instance, as reflected in statutory right of reply requirements, or suggestions for awarding the PCC power to fine newspapers as a sanction for transgressions of the industry's code, or the replacement of the PCC with a statutory tribunal to operate a statutory code of practice, as noted in previous chapters. The alternative suggestions made here, however, are rooted in a view that 'legislating journalistic accountability' will do little to promote genuine accountability within the press, even if the statutory route give more 'prohibitive force' to some of the behaviours that the current journalistic context produces. However, this is not to suggest that such avenues should be infinitely avoided. The suggestion made in the British context that newspapers be fined for breaches of the PCC code may be worth pursuing in view of the probability that such a measure will encourage increased recognition of the code by the industry's managers and publishers, and thus increased adherence by journalists. As Jempson contends, "monetary greed is at the root of it so financial sanctions may be the only realistic way to keep newspapers honest and ethical" (Jempson, M., op. cit.)

[9] Belsey, A., and R. Chadwick. 1995, op. cit., p. 471.

[10] Fullinwider, R., op. cit., p. 72.

Accountability to the public and the 'commercial imperative'

Whether a commitment on behalf of the journalist to notions of accountability to the public is enough given the nature of the institution in which he/she operates has been a central theme of this thesis. There are external pressures weighing on the application of ethics codes. Therefore, in proposing measures for furthering accountability which are rooted in codes of ethics themselves, consideration needs to be given to the apparent tension between the levels of journalistic accountability evident in a contemporary climate of practice. This raises the overarching question 'to whom are journalists primarily accountable; to the public, or to press owners?'

Previous chapters have pointed to factors that can be seen to impinge on the application of journalistic codes in a contemporary climate of practice, which, perhaps somewhat ironically, tend to be beyond control of the individual journalist to whom ethics codes predominantly apply.[11] As Chadwick reinforces this point, the application of codes "... must be tempered by an awareness of the weaknesses of ordinary journalists relative to those who own and control the media outlet".[12] In practice, this means that the journalist may have conflicting obligations; being accountable to the public may be compromised when being accountable to one's employer. This can be couched in terms of the tension between the 'public interest' concept illustrated above, and the apparent dominance of the 'commercial imperative' pervasive in contemporary journalistic practice.

More specifically, a central factor weighing against the application of ethics codes in a contemporary context can be located in the competitive pressures facing media organisations. These impinge on the individual journalist in his/her information gathering and presenting capacities, as previous chapters have highlighted of the British context. For the journalist, this means that there is little time or opportunity to deliberate the potential consequences of his/her actions from an ethical perspective. Furthermore, such decisions may be motivated less by the ethical than the commercial imperative. As indicated above, such pressures may be seen to militate against journalistic accountability and that of the press institution more generally. What this

[11] A related point concerns the fact it is rare for working journalists to be involved in the drawing up of codes. The self-regulatory codes of the PCC and NZPC are both devised without the input of working journalists, whose own perspectives are evidently deemed to be adequately represented by newspaper and magazine editors. It may be submitted that if codes were formed by representatives of all sections of the print media, then their respective interests could be further debated and assimilated in establishing an ethical and professional framework that journalists will work within.

[12] Chadwick, P. 1996, op. cit., p. 251.

may suggest is that criticisms of a lack of journalistic accountability evident in the current media landscape can no longer be confined solely to the character of the codes, and other ethical structures for journalists themselves.

As previous chapters have indicated, more attention thus needs to be paid to the context and circumstances in which codes of ethics evolve and are applied in order to understand the degree of accountability they can be seen to promote. This is because no matter how 'accountable' or 'ethical' the documents may appear in themselves, and the degree of commitment on behalf of the individual journalist to its precepts, it is the wider processes and contextual pressures that will influence adherence to codes in practice. This argument underscores the idea that a code of ethics alone cannot create 'the virtuous journalist', captured by Christians' metaphor:

> ... [C]odes can do no more than clean the house. As household chores are essential for families to function, so codism is desirable for professional life. However, if one weighs the overall significance of these activities, brooms and soap ... are trivial compared to the need for architecture and footings. The call to foundational work, to conceptual finesse remains the ultimate challenge, the irreducible nonnegotiable priority.[13]

At present, this argument appears to be a valid one so far as the British and New Zealand experiences of press self-regulation are concerned. Where codes have evolved largely in response to external calls to the press to 'put its house in order', their content and application reflects this. Therefore, it is not surprising that such codes are seen to do little more than 'clean the house', as opposed to the more fundamental changes evidently necessary. However, what is notable about the content of these codes is that through their tendency to focus on the behaviours on which parliamentary criticism has been based, they fail to relate these to the wider context in which the practice of journalism takes place. The practice of journalism is not linked to the wider environment in which they operate. Rather than dismissing codes altogether as potential accountability mechanisms then, this suggests that a practical move is necessary in order to create codes that can in fact be seen to have the potential to 'do more than just clean the house'.

Certainly, it may be unrealistic to expect that a code of ethics itself can overcome the myriad of external circumstances that may impinge on its effectiveness at counteracting 'journalistic abuses'. The ability of a code to promote genuine

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[13] Christians, C., op. cit., p. 49.

accountability needs to be accompanied by a change in the wider journalistic culture, within which codes are developed and operated, which at present tends to promote profit over public accountability as previous chapters have indicated. However, to paraphrase the sentiments of the Hutchins Commission which made a similar observation over half a century ago, the 'bias' of the press industry against journalistic accountability in the current journalistic environment 'must be known and overcome'.[14]

This translates into the promotion of accountability through increased awareness and recognition of the mandate itself, from which active steps might then be taken to address this dilemma for the future. Where the application of codes at present may be seen as a key dilemma for journalists in itself due to their apparently conflicting accountability requirements, it may be argued that a start could be made in addressing this where codes elaborate on such a difficulty themselves. Thus, reformed ethics codes could be of assistance here. Codes formulated in terms of ethical values and core requirements may have the potential to promote further consideration of the 'ethical value' of a decision rather than merely its 'commercial value'. As Tulloch observes, "a code of practice that is not rooted in some investigation and discussion of the culture of journalism is a set of loopholes bound together with good intentions rather than a framework of values".[15] Such a route may have the potential to promote an increased consciousness of the paramount duty of public accountability within the press more broadly.

The way forward: 'Promoting accountability via codes of ethics' and 'applying ethics codes via accountability'

The relationship between codes of ethics and the culture of journalism in which they are developed and applied is ultimately a reciprocal one. That the content of current codes appears to be limited in terms of their ability to promote accountability may be attributed to the journalistic culture within which they evolve, and vice versa. The present journalistic culture may be described as one that promotes accountability to the market over accountability to the public, where the current codes do little to address the tension between these two levels of accountability. The question may then be asked whether this reciprocity can form the basis for promoting

[14] Commission on Freedom of the Press, op. cit., p. 130.
[15] Tulloch, J., op. cit., p. 81.

a journalistic culture based on the notion of public accountability through the type of ethics code advocated here. In other words, if journalistic codes of ethics were to further clarify the concept of public accountability suggested above, could this contribute to a change in attitude within journalism more broadly?

