

# Criss-Crossing Perspectives: contrasting models of press self-regulation in Germany and the United States<sup>1</sup>

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**ABSTRACT** *Two media scholars—one from Germany and one from the United States—discuss in point-counterpoint style issues pertaining to press self-regulation in their respective press systems. Their intent was not only to assess press freedom and press responsibility in their own countries but also to offer reflections on each other's observations. The German perspective argues for more press freedom in Germany, while the North American perspective maintains the need for more press responsibility in the United States. Authors conclude that insights about one's own press system can be gained from considering factors in other systems.*

**KEY WORDS:** *Journalism, Ethics, Press Council, Press Self-Regulation, Press Freedom, Press Responsibility*

## Introduction

This paper presents views of two media scholars—one from Germany and the other from the United States—on the issue of press self-regulation. The goal of both was to make an assessment of their own press systems but also to attempt to learn from the other.

The first section imparts a German perspective on press freedom and press responsibility in the Federal Republic of Germany with particular focus on the German Press Council. The second section deals with the same issues in the United States from a US perspective. The last two sections turn the tables. The third section presents a rejoinder to the previous section from a German perspective, while the fourth section assesses the first section from a US perspective.

In general, the German perspective argues for more press freedom in Germany, while the North American perspective maintains the need for more press responsibility in the United States.

## A German Perspective

In the Federal Republic of Germany, legislatively designed institutions of media control serve to strengthen the social responsibility of journalists. The result necessarily diminishes somewhat the freedom of expression guaranteed in Article 5 of the Basic Law. For example, a federal office (*Bundesprüfstelle*) prohibits the circulation of writings considered dangerous to young people. In addition, monitoring of broadcasting takes place through legally prescribed committees: public channels (*öffentlich-rechtlicher Rundfunk*) internally by broadcast councils (*Rundfunkräte*) and commercial channels externally by state media institutions (*Landesmedienanstalten*) (Meyn, 1999, pp. 182–84, 218–22; Dussel, 1999, pp. 186, 267).

The strongest content restrictions allowed by German law are statutory offenses. Such offenses include propaganda for anti-constitutional organizations, public calls to resist state authority, denigration of authorities and symbols of the state, and public denial of

the National Socialist genocide of European Jews. Satirical expression of opinion is exempt.

In a liberal constitutional state, these legal precautions must remain largely formal. That applies particularly to Germany. The German democratic tradition is comparatively weak as a result of nearly total state control over journalism in the entire country from 1933 to 1945 as well as from 1949 to 1989 in the German Democratic Republic (GDR). Thus, an index of daily newspapers or political periodicals is not even possible through the *Bundesprüfstelle*. The German constitution gives media freedom the highest status, placing it at the forefront of inviolable basic rights (Article 5, Basic Law). From the beginning, the federal constitutional court has valued this right in balancing it with such competing rights as protection of the individual. The reason? The fundamental importance of free public discussion for democracy. Some legally trained observers, however, are concerned that the value of media freedom in German law in the 50 years since the foundation of the Federal Republic has declined in relation to protection of the individual (Schweizer, 1996).

Between state media control on the one hand and a widening cultural demand for social responsibility in journalism on the other, a regulatory gap develops in liberal democracies. It becomes wider as a result of commercial interests. This widening gap explains why in Germany, as in many other Western countries, unofficial institutions (for example, press councils) have arisen to remind journalists of their social responsibility and to encourage ethical standards of professional performance. Such devices are meant to forestall criticism of the media by strengthening professionalism and promoting socially responsible performance (cf. Bermes, 1991; Bertrand, 1998; Bertrand, 2000; Bromley and Stephenson, 1998; O'Malley and Soley, 2000; Pritchard, 2000). Of course, open societies have their public/consumer or special interest groups that criticize media performance, but these are not the same as instruments of voluntary self-regulation.

#### Self-Regulation and the German Press Council

From the beginning, press and film have been

organized as private enterprise in the Federal Republic of Germany. Next to the Voluntary Self-regulation of the Film Enterprise (FSK), the German Press Council is the oldest, best known and most important institution of media self-regulation for the journalistic profession. Later institutions (German Ad Council, Voluntary Self-Regulation Television [FSF/VPRT]) oriented themselves to the Press Council model of self-regulation.

#### *Duties and Goals*

At the outset the German Press Council was charged with four duties ([www.presserat.de](http://www.presserat.de)).<sup>2</sup> Externally, it was supposed to:

1. defend the constitutionally guaranteed press freedom against government interference and secure open access to news sources and
2. represent the interests of the press in the realm of politics as well as publicly, especially regarding pertinent legal issues.

Internally, the Press Council was supposed to

3. ascertain and redress journalistic abuses and
4. observe critically the development of press structures and guard against press monopolies.

Three decades later the sponsoring organizations of the Press Council adopted statutes that directed the Press Council to:

1. ascertain abuses in the press and work toward remedies;
2. review complaints about individual newspapers, magazines or news services and, in warranted cases, issue notices of censure and reprimands;
3. issue recommendations and guidelines for journalistic work;
4. support open access to news sources, and
5. work with the sponsoring organizations to encourage the free flow of information and the formation of public opinion (*Jahrbuch 1987, 1988*, p. 130).

The major goal of the Press Council was to protect press freedom externally and to prevent or at least discourage journalistic abuses and shortcomings internally.

*Origin and Development*

The German Press Council was founded on 20 November 1956 by representatives of newspaper publishers and newspaper reporters. The triggering moment was the March 1952 draft of the Adenauer government for a federal press law that intended to supervise newspapers through *Landespresseausschüsse* (state press committees). The German Journalists' Association (DJV) and the Federal Association of German Newspaper Publishers (BDZV) agreed that self-regulation was necessary to ward off state control. Two other groups later joined the newspaper publishers and editors. They were the Association of German Magazine Publishers (VDZ) on the business side and the German Journalists' Union in the industrial trade union IG Print and Paper (today the trade union for service-sector business [Verdi]—Journalism Section). An agenda was agreed upon in 1959 that largely still applies today. In these early years, Press Council activities took place primarily in the public arena. The Council successfully promoted standardization of the press law of the federal states and the protection of press freedom in the emergency legislation of 24 June 1968.

