

1

The Norms that Govern Journalism: An Ecological Approach

David Pritchard

The principal determinants of journalistic behaviour in any society come from four domains: legal rules, professional standards, market forces, and technology. Although the domains are conceptually distinct, in practice they constantly evolve and interact to create a dynamic ecology of norms. It is impossible to fully understand a given society's journalism without first understanding the society's normative ecology for news.

This brief essay has five parts. The first introduces the normative ecology concept in the context of journalism. The second focuses on the domain of law. The third examines the broad area of professional standards. The fourth discusses the market as a regulator of journalism. The fifth notes the influence of digital technology.

Normative ecologies

Some influences on the practice of journalism have the form of rules. Laws that enable journalists to be sued for libel or invasion of privacy are examples of such rules, as are journalistic norms such as accuracy and objectivity. Although it may be difficult to define the precise contours of such rules, the rules are explicit and widely understood (if not always followed). Other influences on journalistic behaviour are less explicit, though no less important. The behaviour of the market for news and other media products is not decided by any court or decreed by any self-regulatory body, but it is as powerful an influence on journalistic behaviour as any law or ethics code. The design of communication

technology by the companies that manufacture hardware and software also plays a role in influencing twenty-first-century journalistic behaviour. The normative ecology that results from the interaction of these forces governs journalism by shaping, channelling, constraining, and enabling various practices.

Scholarship about journalism standards (including, but not limited to, journalism ethics) is generally theoretical and prescriptive, rarely testing ideas in the bubbling cauldron of day-to-day news work. Inevitably, such scholarship reveals more about a scholar's preconceived ideas than about the reasons for actual journalistic practices. As Lippmann noted, 'For the most part we do not first see, and then define, we define first and then see' (Lippmann, 1922: 54–5). Careful empirical research on journalistic behaviour not only would help bridge the gap between abstract theory and concrete reality, but would reveal the normative ecology of news in operation.

In recent years an increasing number of scholars have adopted 'ecology' as an appropriate metaphor for the multifaceted system of intertwined rules and processes of varied origin and varying levels of formality that governs journalism at any given time and place. Among the first to explicitly use the ecology metaphor in discussing media governance was a Canadian scholar who described a 'range of seemingly disconnected institutions, issues and practices' that constitutes 'a complex ecology of interdependent structures' (Raboy, 2002: 6). A few years later two journalism researchers in the Baltic region proposed an 'ecological approach' to media accountability (Harro-Loit and Balčytienė, 2005), though they did not incorporate market forces or technology into their framework. A Spanish scholar included media literacy schemes to empower media audiences in her conception of a 'regulatory ecology' (Ariño, 2007: 132).

Researchers who focus on the internet have been especially attuned to the ecological metaphor. A study of internet regulation by a group associated with Oxford University's Programme in Comparative Media Law and Policy noted the 'emergence of a fertile ecology of rule-making, regulatory competition, alternative dispute resolution and a complex interaction between state, co- and self-regulatory practices in the media sectors' (Tambini et al., 2008: 3). A report to UNESCO's Division for Freedom of Expression, Democracy and Peace by a different team of British researchers carried the subtitle, 'The Changing Legal and Regulatory Ecology Shaping the Internet' (Dutton et al., 2011). A 2013

chapter in a media law handbook noted 'evolutionary trends' in the media 'governance ecology' (Burri, 2013: 335). The author noted that the ecology 'not only draws together horizontally different domains but is also unevenly vertically spread along a multi-layered structure that mobilises various actors at the local, national, regional and international levels' (Burri, 2013: 327).

The Legal domain

Although in theory formal law applies evenly to everyone in a given political unit, in practice, the force of law in any given situation varies with the relative power and status of parties to disputes (Black, 1976). The behaviour of law also varies with more macro-level factors such as cultural, social, and political contexts (Engel, 1984; Pritchard, 1989).

In other words, journalism law is variable and dynamic, open to influences that may have nothing to do with either journalism or law. This fact helps explain why journalists who work for community media in small towns have, for all practical purposes, less law at their disposal than do journalists who work for large news organisations. The small-town journalists are less likely to assert their legal right to publish material that authorities want suppressed or to frame a request for public documents in terms of an access-to-information law (see e.g. Hansen and Moore, 1990; Sanders, 2000).

The contextual variability of journalism law makes it difficult to isolate law's influence on journalists. That said, law's effect may be weaker than many scholars believe. A survey of journalists in 17 countries found that media law was not amongst the strongest influences on their behaviour (Hanitzsch et al., 2010). Nor does law seem to be particularly important to those who actually sue the media. The authors of a landmark study of libel litigation in the United States, for example, noted that 'legal theories and rules appear only to have the most tenuous relationship to the actions of the plaintiffs' (Bezanson et al., 1987: 212).