It is conceivable that well-formed codes of the nature advocated above may have a potential pedagogical function, as opposed to the largely admonitory character of present codes. The necessary education and re-education of journalists in the ethics of their profession, and more importantly how these may be applied in practice, could begin through journalism codes. Employed in this manner, a code may promote more effectively an engagement in the ethics of journalism, and their promotion and application in their practice. Indeed, an ethics code thus formed may have the potential to encourage an increased professional consciousness within the press more broadly, as the cornerstone of public accountability within journalism.

As submitted above, professional accountability means acting in the public interest, which in this context entails a conscious commitment to acting ethically and professionally with a regard for the harm ones actions may cause, even at the expense of commercial and other interests. In the context of privacy intrusion for instance, this means that the journalist must consider the harm inflicted to the person(s) concerned over the potential 'commercial value' of the action as potentially circulation-boosting. In other words, professional and ethical considerations come before commercial ones in the journalist' choice of a course of action to take. This may be seen as a 'bottom up' approach to the promotion of genuine professionalism and accountability within the press more broadly.[16] However, while such a change may begin at the level of the journalist's ethical structures, it has the potential to then

[16] These suggestions may be reminiscent of the 'Professional Responsibility Model' (PRM) of promoting 'socially responsible' journalism outlined in chapter six above. This model was critiqued on the grounds that it evidently fails to acknowledge the wider pressure on journalists and the newsroom culture that were located as the basis for promoting a renewed commitment to 'social responsibility. While like the PRM, the suggestions advanced here might be seen as a 'bottom up' approach to journalistic accountability. However, the former is largely ideologically based, and the latter more practically based. Reformulated codes of ethics, of the nature suggested here, rather than the professional culture of a section of the press industry itself as the PRM envisages, may be seen to hold more promise for the future of press self-regulation. While not a concrete or faultless 'solution' to the issues raised of codes and self-regulation throughout this thesis, this may have more potential to address some of the key external difficulties highlighted in this thesis with such models as the PRM, and the social responsibility theory. This would perhaps be heightened if such a code was industry-wide in its application, and implemented through some form of 'binding' self-regulation. This may be a further step in the process towards genuine journalistic accountability.

feed back into the application of, and commitment to the ethical precepts of codes themselves.

If codes are framed around the conception of the 'public interest' advocated above, with its emphasis on the potential effects of the journalist's actions, their ability to promote genuine accountability to the public is arguably increased. In doing so, a key difficulty in the application of codes may be addressed via the voluntary route. At the least, the increased trust and credibility of journalism may bring about an aberration from the politics of voluntary restraint characteristic of the evolution of print media codes in Britain and New Zealand to date. Furthermore, this route allows the press itself to take the lead in promoting further accountability to the public through formulating ethics codes that encourage an increased professional consciousness within the print media. It is in this direction of fostering an increased professional consciousness and ethical conscience that journalism must heed for the future.

Certainly, it may be less easy to resolve the difficulties associated with the context in which the social responsibility theory's mechanisms for voluntary restraint are applied. The remaking of ethics codes may be just an aspect of the changes required in journalism to ensure genuine accountability and the promotion of 'virtuous journalists'. However, a code of ethics based around cardinal professional values for journalists underlies the 'actions and effects' to the formulation of codes approach advocated here. Rooted in the idea of a professional consciousness in journalism, may be considered a useful step in the process towards assimilating autonomy and accountability. Not only does this provide a means whereby some of the broader difficulties of a code's application may potentially be addressed. The course of action advocated here also may be seen to have the potential to solve a number of the difficulties typically noted of current ethics codes themselves. Indeed, such an approach may go some way toward resolving some of the main difficulties of current codes both in terms of their content, as well as the context in which they are developed and revised.

Addressing difficulties in the nature and content of current codes

The framing of ethics codes for journalists around key professional values may not only encourage a greater sense of accountability through an awareness of the effect of the journalist's actions. Such codes may also pose as a potential remedy to the questions raised as to the 'practical value' of ethics codes explored in this thesis. Consideration may firstly be given to the issue of a code's tone. As Belsey confirms, "[c]odes of conduct tend to be negative, prohibiting unethical practices, rather than positively encouraging the raising of standards".[17] However, codes whose requirements revolve around the positive standards of truth-telling, fairness, and independence, thus providing a framework for promoting the required practices related to such values, will be descriptive rather than merely proscriptive. Through placing certain requirements and practices in the broader context of the desirable ethical and professional values that the journalist should promote, a code may do more to encourage journalists to question their actions, and to justify them in terms of their potential effects for others. In this way, a code speaks to journalists as 'accountable professionals', rather than merely prohibiting certain actions where, inevitably, there will be loopholes able to be manipulated.

Of course, it is unlikely that a code can ever be without potential loopholes. However, this does not mean that ethics codes should be dismissed altogether. Rather, it suggests that they must acknowledge this issue and other potential problems rather than attempting to eradicate them, which will be virtually impossible. By highlighting the fact that the journalist's actions will undoubtedly have repercussions for others, a code may not only address some of the difficulties associated with more detailed codes. Such a code may also help to address also some of the problems with the vagueness and generality of many journalism codes illustrated at the beginning of this thesis.

A code that encourages journalists to consider the significance of their actions in terms of the accountability and public interest concepts forwarded above may also prompt the journalists to rationalise their actions in terms of the values around which the code is framed. In doing so, the difficulty of loopholes present in particularly more specific codes such as that of the PCC may be addressed. A code that encourages the journalists not only to ask such questions as 'is this action fair now, and who will be

[17] Belsey, A. 1995, op. cit., p. 99.

affected by my actions and how?' is arguably the essence of professional accountability. This may have the potential to discourage the manipulation of loopholes, and instead promoting the ethical deliberation and rationalisation that needs to accompany codes of ethic in the ethical decision making process. Encouraging the journalist to weigh up in context the relevant conflicting values furthers an 'accountable attitude'.

In this way, a code does not conceivably need to offer precise instructions to journalists about how to resolve a particular ethical dilemma, and thereby eradicate altogether the need for any deliberation. Rather a well-constructed code may encourages the journalist to arrive at 'ethical conclusions' themselves. Indeed, journalists may also be encouraged to further deliberate their actions beyond the prescriptive and unconnected series of 'do's and don'ts' that many current codes are comprised of, thus removing some of the problems associated with the anomalies and weaknesses of the more vague codes. As Coady points out, "... a reason why it is important to preserve moral deliberation is that no code ... could be sufficiently comprehensive to provide the moral answer to all situations".[18]

In addition, a code framed in terms of the core journalistic virtues and 'public interest' values discussed above would appear to offer more by way of a 'reason' for adhering to its precepts, and indeed, for having a code of ethics itself. A code that is based around values, rather than specific behaviours alone, furthers the overall accountability a code can be seen to promote in journalists. In doing so, more is offered as to the basis and purpose of the code, and the relevance of its individual clauses to the code as a whole. Indeed, where an ethics code is based upon the notion of furthering journalistic accountability, and an ethics code speaks to those affected by it as accountable professionals, it may bring these ideals closer to reality.