Over the course of time, however, interest shifted to internal, or professional, concerns. In 1970 the Council created a special commission to handle complaints against the press. Two years later this commission grew into a Complaints Committee with its own set of procedures. In 1973 the Press Council published a Press Code, or principles for journalists. Since then the Press Code has been expanded and supplemented with Guidelines for Publishers and Journalists. These Guidelines are an elaboration of the Press Council's 16 Principles. In 1976, the Bundestag (Lower House of the German Parliament) adopted legislation designed to protect the independence of the Complaints Committee by allocating public funds to the committee. At this time, internal conflicts increasingly dominated the activity of the Press Council. The conflict pitted the two sponsoring organizations representing employee interests against the other two organizations representing employer interests.

In 1981 an incident involving Principle 16 brought the Press Council to a standstill. Principle 16 states that periodicals, especially those found in violation of the Council's Press Code, are to publish any reprimands. Alfred Neven-Dumont, who was president of one of the sponsoring organizations, the Federal Association of German Newspaper Publishers (BDZV), refused to publish a reprimand issued by the Complaints Committee in his *Cologne Express*. Representatives of the two journalist organizations on the Press Council terminated their work. The Press Council was unable to function for four years. Finally, in 1985, Council members reached a consensus over the reform of statutes and complaints procedures. Part of the agreement called for publication of reprimands. At the same time, it was decided to create a Sponsoring Association of the German Press Council in order to build more independence of press self-regulation from the four sponsoring organizations and their conflicts. The organizational and financial responsibilities passed over to this sponsoring association.

Since 1985 the complaints work of the Press Council has taken place continuously. The Complaints Committee meets five times a year. In addition, the Press Council takes positions on flagrant journalistic shortcomings. One such case involved coverage in 1988 of a hostage drama in which two ex-convicts robbed a bank in the Ruhr town of Gladbeck, took two members of the bank staff as hostages and led police on a wild, two-day, thousand-kilometer motorway chase—including several hours in a hijacked public bus with more than two dozen passengers—through northern Germany and The Netherlands. The Council criticized journalists for crossing the line between their professional role of reporting news and assuming the role of negotiator by providing a public platform to robbers who killed two people. More recently in 1999 the Council repeatedly criticized a proposed extension of data protection that would limit journalistic access. The Press Council continuously reports about its activities in yearbooks edited by the sponsoring association. In recent years the yearbooks have been circulated widely. The yearbook summarizes complaints and explains the basis of deci-

sions, though anonymity is observed in much of the process.

#### *Sponsors and Committees*

The four sponsoring organizations (DJV, Verdi, BDZV, VDZ) state as their purpose the promotion of press freedom in the Federal Republic of Germany and a positive image for the German press. Each organization sends five representatives to the Plenum of the Press Council; half of the 20 members are active in publishing while the other half are active in journalism. From among its members, the Plenum chooses the speaker and the deputy speaker of the Press Council; the office of the speaker changes annually. The Plenum appoints from its membership ten members to the Complaints Committee, half of the ten working primarily in publishing and the other half primarily in journalism. In the interest of continuity, the chair of the Complaints Committee (in 2002 Ursula Ernst-Flaskamp) can serve for an unlimited period of time in that office. As a nationally relevant institution, the Press Council maintains its business office in the old federal capital of Bonn. The full-time executive secretary (in 2002 attorney Lutz Tillmanns) with a staff of five is responsible for public information efforts and administrative details. The annual budget of the German Press Council amounts to about 425,000 Euros. About 30 per cent of the funds come from public resources and 70 per cent from the four sponsoring organizations.

#### *Principles of Conduct for Journalists*

In resolving disputes the Press Council adheres closely to its Press Code. Originally adopted on 12 December 1973 and revised on 17 September 1997, the Code was developed to exemplify the professional ethics of the press. The 16 Principles deal with such issues as accuracy, privacy, confidentiality and human rights. (See Table 1 for the Council's 16 Principles of Conduct for Journalists.)

A set of 36 guidelines provide an explanation or elaboration of the 16 Principles. Half of these relate to Principles 2 (accuracy), 8 (privacy) and 11 (sensationalism). Two Principles—9 (publi-

cation of unfounded accusations) and 10 (offending moral or religious beliefs)—do not carry any explanatory guidelines. To give an example, Guideline 12.1 reads, "When reporting on crimes, the suspect's or perpetrator's religious, ethnic or other minority membership will only be mentioned if this information is directly relevant to the understanding of the event. It must be particularly born in mind that any such mention could awaken prejudices against groups in need of protection." Such specifications are deemed necessary so the Complaints Committee can determine the justification of complaints. Several guidelines remind journalists of their duty "to balance different goals and interests carefully" (for example, Guideline 5.1, "Confidentiality").

In its preamble the Press Code emphasizes professional ethics. It attempts to reflect the journalist's professional duty to help foster a public sphere while at the same time observing the claim of a universal morality (Pöttker, 1999). In many ways the Press Code is pragmatic. Yet professional standards of journalistic conduct remain unclear in the absence of a clear structural concept. For example, this codification of journalistic professional ethics addresses reporting about such events as catastrophes, crime and medical topics while ignoring other potentially sensitive subjects such as war, economics and travel.

#### *Complaints Procedures and Activity*

Complaint procedures are relatively straightforward. Anyone may make a complaint to the Press Council, and the Council itself can initiate a proceeding. Complaints must be written. The accused publication may address the complaint before it goes to the Council's Complaints Committee. Council deliberations are conducted in private. Where findings are found in favor of the complainant, offending publications are expected to publish the results.

The Press Council received 5075 complaints between 1985 and 2000.<sup>3</sup> Of these, it decided 1313 cases between 1990 and 2000. The number of complaints and the number of considered cases during this decade varied but overall showed an increase (See Table 2). During this

**Table 1. Principles of conduct of the German Press Code and percentage of cases relating to each Principle during 1990–95 and 2000**

