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Chapter 1: Introduction

On my first day as a cadet reporter I sat on a badly adjusted office chair, behind an Imperial 66 typewriter so upright that I could barely see over the top. I was surrounded by a large number of (mainly) men, much older than me, who impressively combined gravitas and diligence. A strange odour filled the air – cigarette smoke mixed with the unmistakable smell of molten metal and printing ink from the floors below. At the top of the large newsroom were sub-editors, who turned my first story into something readable before sending it via pneumatic tube to be set in hot-metal type by linotype operators, placed in a page form by compositors, transformed into a curved metal printing plate by ‘stereo’ makers, and fixed by printers on to the letterpress press that printed that afternoon’s black and white *Auckland Star*.

Forty years later, on my last day as editor-in-chief of the *New Zealand Herald*, I reflected on an industry that had changed almost beyond recognition. The *Auckland Star* had gone, along with a Sunday newspaper for which I had worked. Linotype operators and compositors had gone, their jobs made redundant by multi-purpose editorial computer systems. So too, had the unique newsroom odour. Fewer, younger (casually dressed) men and women populated the newsroom thanks to reduced editorial budgets, and the sub-editors would soon disappear to an outsourced operation like a large proportion of the photographic staff before them. The tyranny of once-or-twice-a-day press deadlines that gave radio and television a march on stories, had been vanquished by the website on which *Herald* reporters could file stories at any time of the day – introducing the even greater tyranny of the 24/7 news cycle. The printing presses were kilometres away – linked by microwave, and the newspaper would print the following morning in full colour. Fewer copies would roll off the presses than earlier in my decade-long editorship, and the cover price would be higher.

My experience matched that of many journalists of my generation, not only in New Zealand but also in Australia, the British Isles, and North America. As the frontispiece stated, we lived through the best of times and the worst of times, seeing an industry reach the height of its power and audience reach, before declining in the face of new technologies, changing audience preferences and, most importantly, management and

ownership structures that became hostages to financial markets. This thesis addresses the issues confronting news media, and offers an alternative to an ownership model that, like us, has grown older and, in some cases – weaker.

My career was perhaps more unusual, in that it encompassed both editorial and management roles under local and foreign proprietors. The aggregation of that experience led to a recognition of the impact of ownership and the managerial translation of its expectations.

Commercial news media are not pariahs. The majority of journalists are employed in newspaper and broadcasting newsrooms that rely on advertising revenue and some of those reporters, commentators, and editors produce excellent journalism of democratic, social, and cultural significance. However, these newsrooms are under increasing pressure to do more with less, and to pander to perceived market forces that demand to be fed. The managers of these newspapers and broadcast stations are under increasing pressure to maintain profits, in an environment where organic growth is counter-intuitive. That pressure is generated by a system that has commoditised news as a product, because those who invest in listed media companies see them as profit centres no different to any other commercial operation.

Commercial pressures exist in spite of attempts by editorial departments to distance themselves. Decisions on budgets, news holes, and pagination often now lie outside a newspaper editor's complete control. Ultimate decision-making may lie in another city or country. The effect of this physical distance can be a detachment from the consequences of decisions on, for example, redundant workers or reduced news coverage.

The most optimistic view of professional journalism at the end of the first decade of the 21st century was that it was 'under pressure', but a brave new digital world beckoned, while the most pessimistic believed that mainstream, especially newspaper, journalism was in its death throes. The former is certainly true – the latter almost certainly is not. The paper medium may not survive, but the depth, detail, and analysis that are synonymous with the ideals of 'print journalism' have a future – as contributors to social democracy and an enlightened active citizenry.

The phrase ‘democratically significant journalism’ will be found throughout this thesis. By this, I mean the type of reportage, commentary, and analysis that help citizens make informed judgements about politicians, bureaucrats, and public issues – and to hold the powerful to account. This sort of journalism acts as a catalyst and platform for debate, while its broader coverage contributes to the social and cultural wellbeing of society.

Curran et al. suggest that public service media – the model found in Britain, Finland, and Denmark, give greater attention to public affairs and international news than the market model found in the United States, and thereby foster greater knowledge in those areas (2009, 22). While the study concentrated on television, and its findings on newspapers are less clear-cut, it notes a trend toward an entertainment-centred market model with declining exposure to serious journalism. Its conclusions suggest serious journalism’s best hope lies in state-owned, although not state-controlled, public service media.

What is its future though, if the state is unable or unwilling to fill the gaps created by deterioration in quality news outlets in the private sector? Are there any other forms of ownership that protect and promote democratically significant journalism? I believe alternatives do exist. Among them is an ownership model that has been evolving for decades in newspapers, and is being re-fashioned for the digital age.

The proposition set out in this thesis, is that trust or trust-like ownership and trustee styles of stewardship have led to newspapers being run in a manner that institutionalises a commitment to this type of journalism and protects the resources needed to sustain it. I further suggest that trust ownership can become a more viable option, as commercial investor interest in the news media sector declines, and gaps emerge in the journalistic landscape – some of which are being filled by new ventures.