While the remaking of a code alone cannot automatically ensure journalistic accountability, the suggestions advanced here may be seen as a starting point in a transition toward increased public accountability in the journalistic culture. These suggestions may even form the basis of the direction in which codes are developed and revised for the future. This, in turn, may give rise to a situation where there is less of a divergence between the proclaimed functions of ethics codes within the press, and those reflected not only in their development, but also in their content, and their

[18] Coady, M., op. cit., p. 50.

subsequent application. This contention was a central theme of this thesis. Rather than dismissing codes of ethics as a means to an end of journalistic accountability then, their intrinsic value may be located as the basis for promoting professional accountability within the press, and for the required education and re-education of journalists in the ethics of their profession. As Coady observes, "[a] professional code of ethics can be truly ethical rather than either a method of control or a facade to serve self-interest under the guise of altruism, in that it can act as a vehicle to promote...moral deliberation". [19]

Thus, seen as a catalyst for the ethical discussion and debate that must accompany journalistic codes of practice if they are to promote genuine accountability and effective self-regulation, well-formed codes "... might even stimulate journalists to become interested in ethical problems and to seek further interpretation through reflection and discussion – and by such a process to improve the [c]ode itself".[20] This reflexivity may have the potential to change the context within which codes tend to be revised or amended. Where ethics codes are developed, applied, and revised in a context of deliberation and debate within the press about the ethics of journalism, they will undoubtedly fulfil manifest functions other than to pose as merely a façade to protect against statutory intervention in the press. Moreover, this will undoubtedly be both underpinned by, and contribute to a change in attitude from the notion apparent within the press at present that codes of ethics are a 'constraint on press freedom', to one which sees 'press freedom as the freedom to promote ethical journalism' in the future. It is under such circumstances that journalistic codes of ethics may then prove to be viable instruments for journalistic accountability and effective self-regulation.

Through exploring the possibility that reformed ethics codes may contribute to a journalistic culture based on professional consciousness and ethical conscience, this thesis had concluded with some core propositions. Codes of ethics for journalists need to emerge from within a journalistic culture in which there is a genuine and paramount commitment to accountability to the public. Their content needs to promote this objective on an industry-wide basis; the professional consciousness and ethical conscience mandate must apply to the entire print media industry. This is the goal advanced here, with the idea expressed that well-formed codes may be the

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[19] ibid., p. 51.
[20] Belsey, A., and R. Chadwick. 1995, op. cit., p. 470.

starting point in this process, at least as a means whereby such requirements can be expressed.

Of course, the notion that revamped ethics codes may pave the way for increased accountability to the public within journalism is one that needs to be tested in practice; good intentions need to be applied, tested, and reworked when and where necessary. What is important is that the impetus for this comes from within journalism itself. Moreover, the perspectives of an 'outsider' in judging the functions of an actual or anticipated code of ethics need to be considered in addition to those within the industry to which codes actually apply. This is arguably important for the efficacy of any formula for press regulation, as this thesis has highlighted of the British and New Zealand experiences. Therefore, in suggesting the direction in which the content of codes might take for the future in order to promote increased accountability, the effectiveness of such a proposition needs confirmation from those to whom it is to apply. As Kultgen points out,

> "[c]odes are texts that communicate ideas, express attitudes, and direct behaviour. Identification of the functions of a code must be predicated on an understanding of what it says to those affected by it since their understanding, not the analysts, produces the behaviour and the consequences categorized as functions".[21]

This point may be interpreted as a limitation of the present study, or one that offers scope for future research into the perceptions of those to whom journalistic codes of ethics and their content applies.

Whether the remaking of ethics codes in the manner advocated above as a means to sustain the voluntary model of self-regulated restraint will promote genuine accountability or not, it can be seen that there are potential advantages in having such codes in themselves. Through the route advanced here, some of the key difficulties of current journalistic codes of ethics highlighted throughout this thesis may be addressed with benefits for the press and the public. Pipe dream or not, the press has nothing to lose and much to gain. These suggestions offer a means by which the press itself can take the lead in promoting a professional consciousness, and in proactively demonstrating that the voluntary route is legitimately the preferable means of assimilating autonomy with accountability, and freedom with responsibility. Above

[21] Kultgen, J., 1988, op. cit., p. 218.

all, they offer a means of demonstrating that the notion of journalism as a profession based on ethical practice is 'not just a myth, nor an ideal never to be attained'.

APPENDIX ONE:

Codes of ethics of the British print media

NUJ Code of Conduct (1936)

A member of the union should do nothing that would bring discredit on himself, his union, his newspaper, or his profession. He should study the rules of the union, and should not, by commission or omission, act against the interests of the union.

Unless the employer consents to a variation, a member who wishes to terminate his employment must give notice according to agreement or professional custom.

No member should seek promotion or seek to obtain the position of another journalist by unfair methods. A member should not, directly or indirectly, attempt to obtain for himself or anyone else any commission, regular or occasional, held by a freelance member of the union.

It is unprofessional conduct to exploit the labour of another journalist by plagiarism, or by using his copy for lineage purposes without permission.

A member holding a staff appointment shall serve first the paper that employs him. In his own time a member is free to engage in other creative work, but he should not undertake any extra work in his rest time or holidays if by doing so he is depriving an out-of-work member a chance to obtain employment. Any misuse of rest days—won by the union on the sound argument that periods of recuperation are needed after strenuous hours of labour—is damaging to trade union aims for a shorter working week.

While a spirit of willingness to help other members should be encouraged at all times, members are under a special obligation of honour to help an unemployed member to obtain work.

Every journalist should treat subordinates as considerately as he would desire to be treated by his superiors.

Freedom in the honest collection and publication of news facts, and the rights of fair comment and criticism, are principles which every journalist should defend.

A journalist should fully realise his personal responsibility for everything he sends to his paper or agency. He should keep union and professional secrets, and respect all necessary confidence regarding sources of information and private documents. He should not falsify information or documents, or distort or misrepresent facts.

In obtaining news or pictures, reporters and Press photographers should do nothing that will cause pain or humiliation to innocent, bereaved, or otherwise distressed persons.

News, pictures, and documents should be acquired by honest methods only.

(Source: *The New Zealand Journalist*. January 12 1941,vol.9, no. 1, p. 5)

Rules of the NUJ
Appendix A
Code of conduct (1999)

1. A journalist has a duty to maintain the highest professional and ethical standards.

2. A journalist shall at all times defend the principle of the freedom of the press and other media in relation to the collection of information and the expression of comment and criticism. He/she shall strive to eliminate distortion, news suppression and censorship.