Principle	Percentage	
	1990–95	2000
1. Respect for the truth, observance of human rights and accurate informing of the public are the overriding principles of the press.	5.9	8.2
2. The publication of specific news and information in word and picture must be carefully checked with respect to accuracy in the light of existing circumstances. Its sense must not be distorted or falsified by editing, title or picture captions. Documents must be accurately reproduced. Unconfirmed reports, rumors or assumptions must be quoted as such. When reproducing symbolic photographs, it must be clear from the caption that these are not documentary pictures.	24.9	34.7
3. Published news or assertions that subsequently turn out to be incorrect must be rectified in an appropriate manner by the publication concerned.	2.0	1.5
4. Dishonest methods must not be used to acquire news, information or pictures.	2.6	2.6
5. Confidentiality is to be adhered to in principle.	0.4	0.0
6. All those employed by the press shall observe professional secrecy, make full use of the right to refuse to give evidence and shall not disclose the identity of informants without their express consent.	0.3	1.3
7. The responsibility of the press towards the general public requires that editorial publications not be influenced by the private and business interests of third parties. Publishers and editors must reject any attempts of this nature and make a clear distinction between editorial texts and publications for commercial reasons.	3.6	3.3
8. The press shall respect the private life and intimate sphere of persons. If, however, the private behavior of a person touches upon public interests, such information then may be reported. Care must be taken to ensure that the personal rights of uninvolved persons are not violated.	18.3	21.3
9. It is contrary to journalistic decorum to publish unfounded claims and accusations, particularly those likely to injure personal dignity.	8.6	10.8
10. Publication in word and image which could seriously offend the moral or religious feelings of a group of persons, in form or content, is irreconcilable with the responsibility of the press.	3.5	1.8
11. The press will refrain from an inappropriate sensational portrayal of violence and brutality. The protection of young persons is to be given consideration in reports.	3.0	4.6
12. There must be no discrimination against a person on racial, ethnic, religious, social or national grounds or because of his/her sex.	16.0	5.1
13. Reports on cases or investigations that are still before the courts must be free from prejudice. For this reason, before and during legal proceedings, all comment, both in portrayal and headline, must avoid being one-sided or prejudicial. An accused person must not be described as guilty before final judgement has been passed.	7.4	4.1
14. Reports on medical matters should not be of an unnecessarily sensationalist nature, since they might lead to unfounded fears or hopes on the part of some readers. Research findings that are still at an early stage should not be portrayed as if they were conclusive or almost conclusive.	1.7	0.5
15. The acceptance or granting of privileges of any kind which could possibly influence the freedom of decision on the part of publishers and editors are irreconcilable with the prestige, independence and responsibilities of the press. Anyone accepting bribes for the dissemination of news acts in a dishonorable and unprofessional manner.	0.1	0.0
16. It is considered fair reporting when a public reprimand issued by the German Press Council is published, especially by the newspapers or magazines concerned.	0.0	0.0
Total	98.3 (N= 578)	99.8 (N= 384)

NB. The *N* values are not directly comparable. For 1990–95 the figure 578 refers to cases *decided* by the Complaints Committee, while for 2000 the figure 384 refers to total cases *considered*. Two other points: issues not covered by the Press Code during 1990–95 amounted to 1.7 per cent, and complaints occasionally involve more than one principle; thus, percentages are given rather than actual frequency of cases.

**Table 2. Number of cases acted upon by the Complaints Committee of the German Press Council, 1990–2000**

Year	No. of cases
1990	105
1991	102
1992	60
1993	99
1994	102
1995	112
1996	130
1997	182
1998	156
1999	120
2000	185
Total	1353*

\* This figure includes 40 cases that were acted upon but not decided for various reasons, such as the complainant withdrawing the complaint before the decision was made.

time there was no discernible trend in the dispositions arising from the cases but nearly 50 per cent (45.4) of the complaints were deemed to be unfounded, that is, without merit (See Table 3).

Table 1 reveals the nature of cases received by the Press Council in relation to the 16 Principles of the Press Code. Data are presented for 1990–95 and for 2000. Two issues—accuracy (Principle 2) and privacy (Principle 8)—comprise well over half (43.2 per cent for 1990–95 and 56 per cent for 2000) of the total number of cases. The number of discrimination cases declined from 16.0 to 5.1 per cent. The reasons are unknown, although the guideline for this Principle (12.1—see above) is the only one—apart from protection of privacy and youth—that prohibits publication of information even though the information could be accurate.

German journalists are seldom accused of a violation of specific professional norms such as protecting informants (Principle 6) or integrity in the selection of information (Principle 15). Presumably, this has less to do with these job-specific norms being adhered to and more with the fact that these norms generally are not well known. Thus, their functional sense is little understood in Germany's political culture, where the journalistic profession does not enjoy high esteem. In addition, the portion of cases involving Principle 7 (separation of reporting and advertising) amounted to only 3.6 per cent in the period 1990–95 and 3.3 per cent for 2000 as compared with 10.4 per cent in 1985–89. This can hardly be explained by the assumption that journalists in recent years have adhered more strongly to the distinction between reporting and advertising. The reverse would seem to be the case. That is, the decline of complaints involving reporting and advertising may be explained by diminishing expectations in society about the duties and needs of journalism (Schwarz-Weiss Buch, 1990; Schwarz-Weiss Buch, 1996).

The Press Council does not always demand the publication of reprimands. This has less to do with a diminishing severity of the relevant violations of professional ethics and social responsibility and more to do with the concern of the Complaints Committee. The concern is that publication would exacerbate the original offense. Most newspapers and magazines publish reprimands according to Principle 16 of the Press Code. But occasionally periodicals refuse. As noted above, one refusal involving the chair of the German Newspaper Publishers' Association led in 1981 to the complaints work of the Council being suspended for four years.

While offending newspapers and magazines

**Table 3. Nature of disposition of cases decided by the German Press Council, 1990–2000 (N = 1313)**

Disposition	Percentage
Unfounded ( <i>unbegründet</i> )	45.4
Justified—no steps taken ( <i>ohne Massnahme</i> )	5.9
Justified with advice notice ( <i>Hinweise</i> )	18.5
Justified with notice of censure ( <i>Missbilligungen</i> )	18.3
Justified with reprimand not made public ( <i>nicht-öffentliche Rügen</i> )	2.4
Justified with reprimand made public ( <i>öffentliche Rügen</i> )	9.4

usually publish reprimands in which they are involved, the general publication of such reprimands leaves something to be desired. Besides the affected newspapers and magazines, the only other publications that regularly publish reprimands are those produced by the sponsoring organizations. Detailed information about the discussions and decisions of voluntary self-regulation would be important to a broader, non-professional public in encouraging understanding of responsible journalistic behavior.