Digital technology has drastically reduced entry and distribution costs. As a result, there are a growing number of organisations – many the endeavours of displaced or disenchanted professional journalists that alter our perception of ‘mainstream’ journalism. They concentrate on specific areas. Some have a geographic focus; others concentrate on a specific subject area or a branch of journalism. Along with social media such as Facebook and Twitter, they supplement existing mainstream media but

do not replace it. They do not conform to ‘traditional’ notions of news media ownership or business models.

There will continue to be scope for existing news media whose reputations have been built over many years and which serve large audiences. Communities build collective views – public opinion, if you like, by simultaneous exposure to consistent messages. It is a function that mainstream media have fulfilled and it will not disappear. What may diminish is the willingness of profit-driven owners to sustain these outlets.

I began this study as the banking crisis and resulting recession catapulted newspapers into perhaps the most testing time in their commercial history. Three years later, the causes of that recession remain largely unresolved, and so too does the challenge facing news media. The recession was but one of the elements that created the worst of times – the assumptions on which the commercial news media’s business model were built no longer held true. The market scarcity (in some cases monopoly) that guaranteed their revenue streams evaporated, their audiences migrated elsewhere, and they could not sustain the cost of growth strategies embarked upon at the very time that these market changes were occurring.

Over that period journalism has continued to suffer and the quest for alternative protective forms of governance has, if anything, become more urgent. It is a quest which draws one into a theoretical puzzle – a maze with many entrances to the discussion of the media’s role and deficiencies, leading to numerous exits optimistically marked ‘solution’. One of the challenges for this thesis was to find common ground among the theories that would identify the media’s essential structural elements and the normative values that might be better protected by trustees than by orthodox commercial owners.

1.1 Approach and method

There is broad acceptance of the institutional nature of the press, both as an element of the political landscape and in its internal structures and practices. While opinions differ on the relationship between journalists and the political establishment (see, for example, Bennett and Livingston 2003, 359-362; Davis 2003, 669-690), there is little doubt that the relationship is systematised. Hallin and Mancini’s *Comparing Media Systems* and its predecessor *Four Theories of the Press* both attest to the development of the news

media as political institutions within particular social settings (Hallin & Mancini 2004, 14). Likewise, the structures and practices of journalism have become institutionalised, along with the values and ethics to which professional journalists subscribe (Sparrow 2006; Kovach & Rosenstiel 2001; and Brighton & Foy 2007).

This thesis is about institutions and it is the nurturing of the institutional values and practices of journalism in the face of mounting external pressures that is central to its argument. The *Shorter Oxford Dictionary* has seven definitions of institutions but Scruton (1982, 225-6) sums up for us the important characteristics of these bodies as they are perceived within sociology and political science:

- They contain members but are not identical with any member.
- They have independent agency – the faculty of action – and may have rights and obligations that do not belong to individual members.
- They may endure beyond the life of any member and have a history that is not simply the history of its members.
- They manifest their existence through the intentional acts of their members, whose intentions they form and govern.
- They may be autonomous, or not.¹

This thesis accepts that all such characteristics are present in its perception of institutions in general and within journalism and the news media in particular. Barley and Tolbert (1997, 93-4) offer a further definition that is particularly apposite when considering the form and function of newspaper trusts.

...organisations, and the individuals who populate them, are suspended in a web of values, norms, rules, beliefs, and taken-for-granted assumptions, that are at least partially of their own making. These cultural elements define the way the world is and should be. They provide blueprints for organising by specifying the forms and procedures an organisation of a particular type should adopt if it is seen

¹ Scruton sees autonomy in two distinct senses: As self-governing and answerable to no external constraints other than law; and as a body that *requires* its institutional arrangement to fulfil functions that could not be discharged any other way.

to be a member-in-good-standing of its class. Institutions, therefore, represent constraints on the options that individuals and collectives are likely to exercise, albeit constraints that are open to modification over time.

Some scholars make the case for including the media within the ranks of major political institutions rather than simply acknowledging influential linkages between two autonomous fields (Cook 1998 & 2006 and Sparrow 1999 among others). To delve too far into such arguments risks adding unnecessary complexity: I have chosen to treat the news media as autonomous but always subject to the caveat that they are *influenced* by external political, economic and social agencies. The following chapters will demonstrate both the institutionalised nature of the press and the way in which its structural and cultural institutional elements have been impacted by both internal and external pressures. They will show that the obligations, values and codes that in many ways define the institution of journalism have been threatened and demonstrate how trustee governance may be bound – morally and legally – to protect them.

Admittedly, the concept of ‘mainstream media’ is no longer as clear-cut as it was even a decade ago. Cook’s more recent contribution notes that the media landscape has become “messier” due to the declining power of mass media and the growth of Internet-based outlets, and is more circumspect in ascribing homogeneity and complementarity across media organisations because he acknowledges more players, greater diversity, and more permeable institutional walls (2006, 165). The walls have not, however, come tumbling down. Mainstream media – and by that I mean news media that have a generalised distribution to significantly-sized audiences – continue to follow their established institutional practices and exert political influence in spite of swerving, under profit-driven commercial ownership, toward entertainment and away from socially significant information. This thesis is predicated on there being continued validity in Sparrow’s characterisation of the media as an autonomous political institution with respect to their effect on politicians, politics and policies (1999, 12) and to the extent that they adhere to a system of shared practices that provide “an essential coherence” in the production of news about politics and government (*ibid.*, 16). Profit-driven companies under pressure to deliver shareholder dividends do threaten the institutionalised qualities and values of journalism and I will argue here that institutional change – to the forms of governance – is now urgently needed to protect both the values and political significance of mainstream media.