3. A journalist shall strive to ensure that the information he/she disseminates is fair and accurate, avoid the expression of comment and conjecture as established fact and falsification by distortion, selection or misrepresentation.

4. A journalist shall rectify promptly any harmful inaccuracies, ensure that correction and apologies receive due prominence and afford the right of reply to persons criticised when the issue is of sufficient importance.

5. A journalist shall obtain information, photographs and illustrations only by straightforward means. The use of other means can be justified only by overriding considerations of the public interest. The journalist is entitled to exercise a personal conscientious objection to the use of such means.

6. Subject to the justification by overriding considerations of the public interest, a journalist shall do nothing which entails intrusion into private grief and distress.

7. A journalist shall protect confidential sources of information.

8. A journalist shall not accept bribes nor shall he/she allow other inducements to influence the performance of his/her professional duties.

9. A journalist shall not lend himself/herself to the distortion or suppression of the truth because of advertising or other considerations.

10. A journalist shall mention a person's age, sex, race, colour, creed, illegitimacy, disability, marital status, or sexual orientation only if this information is strictly relevant. A journalist shall neither originate nor process material which encourages discrimination, ridicule, prejudice or hatred on any of the above-mentioned grounds.

11. No journalist shall knowingly cause or allow the publication or broadcast of a photograph that has been manipulated unless that photograph is clearly labelled*[sic]* as such. Manipulation does not include normal dodging, burning, colour balancing, spotting, contrast adjustment, cropping and obvious masking for legal or safety reasons.

12. A journalist shall not take private advantage of information gained in the course of his/her duties before the information is public knowledge.

13. A journalist shall not by way of statement, voice or appearance endorse by advertisement any commercial product or service save for the promotion of his/her own work or of the medium by which he/she is employed.

(Source: *Rules of the NUJ.* Updated September 1999. NUJ Online. Available: http://www.gn.apc.org/media/policy.html).

The British Press Council's Declaration of Principle Payment for Articles (1966)

1. No payment or offer of payment should be made by a newspaper to any person known or reasonably expected to be a witness in criminal proceedings already begun in exchange for any story or information in connection with the proceedings until they have been concluded.
2. No witness in committal proceedings should be questioned on behalf of any newspaper about the subject matter of his evidence until the trial has been concluded.
3. No payment should be made for feature articles to persons engaged in crime or other notorious misbehaviour where the public interest does not warrant it; as the Council has previously declared, it deplores publication of personal articles of an unsavoury nature by persons who have been concerned in criminal acts or vicious conduct.

In making this declaration the Press Council acknowledges the wide support given by editors to the broad principles set out.

The Council does not intend that the principles enunciated shall preclude reasonable contemporaneous inquiries in relation to the commission of crime when these are carried out with due regard to the administration of justice. There may be occasions on which the activities of newspapers are affected by overriding questions of public interest, such as the exposure of wrongdoing.

No code can cover every case. Satisfactory observance of the principles must depend upon the discretion and sense of responsibility of editors and newspaper proprietors.

1983 Amendment:

While the Council recognises that conceivably, in an exceptional case, publication of stories or pictures from associates of a criminal could be justified by some overriding consideration of public interest (which is not the same as merely being "of interest to the public"), and an editor might be able to demonstrate that the disclosure would have been impossible without payment, generally there is no such justification.

In future the Council proposes to judge cases on these lines:

Just as it is wrong that the evildoer should benefit from his crime so it is wrong that persons associated with a criminal should derive financial benefit from trading on that association.
What gives value to such stories and pictures is the link with criminal activity. In effect the stories and pictures are sold on the back of crime. Associates include family, friends, neighbours and colleagues. Newspapers should not pay them, either directly or indirectly through agents, for such material and should not be party to publishing it if there is reason to believe payment has been made for it.
The practice is particularly abhorrent where the crime is one of violence and payment involves callous disregard for the feelings of victims and their families.

(Source: Press Council. 1991, pp. 248-250. *The Press and the People, 37th Annual Report of the Press Council, 1990.* London: The Press Council).

The British Press Council's Declaration of Principle Privacy (1976)

The Press Council exists primarily to protect the freedom of the Press, the maintenance of which in our democratic society has never been more important than now. It has however for some time had under study complaints which have been made about Press activities in relation to personal privacy and believes it opportune to declare its determination to uphold the right of individuals to be protected against unwarranted intrusion into their private lives or affairs.

The Council is convinced that the right of privacy is incapable of satisfactory definition by statute law and that any attempt to legislate on privacy would be contrary to the public interest.

No statutory enactment on privacy could itself secure that degree of protection which would satisfy those who consider it to be of paramount importance without at the same time curtailing the right of the public at large to be informed about and know of matters of public concern. Any such enactment would make it more difficult for the Press to carry out those duties of vigilance, inquiry and disclosure which hare appropriate to a healthy democracy.

The following statement represents the policy which the Press Council has and will continue to support and which accords with the practice of responsible journalists:

(i) The publication of information about the private lives or concerns of individuals without their consent is only acceptable if there is a legitimate public interest overriding the right of privacy.

(ii) It is the responsibility of editors to ensure that inquiries into matters affecting the private life or concerns of individuals are only undertaken where in the editor's opinion at the time a legitimate public interest in such matters may arise. The right to privacy is however not involved if the individuals concerned have freely and clearly consented to the pursuit of inquiries and publication.

(iii) The public interest relied on as the justification for publication or inquiries which conflict with a claim to privacy must be a legitimate and proper public interest and not a prurient or morbid curiosity. "Of interest to the public" is not synonymous with "in the public interest". It should be recognised that entry into public life does not disqualify an individual from his right to privacy about his private affairs, save when the circumstances relating to the private life of an individual occupying a public position may be likely to affect the performance of his duties or public confidence in him or his office.

(iv) Invasion of privacy by deception, eavesdropping or technological methods which are not in themselves unlawful can however be justified when it is in pursuit of information which ought to be published in the public interest and there is no other reasonably practical method of obtaining or confirming.

(v) The Council expects the obtaining of news or pictures to be carried out with sympathy and discretion, Reporters and photographers should do noting to cause pain or humiliation to bereaved or distressed people unless it is clear that the publication of the news or pictures will serve a legitimate public

interest and there is no other reasonably practicable means of obtaining the material.

(vi) Editors are responsible for the actions of those employed by their newspapers and have a duty to ensure that all concerned are aware of the importance of respecting all legitimate claims to personal privacy.

This Declaration of Principle, which takes account of existing rulings of the Council and editorial directives on standards of journalists, should ensure the maintenance of a climate of opinion and behaviour amongst all concerned, protecting the right of privacy.

(Source: Press Council. 1977, pp. 150-152. *The Press and the People, 23rd Annual Report of the Press Council, 1976*. London: The Press Council).

The British Press Council's Code of Practice (1990)

Newspaper, periodicals, and journalists have a duty to defend the freedom of the press in the interests of the public, and to resist censorship. Unethical conduct jeopardises this objective.