#### *Press Council Outreach*

The Press Council has tried to make itself and its work better known partly through public information efforts. The Council has begun financing projects intended to gain more public credibility and with it more influence for its media-political positions and activities, especially for its vigorous defense of press freedom. In November 1999 this selective public relations work showed its first success: at a carefully prepared press conference in Berlin the director of the Press Council had expressed concern that a new data protection law conceptualized by the federal interior minister would unduly restrict press freedom. The interior minister modified the bill in such a way that it would no longer force media companies to comply with outside requirements. Instead, it would provide for self-appointed data protection representatives from among the publishers and broadcasters. Thus, data protection in media companies remains a matter of voluntary self-regulation. To a large extent, this success was due to the public information efforts of the Press Council, since news from the press conference found its way onto the front pages of German daily newspapers.

Compared with media-political activities, the Press Council makes little effort to bring before the public its complaints work aimed to promote socially responsible journalism. Up to now, the Council has not been successful in regularly informing the public about complaints cases or decisions that might be of general interest. The Council limits itself to provisions of the complaints procedure, namely brief reports about public reprimands directed to interested (trade) publications and persons who might be

involved. The costs of a continuous news service that could make the complaints work more transparent would only amount to a fraction of the Council's total budget. The limited interest in the transparency of the occasionally contentious complaints work manifests itself in the exclusion of the public from complaints proceedings.

#### *Critique*

The main shortcoming of the Press Council's voluntary self-regulation efforts is typically judged to be the ineffectiveness of its complaints work. Since journalistic failings occur despite Council activity, the public and trade literature cannot help but proclaim a certain ineffectiveness on the part of the Council. Further, the metaphor of the Press Council as a "toothless tiger" suggests that the origin of this ineffectiveness may be due to the limited sanction possibilities of the Council.

Voluntary self-regulation of journalism might be compared to the law and its institutionalized sanction apparatus. Yet no one claims the law is ineffective because it constantly deals with offenses against the norms of the penal code. The occurrence of crime does not make criminal law superfluous. To verify effectiveness, one would have to know how much and what crime there would be without laws and courts. This, naturally, cannot be known. Similarly, ineffectiveness of voluntary self-regulation of journalism through the German Press Council could only be ascertained by knowing the extent of the journalistic failings that would ensue without Press Code and complaints proceedings. Such a comparison is impossible. Thus, the claim that voluntary self-regulation through the Council is ineffective cannot be fundamentally substantiated.

On the other hand, an analogy between law and voluntary self-regulation may be misleading. From its beginning the Press Council was less concerned with sanctions and more concerned with preventing state control by avoiding spectacular failings in journalism. Thus viewed, voluntary self-regulation is a preventative measure against censure as the toughest sanction that can occur to journalism from out-

side the profession. Perceptive publishers and journalists recognize the ominous consequences if self-regulation were to fail. Strengthening this insight will require optimal transparency of the functional mechanism of voluntary self-regulation as well as of the socioeconomic structures in which it is embedded. Thus viewed, the reason voluntary self-regulation of journalism may be only moderately effective is not a lack of sanction authority, but the lack of transparency and publicity of the complaints work (Holtz, 1998).

That the Press Council is so cautious in informing the public of its complaints activity may be due to the strong influence of the four sponsoring organizations. These sponsoring associations confront each other—occasionally also in the Complaints Committee—as representatives of employer and employee interests. The goal of not allowing the resulting conflicts to become public may be a motive for the restrained public information efforts of the Press Council. In order to ease dependence on the sponsoring organizations and enhance public involvement, an expansion of the sponsorship to include social participation may be in order. Though the success of press councils worldwide has been mixed (for example, see Bertrand, 2000; Humphreys, 1996, pp. 60–62; Tulloch, 1998, pp. 71–75; O'Malley and Soley, 2000, p. 131), generally the councils have included lay representation. Exceptions appear to be the Austrian and German press councils (Bertrand, 1978; Wiedemann, 1992). Why not, according to British, Swedish, Swiss or American models (Bermes, 1992; Holtz, 1998), add independent representatives to the German Press Council? A broader member base would raise the visibility of the Press Council and Press Code and perhaps temper disputes among the professional associations.

### A USA Perspective

Though speaking of Russia, Winston Churchill easily could have been talking about the relationship between press freedom and social responsibility in the United States when he said, "It is a riddle wrapped in a mystery inside an enigma."

The key to this mystery—which existed long before Churchill and which defies a definitive resolution—involves the balance between a press that is free and a press that is socially responsible. While it may be difficult to agree on definitions of freedom and responsibility, the real question becomes: What is the appropriate balance between press freedom and social responsibility?

Nearly as important as this question are related questions: Who is entitled to press freedom? How is press freedom attained? maintained? preserved? What constitutes social responsibility? If press freedom and social responsibility are related—which is the argument here—to whom is the press socially responsible? For what is the press responsible? How can the press be responsible? Can the press be forced to be responsible?

Doubtless there are other questions. The purpose is not to identify all of the potentially perplexing issues associated with press freedom and social responsibility. Nor is it to provide all the answers. Instead, the intent is more modest: to explore the coexistence of the concepts of press freedom and social responsibility in the United States with emphasis on contemporary events but with some reference to historical origin. Several self-regulatory methods to enforce social responsibility without damaging press freedom will be explored. These efforts have included press councils, codes of ethics, ombudsmen<sup>4</sup> and, more recently, public (or civic) journalism (Jaehnig, 1998; Bertrand, 2000; Pritchard, 2000). Such efforts, as will be shown, have met with limited success.

### Context

Champions of press freedom often stake out extreme positions. They take an absolutist view, quoting the First Amendment to the US Constitution (adopted 1791): "Congress shall make no law ... abridging the freedom of speech; or of the press." Complete autonomy, the position holds, rests in the hands of the press.

The same extreme stance often characterizes the position of those who advocate that the press be more socially responsible. They argue the First Amendment really means that the first



allegiance is to profit taking, that commercial engines drive the press, determine content and lead toward monopolization. As press critic A. J. Liebling commented, "Freedom of the press is for those who own one" (Stephens, 1988, p. 211).

In some ways, it is easier to argue one of these extreme positions. A middle ground risks being characterized as indecisive. But freedom and responsibility are inseparable. They are dueling concepts that bring into play the most fundamental of human and social relationships, that is, the relationship of the individual to society. That is the core issue that the US press—and other institutions, for that matter, since historical and cultural factors are at work—has been struggling with for many years.

Communication scholars in the US generally agree that the US press operated for nearly 250 years according to libertarian principles. These principles, as elaborated in a now classic though dated treatise by Siebert, Peterson and Schramm, upheld the supremacy of the individual and saw the press not only as "a partner in the search for truth" (1956, p. 3) but as a check on government.