Journalistic ideals are central to the ability of the profession to discharge its democratic functions, and are at the core of our quest for structures that preserve what I have described above as ‘democratically significant journalism’. There are however, different approaches to the evaluation of these ideals and to the relative importance of each value. Scholars apply their own labels when they adopt particular positions, but they fall broadly into four groups which we will call here traditionalist, restructuralist, reductionist, and individualist.

Traditionalists like Patterson and Bennett believe that the social responsibility model articulated by the Hutchins Commission (1947, 20-29) continues to hold sway. Restructuralists like Baker and Curran advocate structural change and set their norms accordingly. Reductionists such as Graber, Schudson and Zaller recognise changes to the media landscape in a digital age, and place journalists in a narrowly-defined role within a broad informational mix. Individualists like Merrill and Singer believe that if media structures have not satisfied journalism’s democratic imperatives, the need can be met by granting autonomy to socially responsible individual journalists. Each approach takes some account of current realities, but generally to identify deficiencies that will be overcome if a particular theoretical position is taken.

Traditional ideals are naturally the starting point for the traditionalist approach, which nonetheless sees these norms as being “framed by a past that has little relationship to the present” (Curran 2007, 34). The traditionalist view places the informed citizen at the centre of democracy and journalism as its servant. At the core of its journalistic ideals is the proposition, expressed by American editors in 1912, that: “freedom from all obligations except that of fidelity to the public interest is vital” (Friend 2007, 5). While recognising that changing market circumstances affect its application, the traditionalist position does not concede that the normative role of the media should be compromised for the sake of expedience. Rather, it acknowledges that some conditions make the ideal harder to attain (Patterson 2003). It is a theory seen by some as the best defence against negative effects of ownership. Soderlund et al. (2005, 137-150) for example, argue that adherence to the doctrine (with its parallel requirement of editorial autonomy) could protect the Canadian press from the interventionist tendencies of major chain owners. In saying so, they reflect views expressed by two enquiries into Canadian press ownership,

neither of which was under any illusion about the dimensions of the lofty heights to be scaled.²

A subset of the traditionalist view (what I will term the New Traditionalists), is the basis of civic or public journalism that seeks to re-invest citizens with democratic participation through journalism that is attuned to the community's civic needs and desires (Fallows 1997, Sparrow 1999). It is a standpoint at odds with interpretations of objectivity held by some mainstream media, because of its forms of engagement with the public but it is, nonetheless, consistent with the Hutchins Commission's ideals. A further example of New Traditionalism is Gans' theory of 'multiperspectival' news (2003) which is the embodiment of the Hutchins Commission's pluralistic ideals.

The value preferences of the restructuralists suggest, perhaps self-evidently, that complex democracies require complex media ideals. The complexity is derived in part, from their equal emphasis on structure and its effects on practice. Both Baker and Curran, for example, develop ideal-type ownership structures which they believe more capable of delivering journalistic ideals in a pluralistic democratic society, but which require enormous restructuring and re-regulation. Baker's vision of an ideal press is for "separate media entities, with each entity focused on, and preferably controlled and maybe owned by, one of the various groups making up the polity" (1998, 343-4) and for widely dispersed ownership (2007, 163-189). Curran envisages a broadcasting-based "working model of a democratic media system" with a core public service television sector, supplemented by a ring of four peripheral sectors,³ which he admits embodies a "complex set of requirements" (2002, 240-247). His view of the significance of media structures is reinforced by his collaborative study with Iyengar, Lund, and Salovaara-Moring of media models in the United Kingdom, United States, Finland, and Denmark. It found that a public service model provided a greater amount of democratically-significant programming than entertainment-centred, market-driven media (2009, 22). Baker's solution is for a "structurally mixed system...with different economic bases and different goals for different portions of the press" facilitated by "intelligent and properly

² The Davey Committee in 1970 described newsrooms as "boneyards of broken dreams" while the Kent Commission in 1981 added that there were now "fewer dreams to be broken" (Canadian Royal Commission on Newspapers 1981, 218).

³ A Civic Media sector supporting activist organisations, a Social Market sector embodying minority media supported by the state, a Professional media sector under the control of professional communicators utilising state-supported non-commercial structures, and a Private Sector operating on a commercial basis but with constraints to prevent subversion of the other sectors.

oriented structuring of the media” by means of Government regulation(2002, 283-4). There is recognition among the restructuralists that the structural change they envisage will re-define journalistic norms to embrace an express pluralistic ideal, and re-define the relationship between journalist and government.