ACCURACY

1. It is the duty of newspapers not to publish deliberately or carelessly inaccuracies or statements designed to mislead, and to correct promptly and with due prominence significant inaccuracies which they have published, or misleading statements for which they are responsible, apologising for these where appropriate.

OPPORTUNITY TO REPLY

2. It is the duty of newspapers to allow a fair opportunity for reply when reasonably called for.

PRIVACY

3. Publishing material or making inquiries about the private lives of individuals without their consent is not acceptable unless these are in the public interest, overriding the right of privacy. The Press Council's Declaration of Principle on Privacy should be observed.

COMMENT AND FACT

4. Newspapers are free to be partisan but they should distinguish between comment and fact. Conjecture should not be elevated into statements of fact.

SUBTERFUGE

5. Newspapers and journalists serving them should use straightforward means to obtain information or pictures. Their use of subterfuge can be justified only to obtain material which ought to be published in the public interest and could not be obtained by other means.

PAYMENT FOR ARTICLES

6. Payments or offers of payment for stories, pictures or information should not be made to witnesses or potential witnesses in current criminal proceedings or to people engaged in crime or their associates except where the material concerned ought to be published in the public interest, and the payment is necessary to enable this to be done. The Press Council's Declaration of Principle on Payment for Articles should be observed.

INTRUSION INTO GRIEF

7. Newspapers and journalists serving them should in general avoid intruding into personal grief. Inquiries should be carried out with sympathy and discretion.

INNOCENT RELATIVES

8. Newspapers should exercise care and discretion before identifying relatives of persons convicted or accused of crime where the reference to them is not directly relevant to the matter reported.

Press Complaints Commission

THE EVOLVING CODE OF PRACTICE

The Code of Practice is written by a committee of editors and ratified by the Press Complaints Commission. It is not a legal document and, as such, it can swiftly be amended to take account if necessary of parliamentary comment, suggestions from the PCC, editors and members of the public, and changes in technology.
There have been nearly 30 such changes since the original Code was published in 1991.

DATE	CHANGE
January 1991	A 16 Clause Code of Practice was established covering areas such as accuracy, privacy and discrimination under a committee chaired by Mrs Patsy Chapman (then editor of the News of the World).
May 1992	The following paragraph was inserted in the preamble relating to the obligation of editors to publish the Commission's critical adjudications. Any publication which is criticised by the PCC under one of the following clauses is duty bound to print the adjudication which follows in full and with due prominence.
March 1993	Following concerns about the manner in which some material was being obtained by journalists a new clause was added which became Clause (5) Listening Devices. The Clause read: Unless justified by public interest, journalists should not obtain or publish material obtained by using clandestine listening devices or by intercepting private telephone conversations.
April 1993	Sir David English, Editor-in-Chief of Associated Newspapers, became Chairman of the Code Committee.
June 1993	The preamble was again altered to enshrine in the Code the requirement for swift co-operation by editors with PCC. The preamble now included the words: It is the responsibility of editors to co-operate as swiftly as possible in PCC enquiries.
October 1993	The following note defining private property was included at the foot of Clause 4 (Privacy): *Private property is defined as any private residence, together with its garden and outbuildings, but excluding any adjacent fields or parkland. In addition, hotel bedrooms (but not other areas in a hotel) and those parts of a hospital or nursing home where patients are treated or accommodated.* Clause 8 (Harassment) was amended to refer to the above definition of private property with regard to the taking of long lens photographs.
April 1994	Clause 6 (Hospitals) was amended to clarify to whom journalists should identify themselves when making enquiries at hospitals. This was changed from a 'responsible official' to a 'responsible executive'.
May 1995	The definition of private property included in Clauses 4 (Privacy) and 8 (Harassment) was amended to make clear that privately-owned land which could easily be seen by passers-by would not be considered a private place. It now read: *Note Private property is defined as (i) any private residence, together with its garden and outbuildings, but excluding any adjacent fields or parkland and the surrounding parts of the property within the unaided view of passers-by, (ii) hotel*

bedrooms (but not other areas in a hotel) and (iii) those parts of a hospital or nursing home where patients are treated or accommodated.

September 1995 — Section (ii) of Clause 13 (Children in sex cases) was amended. Where it had previously read the term incest where applicable should not be used it now said the word incest should be avoided where a child victim might be identified. At the same time, after consultation with the Code Committee, the Codes of the Broadcasting Standards Commission and Independent Television Commission were similarly amended in order to ensure that the 'jigsaw identification' of such vulnerable children did not occur accidentally across the whole media.

December 1996 — Following concerns expressed at the time of the trial of Rosemary West, when a number of witnesses sold their stories to newspapers, Clause 16 (Payment for articles) was amended. The Code now distinguished between payments to criminals and payments to witnesses, and introduced transparency into such payments by requiring that they be disclosed to both prosecution and defence. The Clause now read:

i) Payment or offers of payment for stories or information must not be made directly or through agents to witnesses or potential witnesses in current criminal proceedings except where the material concerned ought to be published in the public interest and there is an overriding need to make or promise to make a payment for this to be done. Journalists must take every possible step to ensure that no financial dealings have influence on the evidence that those witnesses may give.

(An editor authorising such a payment must be prepared to demonstrate that there is a legitimate public interest at stake involving matters that the public has a right to know. The payment or, where accepted, the offer of payment to any witness who is actually cited to give evidence should be disclosed to the prosecution and the defence and the witness should be advised of this).

ii) Payment or offers of payment for stories, pictures or information, must not be made directly or through agents to convicted or confessed criminals or to their associates - who may include family, friends and colleagues - except where the material concerned ought to be published in the public interest and payment is necessary for this to be done.

Following the death of Diana, Princess of Wales, in September 1997, there were numerous calls for revisions to be made to the Code particularly as it related to privacy and harassment. The most substantial rewriting of the Code in its six year history took place over the next three months and the new Code was ratified by the Commission in time for it to become operational from January 1998.

January 1998 — Clause 1 (Accuracy) was extended to deal with photo manipulation. It also absorbed the clause relating to comment, conjecture and fact.

The new wording for the privacy clause, which became Clause 3, was for the first time drawn largely from the European Convention on Human Rights, which the government had by this time pledged to incorporate into British law. It also significantly altered the definition of a private place, which now included both public and private places 'where there is a reasonable expectation of privacy'. There had been concern that the previous Code had been far too tight in its definition of privacy and would not have protected someone from intrusion who was, for example, in a church or at a discreet table in a restaurant.