Siebert, Peterson and Schramm actually developed their propositions from a long-neglected and controversial report issued almost a decade earlier, *A Free and Responsible Press* (Leigh, 1947), known also as the "Hutchins Report", after its chairman, Robert M. Hutchins, then chancellor of the University of Chicago. As with vintage wine, age has smiled upon this report. It has become increasingly influential. The early neglect and controversy emanated from the fact that the report was drawn up by prominent intellectuals and scholars, without press representation. The irony is that the report was financed by Henry R. Luce of the *Time* magazine empire.

Influenced by events leading up to and through the Second World War, the Hutchins Report recognized the important role of the press in a democracy, arguing that "the relative power of the press carries with it relatively great obligations" (1947, p. vii). The most enduring part of the report came in the form of five requirements for a free society. These are (Leigh, 1947, pp. 20–29):

1. a truthful, comprehensive and intelligent account of the day's events in a context that gives them meaning;
2. a forum for the exchange of comment and criticism;
3. the projection of a representative picture of the constituent groups in the society;
4. the presentation and clarification of the goals and values of the society; and
5. full access to the day's intelligence.

Unrealistic? Unachievable? Impractical? Utopian? Idealistic? Visionary? Yes, all these, and probably more. The value of the requirements lies not in their attainment but in their pursuit. To paraphrase Oscar Wilde, Progress is the realization of utopias, and when society arrives there society sets sail for the next utopia.

In assessing performance, the Hutchins Report found the US press lacking. The report called on the press to be more accountable. It suggested this could be achieved in a variety of ways with emphasis on self-regulation (as opposed to government intervention). It cited the need for more professionalization, improved journalism education and the establishment of centers of advanced study and research. In many respects, professional associations and academic institutions have responded positively to the challenges posed in the report. To cite a few examples: establishment of accreditation standards for journalism education (see website of the Accrediting Council on Education in Journalism and Mass Communications at <http://www.ukans.edu/~acejmc/>) and sponsorship of training and research programs by such groups as the American Press Institute (<http://www.newspaper.org/>), the Poynter Institute (<http://www.poynter.org/index.htm>) and the Freedom Forum (<http://www.freedomforum.org/>).

But are these responses enough? In a way, the answer lies in the press's reaction to the Commission's recommendation to establish "a new and independent agency to appraise and report annually upon the performance of the press" (Leigh, 1947, p. 100). This antipathy—even hostility—to systematic and formal criticism has always been the Achilles heel of the US press.

This is the flash point at which the free press clashes with social responsibility. And it is the reason the US press falls far short and always will of meeting the Hutchins Commission's ideals of press requirements for a free society.

### *Engaging Social Responsibility*

An agency to assess press performance in the US did endure a short life a few years ago. Its tombstone stands as one of several attempts to conjoin freedom and responsibility.

Designed to promote fair and accurate reporting and to promote press freedom, the National News Council (formally known as the Council on Press Responsibility and Press Freedom) came into being in 1973 (Klaidman and Beauchamp, 1987). Its purpose was to examine complaints about performance of national news media. The Council's survival depended on private funding and cooperation from national news media. Both proved to be insufficient. Many news organizations simply refused to cooperate with and even ignored the News Council's efforts. This included such major media as the *New York Times*, *Chicago Tribune* and NBC. Through its 11-year struggle, (it was dissolved in 1984), the Council produced a modest record of accomplishment. It issued decisions in 242 complaints that came to it. Most—120—upheld the news media, while only a third—82—were found warranted in whole or in part. The Council dismissed 37 complaints, and three were withdrawn by complainants.

In retrospect, a national press council was probably a bad idea for the United States. The nation, unlike, say, Sweden or Great Britain, is too diverse and too large for such a council to be effective. Even then, success is not predictable given the mixed experiences of the Swedish and British press councils (Humphreys, 1996, pp. 60–62). More successful have been several community and state press councils. On the basis of its relatively broad support from the state's media and its longevity, the Minnesota News Council, founded in 1971, has been highly successful. (For information about the Minnesota News Council, see <http://www.mtn.org/~newsncnl/>)

A longer tradition in the attempt to promote

responsible performance through self-regulation has been the adoption of codes of ethics (Smith, 1999). The first such code by a professional association was drawn up in 1922 by the American Society of Newspaper Editors. Originally, it was called Canons of Journalism but in 1975 was revised and renamed the Statement of Principles (see <http://www.asne.org/kiosk/archive/principl.htm>). These days most professional associations (for example, the Society of Professional Journalists, Associated Press Managing Editors, Radio–Television News Directors) as well as individual media organizations have adopted such codes. The codes perhaps are the most significant and widespread of efforts of the press to regulate itself. While serving a useful purpose by articulating goals and standards of performance, the codes have a major weakness: except in cases where a specific organization can discipline its own employees, there is no means of enforcing professional association standards. Thus, codes of professional ethics remain largely empty rhetoric.

Another enduring yet limited endeavor by the US press to affirm responsible performance has been the concept of the ombudsman. Sweden pioneered this concept nearly two centuries ago. It calls for establishment of an office that represents individuals in dealing with an organization whether it be government, a university or, for that matter, a news organization. In the United States, the *Louisville (Kentucky) Courier-Journal* was the first newspaper to establish an ombudsman position (Nemeth, 2000). That occurred in 1967. Over the years the concept has never approached a full-blown movement. The number of news ombudsmen in the US, as reflected in membership of the Organization of News Ombudsmen, founded in 1980, has hovered in recent years around 40. Overall, in 2002 the organization had about 70 active and associate members, which included about a dozen ombudsmen from other countries. (See the organization's website at <http://www.newsombudsmen.org/>). Despite criticisms of being primarily an extension of the public relations efforts of a news organization (Nemeth and Sanders, 2001; Nemeth, 1999), ombudsmen have demonstrated some success in helping

media be more responsive and responsible to the public (Starck and Eisele, 1999).

The last effort that will be discussed here to promote socially responsible performance on the part of the media is also the latest attempt. It is called public (or civic) journalism. Though still vague in its conceptualization and highly controversial, public journalism has emerged into something of a mini-movement (Hodges, 1996). It was spawned by the Pew Center for Civic Journalism (<http://www.pewcenter.org>). It calls on the press to take an aggressive stance in engaging the audience in democratic discourse. The traditional doctrines of objectivity and detachment give way to media efforts to engage the audience, even to the extent of sponsoring public discussions of pertinent issues. Critics say this results in media going beyond reporting news and creating it.