While Baker and Curran meet complexity with complexity, reductionists such as Zaller (2003) see it as a reason to reduce expectations and accept the value of journalists producing ‘burglar alarm news’ to satisfy citizens’ need to be informed. Their viewpoint, drawn from a re-examination of the role of the citizen by Schudson in 1998, is that the scope and detail of government activity has grown to the point where no citizen can hope to be informed across its range, and the role of the journalist should therefore be confined to those aspects of policy and administration that meet the civic needs of ‘monitorial’ rather than ‘informed’ citizens (Zaller 2003, Graber 2003). If the notion of the ‘informed citizen’ has been over-stated, and Schudson is not alone in thinking so (Delli Carpini 2000) then, by extension, the role of the press must also have been exaggerated. The reductionist argument accepts what Zaller calls ‘the Full News standard’ in elite publications like the *New York Times*, but applies a different standard for ‘ordinary people’. The Burglar Alarm standard calls attention to matters requiring urgent attention and does so in ‘noisy and excited tones’ (Zaller 2003, 122). The reductionist approach finds support for the need to redefine the role of the media in line with a pragmatic re-evaluation of citizens’ democratic activity (Graber 2003), but its ready acceptance of aspects of tabloid journalism and imprecise explanations of democratic theory have rightly drawn criticism (Bennett 2003, Patterson 2003, Strömbäck 2005). It is an approach, that, in the name of pragmatism, replaces the aspirational dimension of journalistic ideals with resigned acceptance.

The individualist model⁴ also recognises extensive information flows in a complex society, but takes a fundamentally different approach to that of the reductionists and structuralists, while embracing the traditionalist principle of social responsibility. It holds that, as ‘anyone can disseminate his or her views instantly and globally with a few keystrokes’, the role of journalists has changed and the structures within which they worked are no longer the means by which that role should be defined (Singer 2006, Friend & Singer 2007). It may also be seen as an individualised approach to the

⁴ Taken from Merrill’s *Existential Journalism* (1977) and applied by Singer (2006).

homogenisation of news and loss of identity by the journalist. Under this approach, normative practices are pivotal in identifying journalists as professionals (and thereby differentiating them from other ‘information providers’) but the onus is placed on individuals to adhere to them and to accept the level of social responsibility that the model identifies as a key component of journalistic professionalism. Singer’s ‘socially responsible existentialist’ is not oxymoronic but an attempt to rationalise the dilemma faced by journalists in an exploding media galaxy: if an ever-expanding range of information options is destabilising traditional media structures, journalists have only themselves to rely upon to apply the professionalism necessary to discharge their social responsibility to the public.

Kovach and Rosenstiel (2001) arrive at the same point, but see the destabilising influence in the form of commercialisation and globalisation. Drawing on collaborative empirical research, they conclude ‘those who inhabit news organisations must recognise a personal obligation to differ with or challenge editors, owners, advertisers, and even citizens and established authorities if fairness and accuracy require they do so.’ The nine elements of journalism that they articulate place the onus on the individual (2001, 12-13). The individualist approach has philosophical resonance. Merrill for example, draws heavily on Sartre’s perspectives on personal responsibility, writing, and journalism in his 1977 work, *Existential Journalism*, but it is at odds with the power that media organisations continue to exert in spite of the fact that they no longer enjoy a monopoly on ‘the news’. Kovach and Rosenstiel recognise this power, and urge the type of change that would meet with approval from the structuralists. Singer sees salvation in the infinite plurality of the Internet, and the principled professionalism of individual journalists (2007, 218).

I have constructed the table (and paraphrased the sources) on the following page to demonstrate how each of the perspectives on journalistic values and their delivery share common elements, but that each school has a different way of shuffling the pack and dealing different cards. For their part, journalists are guided by the organisation in which they work. In turn, the organisation is guided by a combination of heritage, industry-wide approaches and public expectation.

Table 1-1: Four approaches to journalistic ideals

Approach	Ideals
Traditionalist	<ul style="list-style-type: none"> • A truthful, comprehensive, and intelligent account of the day's events in a context which gives them meaning. • A forum for the exchange of comment and criticism. • A means of projecting the opinions and attitudes of the groups in the society to one another. • A method of presenting and clarifying goals and values of society. • A way of reaching every member of the society by the currents of information, thought and feeling which the press supplies, expressed as 'full access to the day's intelligence'. • Acknowledgement of market forces. <p style="text-align: right;">Source: Hutchins Commission 1947</p>
Structuralist	<ul style="list-style-type: none"> • An account not only of major events but also the issues and problems that give rise to them. • A balanced form of journalism and a forum for debate open to different opinions. • A watchdog role achieved by mediating the investigative resources within a free society (e.g. whistleblowers, dissenting elite members, critical researchers). • A structurally mixed media system, with different economic bases and different goals for different portions of the press. • A role for government in the 'intelligent and properly oriented structuring' of the media, creating a mixed system, and providing it with adequate support. <p style="text-align: right;">Sources: Baker 2002, Curran 2007</p>
Reductionist	<ul style="list-style-type: none"> • A 'Full News Standard' (along traditionalist lines) governing elite media that provide sober, detailed and comprehensive coverage of public affairs to allow citizens to form opinions about the full range of important issues independent of government recommendations. • A modified standard to meet the needs of monitorial citizens 'who scan (rather than read) the informational environment in a way so that they may be alerted on a very wide variety of issues for a very wide variety of ends and may be mobilised around those issues in a variety of ways', recognising that the obligations of public life should be 'dispatched with efficiency'. • Coverage that is intensely focussed, dramatic and entertaining, with 'ample opportunity' for opposing views. <p style="text-align: right;">Source: Zaller 2003</p>
Individualist	<ul style="list-style-type: none"> • A journalist makes a personal choice to uphold the public trust. • Complete autonomy is conferred on individual journalists who create their own standards and choose, act and decide on the basis of personal integrity and responsibility. • A subjective approach that considers alternative courses of action before commitment to one of those courses reflecting the honestly held views of the journalist. • Resides editorial decision-making in the hands of each journalist, who must consider the consequences of his or her actions. • A response to what is seen as loss of freedom and integrity within highly institutionalised 'corporate' journalism. <p style="text-align: right;">Sources: Merrill 1977, Singer 2006</p>