One of the chief concerns at the time of Princess Diana's death was about the role of the paparazzi and the manner in which some photographs were sought. To

address this concern, the provisions on Harassment which became Clause 4 were revised to include a ban on information or pictures obtained through 'persistent pursuit'. The new Clause 4 also made explicit an editor's responsibility not to publish material that had been obtained in breach of this clause regardless of whether the material had been obtained by the newspaper's staff or by freelancers.
One of the strictest clauses in the Code was introduced to protect the rights of children to privacy. The new clause number 6 in the revised Code extended the protection of the Code to children while they are at school. Previously it had referred only to the under 16s. It also added two new elements a ban on payments to minors or the parents or guardians of children for information involving the welfare of the child (unless demonstrably in the child's interest) and a requirement that there had to be a justification for the publication of information about the private life of a child other than the fame, notoriety or position of his or her parents or guardian.
The clause on intrusion into grief and shock had previously related only to enquiries made by journalists at such times. The Code Committee took the opportunity to extend this to include publication. The following sentence was therefore added:
Publication must be handled sensitively at such times, but this should not be interpreted as restricting the right to report judicial proceedings.
Throughout the entire Code, the phrase 'should not' was replaced by 'must not'. In addition, the section on the public interest which details occasions when an editor might argue that a breach of the Code was justified in order to protect the public's right to know was turned into a separate section without a clause number. It included a key addition: that in cases involving children the editor must demonstrate an exceptional public interest to over-ride the normally paramount interests of the child.

January 1999 — Following the death of Sir David English, Les Hinton, Executive Chairman of News International, became Chairman of the Code Committee.

December 1999 — Following discussions with the government about the implementation of a new Youth Justice Act, Clause 10 was renamed 'Reporting of Crime' and contained the following addition:
Particular regard should be paid to the potentially vulnerable position of children who are witnesses to, or victims of crime. This should not be interpreted as restricting the right to report judicial proceedings.
At the same time the public interest defence was expanded, once again mirroring the Human Rights legislation. The following section on the right of freedom of expression was added:
There is a public interest in freedom of expression itself. The Commission will therefore have regard to the extent to which material has, or is about to, become available to the public

(Source: The Press Complaints Commission. http://www.pcc.org.uk/evolving.htm)

Press Complaints Commission Code of Practice (2000)

All members of the press have a duty to maintain the highest professional and ethical standards. This code sets the benchmark for those standards. It both protects the rights of the individual and upholds the public's right to know.

The code is the cornerstone of the system of self-regulation to which the industry has made a binding commitment. Editors and publishers must ensure that the code is observed rigorously not only by their staff but also by anyone who contributes to their publications.

It is essential to the workings of an agreed code that it be honoured not only to the letter but in the full spirit. The code should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individuals, nor so broadly that it prevents publication in the public interest.

It is the responsibility of editors to co-operate with the PCC as swiftly as possible in the resolution of complaints.

Any publication which is criticised by the PCC under one of the following clauses must print he adjudication which follows in full and with due prominence.

The public interest

There may be exceptions to the clauses marked * where they can be demonstrated to be in the public interest.

1. The public interest includes:
   i) Detecting or exposing crime or a serious misdemeanour.
   ii) Protecting public health and safety.
   iii) Preventing the public from being misled by some statement or action of an individual or organisation.

2. In any case where the public interest is invoked, the Press Complaints Commission will require a full explanation by the editor demonstrating how the public interest was served.

3. There is a public interest in freedom of expression itself. The Commission will therefore have regard to the extent to which material has, or is about to, become available to the public.

4. In cases involving children editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child

1. Accuracy

i) Newspapers and periodicals should take care not to publish inaccurate, misleading or distorted material including pictures.

ii) Whenever it is recognised that a significant inaccuracy, misleading statement or distorted report has been published, it should be corrected promptly and with due

prominence.

iii) An apology must be published whenever appropriate.

iv) Newspapers, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact

v) A newspaper or periodical must report fairly and accurately the outcome of an action for defamation to which it has been a party.

2. Opportunity to reply
A fair opportunity for reply to inaccuracies must be given to individuals or organisations when reasonably called for.

***3. Privacy**
i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence. A publication will be expected to justify intrusions into any individual's private life without consent

ii) The use of long lens photography to take pictures of people in private places without their consent is unacceptable.

Note - Private places are public or private property where there is a reasonable expectation of privacy.

***4. Harassment**
i) Journalists and photographers must neither obtain nor seek to obtain information or pictures through intimidation, harassment or persistent pursuit

ii) They must not photograph individuals in private places (as defined by the note to clause 3) without their consent; must not persist in telephoning, questioning, pursuing or photographing individuals after having been asked to desist; must not remain on their property after having been asked to leave and must not follow them.

iii) Editors must ensure that those working for them comply with these requirements and must not publish material from other sources which does not meet these requirements.

5. Intrusion into grief or shock
In cases involving personal grief or shock, enquiries should be carried out and approaches made with sympathy and discretion. Publication must be handled sensitively at such times but this should not be interpreted as restricting the right to report judicial proceedings.

***6. Children**
i) Young people should be free to complete their time at school without unnecessary intrusion.

ii) Journalists must not interview or photograph a child under the age of 16 on subjects involving the welfare of the child or any other child in the absence of or

without the consent of a parent or other adult who is responsible for the children.

iii) Pupils must not be approached or photographed while at school without the permission of the school authorities.

iv) There must be no payment to minors for material involving the welfare of children nor payments to parents or guardians for material about their children or wards unless it is demonstrably in the child's interest.

v) Where material about the private life of a child is published, there must be justification for publication other than the fame, notoriety or position of his or her parents or guardian.

7. Children in sex cases

1. The press must not, even where the law does not prohibit it, identify children under the age of 16 who are involved in cases concerning sexual offences, whether as victims or as witnesses.

2. In any press report of a case involving a sexual offence against a child -

i) The child must not be identified.

ii) The adult may be identified.

iii) The word "incest" must not be used where a child victim might be identified.

iv) Care must be taken that nothing in the report implies the relationship between the accused and the child.

***8. Listening Devices**

Journalists must not obtain or publish material obtained by using clandestine listening devices or by intercepting private telephone conversations.

***9. Hospitals**

i) Journalists or photographers making enquiries at hospitals or similar institutions should identify themselves to a responsible executive and obtain permission before entering non-public areas.

ii) The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospitals or similar institutions.

***10. Reporting of crime**

(i) The press must avoid identifying relatives or friends of persons convicted or accused of crime without their consent.

(ii) Particular regard should be paid to the potentially vulnerable position of children who are witnesses to, or victims of, crime. This should not be interpreted as restricting the right to report judicial proceedings.

***11. Misrepresentation**
i) Journalists must not generally obtain or seek to obtain information or pictures through misrepresentation or subterfuge.

ii) Documents or photographs should be removed only with the consent of the owner.

iii) Subterfuge can be justified only in the public interest and only when material cannot be obtained by any other means.

12. Victims of sexual assault
The press must not identify victims of sexual assault or publish material likely to contribute to such identification unless there is adequate justification and, by law, they are free to do so.

13. Discrimination
i) The press must avoid prejudicial or pejorative reference to a person's race, colour, religion, sex or sexual orientation or to any physical or mental illness or disability.

ii) It must avoid publishing details of a person's race, colour, religion, sexual orientation, physical or mental illness or disability unless these are directly relevant to the story.