Perhaps the best philosophical justification of public journalism comes from the notion of communitarianism. A leader in the communitarian movement, Amitai Etzioni, asserts that the time has arrived in the United States to correct an imbalance between rights and responsibilities. Among the aims of communitarianism is recognition that

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the preservation of individuality depends on the active maintenance of the institutions of civil society where citizens learn respect for others as well as self-respect; where we acquire a lively sense of our personal and civic responsibilities, along with an appreciation of our own rights and the rights of others; where we develop the skills of self-government as well as the habit of governing ourselves and learn to serve others—not just self. (1994, pp. 253–54)

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The connection between individual rights and social responsibilities seems so obvious. How could it be otherwise? And how could it be otherwise for those institutions, such as the press, which individuals collectively have created? The constant challenge is to avoid uncompromising positions and to strive for an appropriate balance between rights and responsibilities.

#### *Finally*

Public journalism, along with press councils, codes of ethics, ombudsmen, and other courses

of action, such as expanded letters to the editor and opinion columns, appears to be leading the US press toward more socially responsible performance. Though each of these methods of self-regulation might be construed as professionally defensive, each procedure has yielded minimal to modest success.

An underlying part of this continuing search has been the moral development of a profession. Ethics have emerged as a critical component in journalistic practices (Starck, 2001). In reality, it is difficult to think of a journalistic decision that does not involve an ethical consideration. As a result, US scholars and many professionals increasingly are arguing for greater presence of ethics in the classroom and the newsroom. As several scholars argue, professional ethics requires journalists to be equipped with the ability to exercise moral reasoning in making daily on-the-job decisions (Christians et al., 2001).

At stake is public credibility, accountability and acceptability of the news media. Indeed, the future of democracy may be at stake. Institutionally, society has assigned news media the task of providing communication channels and information vital to self-governance. It is a moral and public responsibility the news media cannot escape. Tension between the precepts of press freedom and social responsibility is inevitable. It is desirable. The alternatives are not.

#### **A German Rejoinder**

##### *Fundamental Differences*

Unlike in the United States, where the press has operated on liberal principles for more than 200 years, the long and deeply rooted tradition of press freedom is missing from journalism in Germany (Humphreys, 1994). Until the attempt at a civil-democratic revolution in 1848, sharp curtailment of the press prevailed in the German Federation states. Restrictions resumed in large part after the failed attempt at revolution. The worst setback for press freedom in Germany was the National Socialist regime from 1933 to 1945. While the Hutchins Report (Leigh, 1947) appeared in the United States to remind the press of its social responsibility, the press in the German western zones—still licensed by

the victorious Allied powers of the Second World War—was about to gain freedom of expression and information as guaranteed by Article 5 of the Basic Law of the Federal Republic of Germany. Meanwhile, in East Germany until 1989 the media were subject to strict state guidance in the sense of a deliberate anti-liberal ideology, including direct post-publication censorship. A phase of comprehensive, legally anchored press freedom existed only between 1918 and 1933, which nevertheless was, *de facto*, continuously threatened by political authority. In Germany as a whole, then, journalism has enjoyed a press freedom similar to that of the United States for only the past decade.

In Germany, with its long tradition of state control, the argument of social, cultural or political responsibility of journalism was notoriously abused in order to use the media to push through ideologies and special interests. In German society, the understanding of press freedom in a democracy and of the essential principle of public discourse cannot be directly compared to similar ideas in the United States. Media controls, like media ethics, can become a muzzle.

Proponents of self-regulation of journalism in Germany still tend to identify their position with that of the judicial system. Hence, institutions of law become effective through sanction and rule rather than being integrated into the social fabric. Journalism, in turn, relies on the social conscience of those involved in media, including the public. Through a strategy aimed at effectiveness through public information and public involvement, journalism in Germany could benefit from the examination and adaptation of social control mechanisms practiced elsewhere in the world, including the United States.

#### *Learning from America*

The delayed reaction to the Hutchins Report shows that in the United States also the relationship between public opinion and the social responsibility of journalism was not immediately apparent. The meaning of the Hutchins Report was that journalists, from a professional standpoint, must possess a sense of social re-

sponsibility. In turn, this responsibility was to be regulated through the public rather than through the courts. Both the institution of ombudsmen and the movement for a public or civic journalism which—though not without their own critics—are shaped by the idea of media regulation as an open process in which a significant segment of the public participates. Admittedly, self-regulation does not ordinarily raise questions about basic assumptions of the entire press system. For example, Bagdikian (2000) and Herman and McChesney (1997) inveigh against concentration of ownership, and Herman and Chomsky (1988) distrust claims that the press is a watchdog of society. Press self-regulation rests on the assumption that the system itself is satisfactory but requires constant fine tuning.

Whereas the idea of media control can limit itself to punishment for the violation of fixed codes of conduct through press councils and judicial authorities, as in Germany, such new approaches as ombudsmen and civic/public journalism may inspire new models. Obviously such devices cannot simply be copied but must be adapted to local conditions. Since the phrase “public/civic journalism” merely reinforces tautologically the principle of public involvement (is there then also a “non-public” journalism?), these remarks will focus on the approach of the ombudsman.

Although the ombudsman concept stems from northern Europe and is practiced in the relationship of citizens not only to the state but also to the media in several European countries, no press publishing company or broadcasting station active in Germany employs an ombudsman as a link between itself and its audience. To change this, an arrangement between media and government similar, say, to that of the German Press Council, could be beneficial. Of course, independence of the ombudsman office would have to be assured.

The Free State of Bavaria, for example, pays 500 Euros monthly to every member of the state media council. The council is supposed to monitor commercial radio and television programming. Council activity is largely unobserved and ineffective. Maybe this sum of 300,000 Euros annually would be more effect-

ively spent if a group of journalistically knowledgeable ombudsmen at large Bavarian media companies were to assess regularly the activities of these stations. Such ombudsmen are almost certain to be more effective than the Bavarian Media Council. Their deliberations, in all probability, would be more easily understood by the public and more favorably regarded by journalistic professionals. Ombudsmen should not be considered an alternative to press councils, but instead, as in the United States, supplement efforts to promote responsible performance. Before such an undertaking, studies must be conducted of news ombudsmen in Sweden (a highly successful arrangement), the United States and elsewhere to ascertain the optimal conditions for successfully incorporating the concept into the German system (Bertrand, 2000, pp. 117-18; Humphreys, 1996, pp. 62-64).