Graber's evaluation of the actual deficiencies in U.S. journalism's contribution to democracy is sobering, just as her reductionist acceptance of the status quo is pragmatic. She maintains that the democratic role of the media is based on a series of questionable assumptions, and the discharge of the democratic function is far from uniform and far from ideal (2003a).

Yet journalism is capable of more positive contributions to democracy than the reductionist view suggests. Each approach is, in fact, seeking a means to the same end – a socially responsible media equipped to, as Dahl puts it, 'improve citizens' capacities to engage intelligently in political life' (2000, 187). I believe that a variant of the restructuralist approach best suits the needs of civic society and within this framework lies the potential for extending the role of trustee governance.

Just as shared practices contribute to the defining characteristics of an institution, so too, do shared desires. Hence journalistic ideals, viewed from any of the standpoints set out above, contribute to the news media's institutional character. Common institutional settings can be applied nationally and, in key respects, across all of the countries studied here.

There is widespread use of industry-wide standards within the English-speaking world. Each publication has its own characteristics but operates within a general framework, even when transformed into a publication-specific code. Codified principles vary in both form and detail, but there are clear similarities in the ethical expectations of the organisations that have created them. *Table 1-2* (overleaf) illustrates this conjunction.

Table 1-2: Common principles in Anglo-American journalism

	U.K. Press Complaints Commission	National Union of Journalists U.K.	New York Times	Los Angeles Times	Associated Press (U.S.)	Brit. Columbia Press Council	Canadian Newspaper Ass.	Sydney Morning Herald	New Zealand Press Council
Accuracy	●	●	●	●	●	●	●	●	●
Attribution			●	●	●			●	
Balance			●	●	●		●		●
Children	●			●	●	●			●
Confidentiality	●	●	●	●	●	●		●	●
Conflicts	●	●	●	●	●	●	●	●	
Correction	●	●	●	●	●	●	●	●	●
Discrimination*	●	●				●		●	●
Fabrication**		●	●	●	●			●	
Fairness		●	●	●	●		●	●	●
Grief/shock	●	●						●	●
Harassment	●		●						
Identification	●		●	●	●	●		●	
Privacy	●	●	●		●	●	●	●	●
Right of reply	●		●	●	●	●	●	●	●
Sex victims	●			●	●	●			
Subterfuge	●	●	●	●		●			●
Treating			●	●	●			●	

* Includes communal tension ** Includes plagiarism

Journalism operates on numerous related planes – technological, cultural, constitutional and commercial – that may be stable or volatile, crystal clear or ambiguous. It also exists in a number of different institutional environments:

- Political: The institutional setting, national and supranational that determines the political importance that should be attached to the news media.
- Professional: The normative work practices that create a context within which journalistic performance can be understood and assessed.
- Practical: The organisational structures and practices that define news media entities and their development.

The institutional settings with which we are concerned here are those that influence – or are influenced by – ownership. At times it is necessary to step outside the field of

journalism to find appropriate elements — to the institution-related theory of the firm, for example — that help to explain media business practice. Generally, however, the discussion of journalism itself will take place within the framework of shared practices in news production and against a background of homogeneity that Cook might again have revisited had he lived. Falling newsroom staff numbers (already declining when the recession that began in late 2007 brought even more savage cuts) have led media outlets to practice convergence -- a follow-my-leader approach to what they cover, adopt similar ways of doing more with less, and utilise increasing amounts of ‘news-on-a-plate’ provided by public and private sector media management teams.

Gans’ preface to a 25th anniversary edition of his widely-cited study *Deciding What’s News* (2004/1979) notes that the media landscape as a whole has changed since the first edition but the organisations that he had studied: “have remained virtually unchanged”. He doubts that a restudy would produce significantly different conclusions to those he reached in 1979. Among those conclusions was the propensity for news organisations to ‘routinise’ the journalistic task, produce ‘journalistic efficiencies’, and publish similar news. A quarter of a century earlier, Gans noted that there were impediments to journalists changing the way they practiced their craft. Those impediments – audience reduction, increased external pressure, higher costs, organisational (management) obstacles, and the ‘competitive bind’ requiring virtually identical news offering, – now appear remarkably prescient (2004, 288-9). Gans’ highly institutionalised view of news practices and structures (much of which accords with the author’s own experience in New Zealand) has lost none of its validity over time, recessionary effects notwithstanding. News media outlets continue to display significant professional, structural, procedural, and cultural similarities.