Professional standards

The most important source of journalists' knowledge about professional standards is learning on the job (Weaver et al., 2007: 159), but what

journalists at different news organisations learn is not necessarily uniform. What is more, newsroom socialisation processes are not open to public scrutiny. The lack of uniformity and transparency means that core principles such as objectivity may be poorly understood both by journalists and the public. Nonetheless, such principles are important determinants of journalistic behaviour (Hanitzsch et al., 2010).

In the twentieth century the news industries in North America and Western Europe developed a variety of self-regulatory mechanisms intended to explain journalism and its standards to the public (Nemeth, 2003), to resolve disputes between news organisations and members of the public (Pritchard, 1992), and to provide accountability via press criticism (Bunton, 2000). Much of this self-regulation arose during times of state scrutiny of the press; virtually all press councils in the United States and Canada, for example, were created to block the threat of direct government regulation of the news industry (Pritchard, 1992). The Australian Press Council was created in similar circumstances (O'Malley, 1987a).

Although press self-regulation may be conceptually appealing as a presumed middle ground between the worrisome extremes of state control on the one hand and unconstrained press irresponsibility on the other, in practice self-regulation has not been notably successful in curbing journalistic excesses. No country has more experience with the limits of self-regulation than Britain, where the Press Council's inability to rein in the press led to its replacement in 1991 by a Press Complaints Commission that would monitor compliance with a formal code of conduct. The *News of the World* phone hacking scandal highlighted the impotence of the Press Complaints Commission, and in July 2011 the prime minister announced a public inquiry into the culture, practices, and ethics of the British press. The inquiry, headed by Lord Justice Brian Henry Leveson, issued its report of nearly 2,000 pages in November 2012. The report recommended the creation of an independent self-regulatory body that would adopt a code of standards for the press and have the power to impose sanctions, including fines of up to £1 million. As of June 2013, however, none of the inquiry's recommendations had been adopted.

Despite the fact that the threat of state control has been at the root of many mechanisms of news self-regulation, it appears that self-regulation is not simply state control by other means. Instead, self-regulation attempts to balance the interests of the news industry with those of other sectors of society (O'Malley, 1987b; Ugland, 2008). That is not to say, however, that there are no interactions between journalism law and self-regulatory

mechanisms. Courts sometimes cite the decisions of self-regulatory bodies (Trudel and Abran, 2006), and self-regulatory bodies sometimes change their practices in reaction to court decisions (Bernier, 2005). Some scholars who are sensitive to any hint of censorship express the concern that self-regulation may give courts a rationale for limiting freedom of the press (Drechsel, 1992; Gajda, 2009).

Market forces

Market forces have always been part of the normative ecology for news in the sense that news content is always influenced by journalism's 'funders' – subscribers, advertisers, organisations, and sometimes governments – along with the competition for the revenue they provide (Shoemaker, 1987). Web 2.0 has added a new and different kind of market to the normative ecology: competition for primacy in defining the meaning of the news. This new market manifests itself via reader comments about stories posted on online news sites and social media platforms, as well as via blogs. The comments, generally anonymous and often rude, have two kinds of effects. First, they 'can significantly distort what other readers think was reported in the first place', which is 'a surprisingly potent effect' (Brossard and Scheufele, 2013: SR5; see also Anderson et al., in press). Second, they act as virtually instantaneous media criticism that can influence how a journalist frames a story (Santana, 2011).

Blogs increasingly compete with traditional news organisations to be the first to report an important story (Gant, 2007). Bloggers often distinguish their standards from those of traditional journalism. They contrast what some call 'horizontal editing' – posting an initial version of a story and then relying on peer review and rapid self-correction – with the 'vertical editing' common at legacy news organisations (Wischnowski, 2011). Traditional journalism standards inevitably adapt to competition from the blogosphere, resulting in changes to the normative ecology for news.

Technology

The widespread belief that the internet not only is unregulated but cannot be regulated is patently false. In the United States, for example, laws that

permit filtering internet content, enabling restrictive digital rights management schemes, allowing internet service providers to discriminate against certain categories of content, and undermining copyright's fair-use provisions via the guilty-until-proven-innocent mandatory take-down provisions of the Digital Millennium Copyright Act are the part of the regulatory scheme that Lessig calls 'East Coast Code' (2006: 72). The East Coast Code is traditional law and policy as adopted by legislators and administrative agencies. Though it is the product of inefficient deliberative processes, it is transparent and subject to a system of checks and balances, including the First Amendment.