Perhaps the failure to have press ombudsmen in Germany is a lack not of means but mainly of knowledge and understanding of the concept. Even among German-speaking communication scholars, misunderstandings about an ombudsman's role abound. For example, one erroneous view is that the ombudsman is solely responsible for external relationships or, on the other hand, that the ombudsman deals only with internal issues. That up to now no ombudsmen have been employed in Germany may also be connected to the traditional assumption that there is a fundamental contradiction between the journalistic ethos and commercial considerations. It is therefore difficult for media companies to envision a more or less independent ombudsman as an interactive connection to the public while at the same time media critics might regard the ombudsman as just one more commercially motivated measure. This appears to be a problem in the United States, where only 2.4 per cent of all daily newspapers have an ombudsman (Stapf, 2000).

But in the United States, media goals to produce socially necessary information as well as to make a profit are generally considered compatible. At least 40 ombudsmen have been continuously active for three decades. This has occurred in spite of the lack of conclusive em-

pirical evidence that ombudsmen are seen as beneficial by the media, which after all pay the ombudsmen, as well as by critical readers, who express their trust through questions and complaints. That the 40 American ombudsmen do not simply fulfill an alibi function for the legitimizing of the media business is evident in the work of many ombudsmen and equates journalistic professionalism with social responsibility.

Out of the modest success of the media ombudsmen in the United States as well as the experience of Sweden, something could be learned in at least two ways. First, there is the opportunity to strengthen in journalism the sense of the general social and moral claims from the public regarding the media. Second, there is the opportunity to strengthen in the public the sense of the special duty of journalism, that is, the cultivation of the public sphere. This special duty does not always allow itself to agree with the general morality yet belongs, in a complicated way, to the responsibility of journalists to society. To discuss journalistic responsibility to society is especially important in Germany, where there is a traditional lack of awareness of the social function of journalism to mediate divisions in society and to permit individuals the possibility of participation in societal concerns. For this reason, the ombudsman appears to be an exemplary institution for Germany.

To advise others across cultural borders poses a risk that might be construed as arrogant. Yet the United States and Germany share fundamental cultural and political principles. Should we not strive for universally valid regulatory measures? How are press freedom and journalistic responsibility separate yet related to one another? What criteria should journalists apply in specific instances to achieve the necessary balance between conflicting principles? To be sure, journalistic responsibility, along with professional ethos, appears differently to those former colonized territories that today strive to achieve the levels of economic development of today's highly complex industrial societies. Doubtless, the United States and Germany belong to the modern part of the world in which questions about what journal-

ists should and may do are answered in a similar way. Whether journalistic standards are being (or can be) followed in a country with high professional mobility might depend on the clarity and transportability of such standards. A journalist who has developed certain work routines on the basis of standards accepted in, say, Minnesota should be able to retain and apply those principles through subsequent positions on the east or west coasts of the US. The necessity to adopt different standards weakens the binding force of the standards altogether.

That the German Press Code claims validity among journalists in all regions of the country is a strength of the extra-legal self-regulation to promote socially responsible journalism. Proponents of social responsibility in the United States might consider adopting standards that reflect greater acceptance among journalists regionally and nationally. In many other respects, especially in terms of public acceptance, the diverse efforts at self-regulation of journalism in the United States appear exemplary for Germany.

### A USA Rejoinder

#### *Differences yet Similarities*

While a democracy requires a free press, a free press does not assure a democracy. What assures a democracy is a press that not only exercises its freedom but also conducts itself in a socially responsible way. To this extent, democracies the world over share a common bond. Nowhere does the proposition that press freedom must be balanced with social responsibility manifest itself more clearly than in the relationship of the press to government.

If people become so upset with the press that they want someone to intervene, to whom can they turn? Like-minded individuals? Perhaps, though, such alliances are hard to establish. The media themselves? Hardly likely, especially if the media fail to be responsive in the first place. The government? Possibly, especially if that's the only recourse.

For democracies based on free market principles, where information is simply another commodity for sale—like shoe polish or toothpaste—the proper course of action can present

a quandary. Information providers must accommodate market demands yet at the same time meet the particular demands imposed on news media in a democracy. Is it even possible to serve two such masters—and to do so effectively?

More than a few societies have wagered that it is not only possible but preferable to other political-economic arrangements. It certainly is possible, but there is a caveat: such an arrangement depends on media managers being accountable not only to owners and stockholders but also to the public. Of course, the outcome of this arrangement won't be known except in the long run, and remember it was John Maynard Keynes who quipped, "In the long run ... we are all dead."

The path of press accountability taken by both the United States and Germany calls primarily for the press to regulate itself with minimal intervention by the courts or government. Approaches to the press regulating itself in the two countries have been different.

Comments here will center on social responsibility and press controls in Germany and the preceding discussion of the work of the German Press Council. One might ask why press experts in one country are offering an assessment of the press of another country. Anyone familiar with more than one culture can answer the question: to know your own culture, you must be acquainted with at least one other culture. The same applies to press systems; to know your own press system, you must know about others. When it comes to the press, the United States and Germany have much in common. The Hutchins Commission Report dealt with a number of issues pertinent for any modern nation struggling with efforts to balance a market economy with democracy. A number of these issues came up at a 1997 symposium in Champagne-Urbana, Illinois, commemorating the 50th anniversary of the Hutchins Report. Among scholars assessing the impact of the report was Kaarle Nordenstreng of Finland. He extracted from symposium discussions several persistent themes prompted by the Hutchins Report. There were two specific themes: "(1) media as vehicles of public interest vs. media as commodities and (2) media diver-

sity *vs.* media concentration", and three other themes "with a general—even eternal character: (3) truth, (4) democracy and (5) freedom and responsibility" (1998, p. 433).

Indeed, these themes emerge paramount in any society boasting a free press, a market economy and a democratic state. Other social issues impact these enduring press concerns, including the effects of an increasingly interrelated global economy, development of new communication technologies and growing multiculturalism.

While similarities in such societies may be evident, differences may be more dramatic, depending on local circumstances. A reunified Germany has existed only a little more than a decade, and the amalgam of east and west has triggered its own conflicts. Taking into account the events of World War II, the press of Germany clearly does not have the traditions accruing from the United States' more than 200 years of independence.