Numerous scholars (Baker, Bollinger, Cook, Curran, Gans, Norris, Patterson, Schudson, Sunstein, and Tuchman among others), have described the journalistic function, each imbuing it with a particular emphasis or dimension that takes it beyond the simple social responsibility model espoused by the United States’ Hutchins Commission in 1947, and almost all finding large gaps between what Schultz calls the ambition and reality of journalism (1998, 45). There is a question over whether this gap has developed or has always existed. Habermas (1991) takes the view that journalism’s contribution to the public sphere began well but deteriorated over time. Other historical perspectives such as those by Schudson (1978, 2005), Kaplan (2002, 2006) and Starr

(2004) suggest an evolutionary process that at no stage produced a perfect specimen. A third alternative, which might be called New Jerusalem Journalism, is less concerned with the past than with the future. Zelizer, drawing on Cook's judgement of journalism critiques (1998, 173), explains it thus: "Driven by a concern for the ideal and the optimum, political science developed a wide-ranging litany of tools by which to transform journalism's actual state into a more perfect enterprise" (2004, 149). Ideological fashion and socio-economic change have facilitated the periodic redefining of shortcomings and what the 'perfect enterprise' should be. Curran, echoing a belief shared with other scholars, says that the traditional theory of the role of the media now seems "so pious, so fossilised" (2007, 34). It is, he says, disconnected from an understanding of the working of contemporary democracy and its emphasis on social groups, political parties, civil society, ideology, and globalisation. To this should be added commercialisation, which Hallin and Mancini describe as "the most powerful source for homogenisation of media systems" (2004, 273). Curran also believes traditional theory is narrowly focussed on serious political journalism, which is a diminishing component of market-driven, entertainment-oriented modern media (Cook 2006, 116-117; Underwood 56-7; Hamilton 238-241). In parallel, Baker contends that journalistic theory cannot be divorced from the economic structure, legal rules, and governmental actions that affect its implementation, nor from the effect of budget cuts that affect professional practices – deficiencies he often lays at the feet of media owners that detract from a fulfilment of the democratic promise (2002, 282-284).

This thesis takes Baker's contention as its starting point. A large majority of journalists have not lost sight of their responsibilities to citizens or of their commitment to journalistic codes and values. However, they acknowledge the reducing autonomy of journalism as an institution and increasing difficulty in discharging its obligations. If the dominant forms of news media organisation are failing to fulfil their fiduciary obligations – by reducing the ability of journalists to fulfil their democratic function – are there ways of re-ordering the institutional foundations to provide structures more likely to meet the desired needs?

It is unnecessary to retrace in detail the footsteps of Curran, Baker and other distinguished scholars who have addressed the negative impact of corporate ownership and conglomeration on journalism and its contribution to democracy. As already stated,

the focus of the thesis is on a form of ownership that has received relatively little attention – private sector trustee governance.

My primary research plan therefore was drawn up with this narrow focus clearly in mind. Case studies and potential interview participants were chosen on the basis of their ability to contribute to an understanding of the contribution that trustee governance had made – or had the potential to make – to serious journalism.

There are relatively few existing newspapers in forms of trustee ownership. Three newspapers – the *Guardian*, *Irish Times* and *St Petersburg Times* – were chosen as case studies because they are the largest and most influential publications held under a form of private sector trustee ownership. No other newspapers under this form of governance match their scale of operation or influence and were therefore judged worthy of mention but not in depth analysis. The *Toronto Star* was considered for inclusion but finally was not included as a case study because it is not in formal trustee ownership and is part of a large conventional corporation. It owes its status to a peculiarity of Ontario law.

Sixty personal interviews were conducted in the course of the study and represented an acceptance rate of more than 90 per cent. Without exception those to whom I turned for assistance were extremely helpful.

The University of Auckland Human Participants Ethics Committee approved the procedure adopted for all interviews. Each potential interviewee was provided with an approved participant information sheet when first approached, together with a consent form, which set out the purpose of the research and the interview parameters (Appendix 1).

A small number of participants were unavailable during my field visits and those interviews were conducted by telephone or, in one case, a video link. Otherwise the interviews were face-to-face. In each case the interview was open-ended and, although interviewees were advised in advance (via email) about the subjects that I intended to cover, did not involve the use of set questions. This approach was taken to allow me to explore matters raised in the course of the interviews with subjects from diverse backgrounds. Interviews were recorded and later transcribed. Notes were also taken at the time of the interviews.

All of the interviews contributed to my understanding of the subject but only a proportion was used directly in the thesis. Where material was derived directly from an interview, that part of the thesis containing the information was referred back to the participant. Where changes were requested or suggested, those amendments were made.