14. Financial journalism
i) Even where the law does not prohibit it, journalists must not use for their own profit financial information they receive in advance of its general publication, nor should they pass such information to others.

ii) They must not write about shares or securities in whose performance they know that they or their close families have a significant financial interest without disclosing the interest to the editor or financial editor.

iii) They must not buy or sell, either directly or through nominees or agents, shares or securities about which they have written recently or about which they intend to write in the near future.

15. Confidential sources
Journalists have a moral obligation to protect confidential sources of information.

***16. Payment for articles**
i) Payment or offers of payment for stories or information must not be made directly or through agents to witnesses or potential witnesses in current criminal proceedings except where the material concerned ought to be published in the public interest and there is an overriding need to make or promise to make a payment for this to be done. Journalists must take every possible step to ensure that no financial dealings have influence on the evidence that those witnesses may give.

(An editor authorising such a payment must be prepared to demonstrate that there is a legitimate public interest at stake involving matters that the public has a right to know. The payment or, where accepted, the offer of payment to any witness who is actually cited to give evidence should be disclosed to the prosecution and the defence

and the witness should be advised of this).

ii) Payment or offers of payment for stories, pictures or information, must not be made directly or through agents to convicted or confessed criminals or to their associates - who may include family, friends and colleagues - except where the material concerned ought to be published in the public interest and payment is necessary for this to be done.

(Source: The Press Complaints Commission Online: http://www.pcc.org.uk/cop.asp)

APPENDIX TWO:

Codes of ethics of the New Zealand print media

NZJA CODE OF ETHCS (1967)

Members of the NZJA pledge themselves to accept the following code and stand by their fellow members in its observation and enforcement.

1. To report and interpret the news honestly

2. To promote through their conduct full public confidence in the integrity and dignity of their calling.

3. To observe professional secrecy in matters revealed in confidence, to the furthest limits of law or conscience.

4. To use only honest methods to obtain news, pictures and documents.

5. Never to accept any form of bribe, either to publish or to suppress.

6. To reveal their identity as members of the press when not to do so would be contrary to ethical standards.

7. Not to suppress essential fact, and not to distort the truth by omission or wrongful emphasis.

8. To observe at all times the fraternity of their profession and never take unfair advantage of a fellow member of the N.Z.J.A.

9. That journalists should accept no compulsion to intrude on private grief.

(Source: *The New Zealand Journalist* vol. 32, no. 5, September 1967, p. 1)

EPMU Code of ethics for journalists (1988)*

Respect for truth and the public's right to information are over-riding principles for all journalists. In pursuance of these principles, journalists commit themselves to ethical and professional standards. All members of the Union engaged in gathering, transmitting, disseminating and commenting on news and information shall observe the following Code of Ethics in their professional activities:

(a) They shall report and interpret the news with scrupulous honesty and striving to disclose all essential facts and by not suppressing relevant, available facts or distorting by wrong or improper emphasis.

(b) They shall not place unnecessary emphasis on gender, race, sexual preference, religious belied, marital status or physical disability.

(c) In all circumstances they shall respect all confidences received in the course of their occupation.

(d) They shall not allow personal interests to influence them in their professional duties.

(e) They shall not allow their professional duties to be influenced by any consideration, gift or advantage offered, and where appropriate shall disclose any such offer.

(f) They shall not allow advertising or commercial considerations to influence them in their professional duties.

(g) They shall use fair and honest means to obtain news, pictures, films, tapes and documents.

(h) They shall identify themselves and their employers before obtaining any interview for publication or broadcast.

(i) They shall respect private grief and personal privacy and shall have the right to resist compulsion to intrude on them.

(j) They shall do their utmost to correct any published or broadcast information found to be harmfully inaccurate.

A breach of this Code shall be a breach of the Union's rules and thus may give rise to disciplinary procedures under the rules. If a member is dismissed from employment or otherwise disadvantaged by an employer, and a breach of the Code is claimed and substantiated as a ground for the employer's action, the Union may decline to pursue a personal grievance on behalf of the member.

*The code was last revised in 1988 while operated by JAGPRO, which in 1996 became the EMPU)

New Zealand Press Council
Statement of Principles (1999)

There are some broad principles to which the Council is committed. There is no more important principle than freedom of expression. In a democratically governed society the public has a right to be informed, and much of that information comes from the media. Individuals also have rights and sometimes they must be balanced against competing interests such as the public's right to know. Freedom of expression and freedom of the media are inextricably bound. The print media is jealous in guarding freedom of expression not just for publishers' sake, but, more importantly, in the public interest. In complaint resolution by the Council freedom of expression and public interest will play dominant roles.

It is important to the Council that the distinction between fact, and conjecture, opinions or comment be maintained. This Principle does not interfere with rigorous analysis, of which there is an increasing need, and is the hallmark of good journalism.

The Council seeks the co-operation of editors and publishers in adherence to these Principles and disposing of complaints. Editors have the ultimate responsibility to their proprietors for what appears editorially in their publications, and to their readers and the public for adherence to the standards of ethical journalism which the Council upholds in this Statement of Principles.

These Principles are not a rigid code, but may be used by complainants should they wish to point the Council more precisely to the nature of their complaint. A complainant may use other words, or expressions, in a complaint, and nominate grounds not expressly stated in these Principles

1. Accuracy

Publications (newspapers and magazines) should be guided at all times by accuracy, fairness and balance, and should not deliberately mislead or misinform readers by commission, or omission.

2. Corrections

Where it is established that there has been published information that is materially incorrect then the publication should promptly correct the error giving the correction fair prominence. In appropriate circumstances the correction may be accompanied by an apology and a right of reply by an affected person or persons.

3. Privacy

Everyone is entitled to privacy of person, space and personal information, and these rights should be respected by publications. Nevertheless the right of privacy should not interfere with publication of matters of public record, or obvious significant public interest.

Publications should exercise care and discretion before identifying relatives of persons convicted or accused of crime where the reference to them is not directly

relevant to the matter reported.

Those suffering from trauma or grief call for special consideration, and when approached, or enquiries are being undertaken, careful attention is to be given to their sensibilities.

4. Confidentiality

Editors have a strong obligation to protect against disclosure of the identity of confidential sources. They also have a duty to take reasonable steps to satisfy themselves that such sources are well informed and that the information they provide is reliable.

5. Children and Young People

Editors should have particular care and consideration for reporting on and about children and young people.

6. Comment and Fact

Publications should, as far as possible, make proper distinctions between reporting of facts and conjecture, passing of opinions and comment.

7. Advocacy

A publication is entitled to adopt a forthright stance and advocate a position on any issue.

8. Discrimination

Publications should not place gratuitous emphasis on gender, religion, minority groups, sexual orientation, race, colour or physical or mental disability unless the description is in the public interest.