#### *Tools for Social Responsibility*

Methods of self-regulation to bring about responsible press performance have met with varying degrees of success throughout the world (Bertrand, 2000). Indeed, some methods, for example, press councils, have been coopted by government authorities to serve their own interests. Such instances obviously are not acceptable and, in fact, cannot even be considered in the category of self-regulatory measures.

Any tools to promote accountability have a double edge. Even the ombudsman concept has an inherent flaw, namely, that in most cases ombudspersons are not entirely independent of the organization that they presumably appraise. The charge of "window dressing" may be applied to more than one news organization that has established an ombudsman position.

Although certain arrangements carry the possibility of negative or less than ideal consequences, one should not invoke a blanket condemnation of well-intentioned efforts. Maybe the particular attempt—whether it be a news council, an ombudsman, or even a civic/public journalism project—needs to be modified or replaced by a different effort.

While motives may always be suspect, attempts by the press to meet its obligation of being socially and not only financially accountable must not cease. To paraphrase Winston Churchill, the press system in a market-oriented democracy may be the worst press system anywhere—except for all those other forms that have been tried from time to time.

News media in the United States and Germany engage in a delicate juggling act. While it is necessary to show profits, the news organization must also demonstrate fulfillment of its special role in a democracy. These goals can be achieved only if the organization manages to create and maintain a bond with its community. That means both pleasing and displeasing the community, for the measure of democracy is the extent to which discourse invites disagreement and fosters compromise.

There is no single path to social responsibility. News councils are not a panacea. Nor is the ombudsman. Nor are self-appointed media watchdogs. While there is no single answer to the accountability question, it is surprising that so few news organizations have an institutionalized method—other than the bottom line—of assuring their audience that they are as accountable for their services as, say, a physician or a department store.

While a National News Council (known as the Council on Press Responsibility and Press Freedom) in the United States did not fare very well (it operated from 1973 to 1984; see elsewhere in text for details), the German Press Council has compiled over its 45-year history what has to be termed an enviable record. Over the years it has acted on hundreds of complaints, even though it and its deliberations have had limited public visibility. In the process, the Council has developed a number of precedent-type cases ranging from privacy issues to discrimination in news coverage, from accuracy to human rights. Analysis of such cases produces data that are useful in helping to establish standards of performance for the press. In the United States, there are some who maintain that articulated standards are not desirable and only serve to restrain or control. Without controls of some sort, freedom tramples upon other freedoms.

An important component of the German Press Council is its Press Code. These 16 Principles—essentially a code of ethics—are guidelines for journalists as well as for the Press Council in its deliberations. The Principles do not stand by themselves. All but two, as noted above, are explained further with guidelines. For example, journalists are not to use dishonest methods in acquiring information; a guideline says “journalists must identify themselves”, but recognizes that “undercover research may be justifiable in individual cases”.

A single code of ethics agreed to by press organizations makes good sense. In the United States, numerous codes produce a haze of standards that go largely ignored.

From a US standpoint, a criticism of the German Press Council is its acceptance of a portion of its funding (30 per cent) from public sources. For a strict constructionist interpretation of the First Amendment, this would be considered anathema. But the real question—or at least it should be—is: does this have the potential to compromise the integrity of Council actions or to influence public perception of the Council?

A major problem of the German Press Council is that it is not well known. The reason is ironic. The Council, while acting in the public interest, does not consider itself in the public interest. The Council's meetings are closed, though it publicly announces decisions and periodically publishes compilations of its activities. The Council's effectiveness surely would be expanded if it adopted the principles of transparency that the press requires of government agencies. Opening the Council to the public would enhance its credibility as well as its legitimacy.

The struggle to balance press freedom and press responsibility is as complex as the search for justice and equality.

In one of his plays, Norwegian social critic and playwright Henrik Ibsen (1828–1906) tackled many of the fundamental issues—truth, freedom, responsibility—addressed in the Hutchins Commission Report. In the drama *An Enemy of the People*, the doctor (Stockmann) has discovered a deadly health hazard in the community which, if revealed, also would threaten the town's economy. When the local newspaper

(the *People's Messenger*) refuses to publish the information, the doctor expresses amazement that such news would be withheld.

“You are editor,” says the doctor, “and I suppose it's the editor that controls a paper.”

“No, it's the subscribers, doctor,” asserts the printer (Aslaksen), who adds, “It's public opinion, the enlightened majority, the house-owners, and all the rest. It's *they* who control a paper.”

In the next and final act, the doctor, soon to be declared an enemy of the people, declares “that the common man, the ignorant, undeveloped member of society, has the same right to sanction and to condemn, to counsel and to govern, as the intellectually distinguished few” (Buck, 1951, pp. 1015, 1021).

Oddly and, from a journalistic perspective, sadly, it is the doctor—not the journalist—who provides eloquent testimony to the special responsibility that news media have to all of society.

### Conclusion

This paper set out to explore cross-perceptions by two mass media scholars concerning methods of self-regulation in their respective press systems, Germany and the United States. One scholar surveyed the issues in his native land, Germany, with an emphasis on the German Press Council. The other scholar examined press freedom and responsibility in his country, the United States. Then each offered a rejoinder to the other.

On a continuum with press freedom at one end and press responsibility at the other, the discourse found both sets of arguments leaning toward a middle ground. That is, the German perspective argued for more press freedom in Germany, while the North American perspective maintained the need for more press responsibility in the United States. While certainly not generalizable, findings suggest that valuable insights about one's own press system can be gained from becoming familiar with at least one other press system.

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### Notes

- <sup>1</sup> Versions of this paper have been published in German in *Zeitschrift für Kommunikationsökologie* 3 (2), 2001, pp. 6–20 and presented at the annual convention of the International Communication Division of the Association for Education in Journalism and Mass Communication, 5–8 August 2001, Washington.
- <sup>2</sup> The German Press Council's Web site at [www.presserat.de](http://www.presserat.de) provides a comprehensive account of the Council's work as well as an English-language summary that includes its Principles and complaints procedure.
- <sup>3</sup> This figure includes three categories of complaints: those for which the Council has no responsibility, those which are considered (but not acted upon) in a pre-procedural examination and those which ultimately are decided, that is, acted upon by the Council's Complaints Committee.
- <sup>4</sup> Though the term "ombudsperson" is perfectly acceptable to us, we deferred to the term "ombudsman" as used by the Organization of News Ombudsmen.

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