The field research drew on my own 40-year career in the news media and more than 25 years in senior management positions that gave me a grounding in news media economics and news practices. During visits to the British Isles, the United States and Australia I was able to visit newsrooms, although I was already familiar with many of these operations as a result of my previous position as editor-in-chief of the *New Zealand Herald*. I had, in fact, made regular visits to each of those countries over the previous 30 years – first as a Harry Brittain Memorial Fellow in the U.K. in 1980 and then in the course of a series of company development projects (broadcast television, cable and satellite TV, and newspaper editorial production), syndication rights negotiations, industry meetings, and international group editorial conferences. Hence I was well briefed on newsrooms and newspaper management but I did take the opportunity over two days at the *St Petersburg Times* to observe their editorial processes. Over the full the course of the research I also regularly monitored editorial content in each of the case study newspapers through their websites and digital editions.

The preferred basis was on-the-record attributed interviews and the vast majority of participants were happy with that arrangement. Participants were remarkably candid and only in isolated instances were there requests to withhold publication of commercially sensitive data (in virtually all cases the information was provided but accompanied by a request that the numbers be described in more general terms). One interview was entirely off the record at the participant's request (he was long retired and wished only to provide background), one wished his comments (which were not, in fact, included in the thesis) to be anonymous, while the five staff members at the *St Petersburg Times* were offered anonymity in order to allow more candid responses.

A self-contained literature review was omitted from the thesis for two reasons. The first is that there is limited literature on the role of trust ownership in the preservation of serious journalism, and the second is that this thesis is made more coherent by weaving relevant references into the narrative. The nature of secondary sources is partly described by the bibliography but published works were significantly augmented by

access to legal documents (such as legislation, company articles of incorporation and company memoranda, and trust deeds), company annual reports and financial returns, and official reports. In some cases this material was supplied (or held in the author's collection) but the vast majority of this type of material was accessed through corporate or official websites and electronic registers maintained by the United States Internal Revenue Service, Companies House (UK), the Irish Companies Registration Office and Industry Canada.

1.2 Outline

The body of this thesis is devoted to an investigation of the role of trusts in the news media over time. However, it begins with a discussion (Chapter 2), of the circumstances that have led to the issues confronting newspapers and the reasons society should preserve the professional journalism for which a number of trust-owned newspapers stand.

It is necessary to stand outside the media world to understand the structure of trusts and, in particular, the altruistic trusts that offer the best prospect for the preservation of entrenched values and promotion of public interest. Chapter 3 canvasses the legal development of trusts, before examining the history and current operation of an exemplary organisation – the Wellcome Trust, to highlight positive and negative aspects of trust development.

The majority of the thesis, however, concentrates on newspapers, and the role that trusts and trust-like governance have played in their past and present. The purpose is to demonstrate that only certain types of trust governance are designed primarily to preserve qualities of good journalism and public service. It will also show that there is no pre-ordained path toward trust ownership, and that unique, and sometimes extraordinary circumstances have lain behind the formation of significant newspaper trusts.

Chapter 4 examines the history of newspapers and trust governance in a broad sense. Trust instruments began to be used by newspaper proprietors in the first half of the 20th century and the question is: To what purposes were they put? The chapter will seek to determine whether trust deeds in the new media have been altruistic (i.e. the form of trust governance designed to preserve good journalism and public service) or were

instituted for other purposes such as perpetuating political allegiances or securing control. It will examine newspaper trust history on both sides of the Atlantic, with a brief foray into Australasia, where the use of trusts in news media has been less common.

The form of trust most often encountered in newspaper companies over time has been the family trust, an inter-generational instrument designed to consolidate and protect the interest of family members. Chapter 5 examines several of these trusts to determine whether they contain an in-built capacity to protect and nurture altruistic qualities that contribute to the publication of democratically significant journalism. The *New York Times* and the *Wall Street Journal* are high quality newspapers, whose ownership has involved controlling family trusts. The chapter will assess whether this quality is a product of the presence of those bodies. It will also examine whether family trusts can co-exist with other shareholders, when companies list on the stock exchange, and still maintain control. The issue of control is important in an assessment of family trusts, and the chapter examines how they cope with an increase in the number of beneficiaries with each succeeding generation.

The remainder of the thesis is devoted to a study of trusts and trust-like entities that have been established to own and maintain journalistic enterprises in the public interest. These may be one of three types: Bodies established to take ownership of existing publications with established reputations for quality journalism, state-owned public service broadcasters, and entities (old and new) established to serve specific editorial operations within the news media.

Chapters 6 and 7 examine trusts or trust-like entities that have taken ownership of existing publications. The three newspapers that will be the subject of these chapters are: the *Guardian* in London, *Irish Times* in Dublin, and *St Petersburg Times* in Florida, each of which was visited by the author.

The history leading up to the change from conventional to trustee ownership is discussed in Chapter 6, and shows the unique circumstances that played out in each case. The chapter will also document the development of their trustee governance and show how each changed over time, often in response to the influence that individuals had on the organisation. It suggests that these newspaper trusts passed through an

evolutionary process before they achieved robust governance and business models – something they had in common with the Wellcome Trust.

In Chapter 7, the current governance and business models of the organisations are examined and, with the benefit of personal interviews with key personnel in each, are assessed in order to determine their ability to continue to publish newspapers (or their electronic equivalent) in the public interest. The assessment will have a dual focus. The first will be on the respective roles of the trusts (or institute, in the case of the *St Petersburg Times*) and editors-in-chief and the relationship between them, and the second will be on the viability of each business. The latter focus is a recognition of the fact that the best mass audience journalism will not survive in the absence of the revenue to sustain it.