West Coast Code, by contrast, is not a governmental product. Product developers simply build it into software or hardware. There is no public deliberation and no transparency. West Coast Code reflects corporate interests, not the public interest (though the two can sometimes overlap). Few scholars question the ascendance of West Coast Code. An American law professor wrote that 'decisions about technological design, legislative and administrative regulations, the formation of new business models, and the collective activities of end-users' have become more important than the First Amendment in influencing the future of freedom of expression (Balkin, 2009, 427). Does this mean that digital technologies determine journalism standards? Not in any direct way, but digital technologies raise the stakes and change the ethical discussion in the sense that they represent powerful new tools that journalists can use for good or ill (e.g. the British phone hacking scandal). More research on the relationship between digital technologies and journalism standards is urgently needed.

Conclusion

Anyone who wishes to understand the standards that govern journalism – and, therefore, journalism ethics – in the twenty-first century must consider not only the importance of technological design and the emergence of new kinds of markets, but also how those factors interact with the other components of the normative ecology for news. Research on this topic is necessarily contextual because ecologies are dynamic rather than static. Knowledge that is both broad and deep is far more likely to emerge from an accumulation of careful case studies than from any single research project.

The chapters that follow explore the domains that determine journalistic behaviour and the journalism ecologies that result from the complex interplay of these domains. Some chapters focus on a single domain; others explore multiple domains. Some focus on one particular context; others are more broad. Finally, some authors speak specifically to the domains identified here; others introduce new domains (e.g. culture or individual morality). The point is that, to fully understand journalism ethics, we must look at how all of these domains work together. The contributors to this volume help us more fully conceptualise the dynamic ecology of norms – the powerful web of influences that forms the basis for journalism ethics.

Note

All web addresses in this chapter were last accessed in March 2013.

References

- Anderson, Ashley A., Brossard, Dominique, Scheufele, Dietram A., Xenos, Michael A., and Ladwig, Peter (in press) 'Crude Comments and Concern: Online Incivility's Effect on Risk Perceptions of Emerging Technologies', *Journal of Computer-Mediated Communication*.
- Ariño, Monica (2007) 'Content Regulation and New Media: A Case Study of Online Video Portals', *Communications and Strategies*, 66(2): 115–35.
- Balkin, Jack M. (2009) 'The Future of Free Expression in a Digital Age', *Pepperdine Law Review*, 36: 427–44.
- Bernier, Marc-François (2005) *L'ombudsman de Radio-Canada: Protecteur du public ou des journalistes?* (Quebec City: Presses de l'Université Laval).
- Bezanson, Randall P., Cranberg, Gilbert, and Soloski, John (1987) *Libel Law and the Press: Myth and Reality* (New York: Free Press).
- Black, Donald (1976) *The Behavior of Law* (Orlando, FL: Academic Press).
- Brossard, Dominique, and Scheufele, Dietram A. (2013) 'This Story Stinks', *New York Times*, 3 Mar.: SR5.
- Bunton, Kristie (2000) 'Media Criticism as Professional Self-Regulation', in David Pritchard (ed.), *Holding the Media Accountable: Citizens, Ethics, and the Law* (Bloomington, IN: Indiana University Press), 68–89.