9. Subterfuge

Editors should generally not sanction misrepresentation, deceit or subterfuge to obtain information for publication unless there is a clear case of public interest and the information cannot be obtained in any other way.

10. Headlines and Captions

Headlines, sub-headings, and captions should accurately and fairly convey the substance of the report they are designed to cover.

11. Photographs

Editors should take care in photographic and image selection and treatment. They should not publish photographs or images which have been manipulated without informing readers of the fact and, where significant, the nature and purpose of the

manipulation. Those involving situations of grief and shock are to be handled with special consideration for the sensibilities of those affected.

12. Letters

Selection and treatment of letters for publication are the prerogative of editors who are to be guided by fairness, balance, and public interest in the correspondents' views.

13. Council Adjudications

Editors are obliged to publish the substance of Council adjudications that uphold a complaint. Note: Editors and publishers are aware of the extent of this Council rule that is not reproduced in full here.

Independent Newspapers Limited Code of ethics (1997)

INL newspapers and magazines subscribe to the objectives and values of the New Zealand Press Council – to preserve the established freedom of the New Zealand Press, and to maintain the character of the New Zealand Press in accordance with the highest professional standards.

INL publications, editors and editorial staff will strive to be:

- accurate
- fair
- independent

In pursuit of these goals, they will:

1. Present news and comment honestly, bearing in mind the privacy and sensibilities of individuals as well as the public interest.

2. Correct mistakes by prompt correction and explanation and, where necessary, apology.

3. Ensure journalists and photographers identify themselves and their purpose clearly and misrepresent themselves unless there is a case of compelling public interest cannot be obtained in any other way.

4. Approach cases involving person grief or shock with sympathy and discretion.

5. Ensure that staff act professionally so as not to compromise the integrity or reputation of themselves or their publication.

6. Value originality in journalism, and take every reasonable precaution to avoid plagiarism.

7. Not allow the personal interests of journalists to influence them in their professional duties.

8. Not allow the professional duties of journalists to be influenced by any consideration, gift or advantage offered and, where appropriate, disclose any such offer.

9. Not tamper with photographs to distort and/ or misrepresent the image without informing the reader what has occurred and why.

10. Protect confidential sources.

11. Avoid stereotyping by race, gender, age, religion, ethnicity, sexual orientation, physical appearance or social status, without avoiding legitimate public debate on such issues in the public interest.

12. Publish any Press Council decisions involving their publications as soon as practicable.

APPENDIX THREE:

US Society of Professional Journalists code of ethics

SPJ Code of Ethics (1996)

Preamble

Members of the Society of Professional Journalists believe that public enlightenment is the forerunner of justice and the foundation of democracy. The duty of the journalist is to further those ends by seeking truth and providing a fair and comprehensive account of events and issues. Conscientious journalists from all media and specialties strive to serve the public with thoroughness and honesty. Professional integrity is the cornerstone of a journalist's credibility. Members of the Society share a dedication to ethical behavior and adopt this code to declare the Society's principles and standards of practice.

Seek Truth and Report It

Journalists should be honest, fair and courageous in gathering, reporting and interpreting information.

Journalists should:

- Test the accuracy of information from all sources and exercise care to avoid inadvertent error. Deliberate distortion is never permissible.
- Diligently seek out subjects of news stories to give them the opportunity to respond to allegations of wrongdoing.
- Identify sources whenever feasible. The public is entitled to as much information as possible on sources' reliability.
- Always question sources' motives before promising anonymity. Clarify conditions attached to any promise made in exchange for information. Keep promises.
- Make certain that headlines, news teases and promotional material, photos, video, audio, graphics, sound bites and quotations do not misrepresent. They should not oversimplify or highlight incidents out of context.
- Never distort the content of news photos or video. Image enhancement for technical clarity is always permissible. Label montages and photo illustrations.
- Avoid misleading re-enactments or staged news events. If re-enactment is necessary to tell a story, label it.
- Avoid undercover or other surreptitious methods of gathering information except when traditional open methods will not yield information vital to the public. Use of such methods should be explained as part of the story.
- Never plagiarize.
- Tell the story of the diversity and magnitude of the human experience boldly, even when it is unpopular to do so.
- Examine their own cultural values and avoid imposing those values on others.
- Avoid stereotyping by race, gender, age, religion, ethnicity, geography, sexual orientation, disability, physical appearance or social status.
- Support the open exchange of views, even views they find repugnant.
- Give voice to the voiceless; official and unofficial sources of information can be equally valid.
- Distinguish between advocacy and news reporting.
- Analysis and commentary should be labeled and not misrepresent fact or context.
- Distinguish news from advertising and shun hybrids that blur the lines between the two.
- Recognize a special obligation to ensure that the public's business is conducted in the open and that government records are open to inspection.

Minimize Harm

Ethical journalists treat sources, subjects and colleagues as human beings deserving of respect.

Journalists should:

- Show compassion for those who may be affected adversely by news coverage. Use special sensitivity when dealing with children and inexperienced sources or subjects.
- Be sensitive when seeking or using interviews or photographs of those affected by tragedy or grief.
- Recognize that gathering and reporting information may cause harm or discomfort. Pursuit of the news is not a license for arrogance.
- Recognize that private people have a greater right to control information about themselves than do public officials and others who seek power, influence or attention.
- Only an overriding public need can justify intrusion into anyone's privacy.
- Show good taste. Avoid pandering to lurid curiosity.
- Be cautious about identifying juvenile suspects or victims of sex crimes.
- Be judicious about naming criminal suspects before the formal filing of charges.
- Balance a criminal suspect's fair trial rights with the public's right to be informed.

Act Independently

Journalists should be free of obligation to any interest other than the public's right to know.

Journalists should:

- Avoid conflicts of interest, real or perceived.
- Remain free of associations and activities that may compromise integrity damage credibility.
- Refuse gifts, favors, fees, free travel and special treatment, and shun secondary employment, political involvement, public office and service in community organizations if they compromise journalistic integrity.
- Disclose unavoidable conflicts.
- Be vigilant and courageous about holding those with power accountable.
- Deny favored treatment to advertisers and special interests and resist their pressure to influence news coverage.
- Be wary of sources offering information for favors or money; avoid bidding for news.

Be Accountable

Journalists are accountable to their readers, listeners, viewers and each other.

Journalists should:

- Clarify and explain news coverage and invite dialogue with the public over journalistic conduct.
- Encourage the public to voice grievances against the news media.
- Admit mistakes and correct them promptly.
- Expose unethical practices of journalists and the news media.
- Abide by the same high standards to which they hold others.

Sigma Delta Chi's first Code of Ethics was borrowed from the American Society of Newspaper Editors in 1926. In 1973, Sigma Delta Chi wrote its own code, which was revised in 1984 and 1987. The present version of the Society of Professional Journalists' Code of Ethics was adopted in September 1996.

(Source: SPJ Online: http://www.spj.org/ethics/ethics.pdf)

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