- Burri, Mira (2013) 'Controlling New Media (without the Law)', in Monroe E. Price, Stefaan G. Verhulst, and Libby Morgan (eds), *Routledge Handbook of Media Law* (Abingdon, Oxon: Routledge), 327–42.
- Drechsel, Robert E. (1992) 'Media Ethics and Media Law: The Transformation of Moral Obligation into Legal Principle', *Notre Dame Journal of Law, Ethics and Public Policy*, 6: 5–32.
- Dutton, William H., Dopatka, Anna, Hills, Michael, Law, Ginette, and Nash, Victoria (2011) *Freedom of Connection – Freedom of Expression: The Changing Legal and Regulatory Ecology Shaping the Internet* (Paris: UNESCO).
- Engel, David M. (1984) 'The Oven Bird's Song: Insiders, Outsiders, and Personal Injuries in an American Community', *Law and Society Review*, 18: 551–82.
- Gajda, Amy (2009) 'Judging Journalism: The Turn toward Privacy and Judicial Regulation of the Press', *California Law Review*, 97: 1039–1105.
- Gant, Scott. (2007) *We're All Journalists Now: The Transformation of the Press and the Reshaping of the Law in the Internet Age* (New York: Free Press).
- Hanitzsch, Thomas, Anikina, Maria, Berganza, Rosa, Cangoz, Incilay, Coman, Mihai, Hamada, Basyouni, Hanusch, Folker, Karadjov, Christopher D., Mellado, Claudia, Virginia Moreira, Sonia, Mwesige, Peter G., Plaisance, Patrick Lee, Reich, Zvi, Seethaler, Josef, Skewes, Elizabeth A., Noor, Dani Vardiansyah, and Yuen, Kee Wang (2010) 'Modeling Perceived Influences on Journalism: Evidence from a Cross-National Survey of Journalists', *Journalism and Mass Communication Quarterly*, 87: 5–22.
- Hansen, Elizabeth K., and Moore, Roy L. (1990) 'Chilling the Messenger: Impact of Libel on Community Newspapers', *Newspaper Research Journal*, 11(Spring): 86–99.
- Harro-Loit, Halliki, and Balčytienė, Aukse (2005) 'Media Accountability Systems: An Ecological Viewpoint', in Richard Baerug (ed.), *The Baltic Media World* (Riga: Flera Printing House), 25–39.
- Lessig, Lawrence (2006). *Code: Version 2.0* (New York: Basic Books).
- Lippmann, Walter (1922) *Public Opinion* (New York: Macmillan).
- Nemeth, Neil (2003) *News Ombudsmen in North America: Assessing an Experiment in Social Responsibility* (Westport, CT: Praeger).
- O'Malley, Pat (1987a) 'Regulation, Pseudo-Regulation and Counter-Regulation: The Operation of the Australian Press Council', *Media, Culture and Society*, 9: 77–95.
- O'Malley, Pat (1987b) 'Regulating Contradictions: The Australian Press Council and the "Dispersal of Social Control"', *Law and Society Review*, 21: 83–108.
- Pritchard, David (1989) 'Beyond the Meese Commission Report: Understanding the Variable Nature of Pornography Regulation', in Susan Gubar and Joan

- Hoff (eds), *For Adult Users Only: The Dilemma of Violent Pornography* (Bloomington, IN: Indiana University Press), 163–77.
- Pritchard, David (1992) 'Press Councils as Mechanisms of Media Self-Regulation', in Jacques Zylberberg and François Demers (eds), *L'Amérique et les Amériques / America and the Americas* (Quebec City: Presses de l'Université Laval), 99–116.
- Raboy, Marc (2002) 'Media Policy in the New Communications Environment', in Marc Raboy (ed.), *Global Media Policy in the New Millennium* (Luton: University of Luton Press), 3–18.
- Sanders, Craig (2000) 'Newspapers' Use of Lawyers in the Editorial Process', in David Pritchard (ed.), *Holding the Media Accountable: Citizens, Ethics, and the Law* (Bloomington, IN: Indiana University Press), 138–53.
- Santana, Arthur D. (2011) 'Online Readers' Comments Represent New Opinion Pipeline', *Newspaper Research Journal*, 32(3): 66–81.
- Shoemaker, Pamela J. (1987) 'Building a Theory of News Content: A Synthesis of Current Approaches', *Journalism Monographs*, 103: 1–38.
- Tambini, Damian, Leonardi, Danilo, and Marsden, Chris (2008) *Codifying Cyberspace: Communications Self-Regulation in the Age of Internet Convergence* (Abingdon, Oxon: Routledge/UCL Press).
- Trudel, Pierre, and Abran, France (2006) *Le statut et les processus décisionnels du Conseil de presse du Québec*. Report commissioned by the Quebec Press Council: [www.chairelrwilson.ca/cours/drt3805/conseildepresse\(juillet\).pdf](http://www.chairelrwilson.ca/cours/drt3805/conseildepresse(juillet).pdf).
- Ugland, Erik (2008) 'The Legitimacy and Moral Authority of the National News Council (USA)', *Journalism: Theory, Practice and Criticism*, 9: 285–308.
- Weaver, David H., Beam, Randal A., Brownlee, Bonnie J., Voakes, Paul S., and Wilhoit, G. Cleveland (2007) *The American Journalist in the 21st Century: U. S. News People at the Dawn of a New Millennium* (Mahwah, NJ: Lawrence Erlbaum).
- Wischnowski, Benjamin J. (2011) 'Bloggers with Shields: Reconciling the Blogosphere's Intrinsic Editorial Process with Traditional Concepts of Media Accountability', *Iowa Law Review*, 97: 327–46.