Revenue is a significant issue not only for the three newspapers studied, but also for public service broadcasters and the new generation of start-ups that are filling editorial gaps. Chapter 8 exposes this as one of the vulnerabilities of trustee governance, because in the case of PSBs, governments are able to leverage their control of broadcasters' finances, while new start-ups face potential conflicts of interest when funding comes largely from philanthropic groups and individuals. The chapter also explores the governance of PSBs, start-ups, and news agencies to determine how the protection and promotion of editorial standards and journalistic objectives is achieved. Implicit in a number of these organisations – the *BBC* and Germany's public service broadcasters, is the role of principled journalism as a defence against totalitarianism.

The final chapter draws together these strands to present conclusions, which, while not holding up trust ownership as a panacea for the ills of the news media industry, suggests that trusteeship in its various guises is a viable way of preserving the mass distribution of the type of professional journalism that is a necessary component of a healthy democracy. This assessment of trust and trust-like ownership is qualified, however, by a recognition of the complexities of the industry and the difficulties that would be involved in unravelling organisations from the commercial mire of the millennium's first decade so that they can function principally in the public interest. That notwithstanding, it concludes that there is an achievable role for trusts in local and regional publication, and hold open the possibility of its applicability in larger enterprises should circumstances change.

I began this chapter by contrasting the beginning of my journalistic career in 1965 with the state of the industry when I retired from daily journalism in 2005. The point in recounting this metamorphosis was to show it is an industry prone to unforeseen developments. The history of trusts in the news media has been strewn with the unforeseen, and those that have emerged as public-spirited custodians of fine newspapers have been regarded as oddities – departures from the norm. However, these are extraordinary times for the news media – and newspapers in particular. This may be a form of stewardship whose time has come. This thesis is one small step in an area of media research that will grow as journalism passes through what could be the worst of times...and the best of times.

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Chapter 2: Journalism's crisis

Panic is not too strong a word for the collective mind of the newspaper industry. For several years the nation's newspaper publishers have been looking over their shoulders at the Internet, fearful of what it might mean to the newspaper business that has been so good for so long. But for many it has been like standing on the streets of Pompeii watching in trancelike denial as Vesuvius belched smoke before erupting.

Alex S. Jones, *Losing the News*, 2009

There was a time when publishers thought they could escape gravity and assume that what went up did not come down. They practised a form of rocket science that was fuelled by year-on-year double-digit profit rises, and a belief that acquisition meant the same thing as revenue growth. And, like the citizens of Pompeii standing entranced by Vesuvius' display, the newspaper industry was stunned by the fact that business was getting better in spite of circulation's slow decline. Then the ash began to fall.

At first it was a light dusting. In 2005, (a year in which the U.S. media castigated oil companies for making 10 percent 'windfall profits' following petrol price increases) profit margins in American media companies fell a modest 1.5 points to an average of slightly less than 20 percent. However, margins continued to fall and disaster struck in the wake of the 2008 international recession. An American media industry analyst, John Morton, predicted that in the first six months of 2010 the average operating margin for the publicly reporting companies, which represented about 40 percent of the nation's daily newspaper circulation, would be around 5.6 percent.⁵ United States newspaper advertising revenue fell by an estimated 43 percent between 2007 and 2009⁶ and internationally, media companies reported declines of more than 20 percent. The international newspaper printing and publishing industry organisation WAN-IFRA reported that the global advertising market in 2009 fell by almost 10 percent and forecast a continuing decline in North America, Western Europe, and Japan in 2010.⁷

Employment in the industry told a similar story. A U.S. Bureau of Labor Statistics survey showed the number of people employed by newspaper publishers declined from

⁵ Interviewed by Dean Roper for WAN-IFRA www.ifra.net.

⁶ Project for Excellence in Journalism: *State of the News Media 2010* www.stateofthemedias.org.

⁷ WAN-IFRA Business Report 2009 (December 2009)

a 1990 peak of 457,000⁸ to 264,600 in December 2009 – the same number as were employed in June 1949. While such numbers may indicate the parlous state of most U.S. newspaper companies at the end of the first decade of the 21st century (and the newspapers of Canada, Britain and Australasia were also depleted), it represented the latest addition to two decades of accelerating decline that has been blamed generally on a combination of periodic economic recession and sustained migration of audiences and advertising to the Internet. Both *are* factors in the malaise, however underlying these effects is a deeper internal problem – a business formula that was fundamentally flawed.

The industry followed a business model that saw six American newspaper publishers (including the Tribune Company that published the *Chicago Tribune* and the *Los Angeles Times*) and Canada's largest media company (CanWest) file for bankruptcy protection in 2009, the closure since 2007 of 11 U.S. metropolitan dailies and more than 50 British regional newspapers, and the share price of Australian media companies (that control the bulk of New Zealand's newspapers) fall by an average of 50 percent in 2008.

This chapter examines how common forms of ownership have shaped an institutional approach to business strategy in the newspaper industry, and have given rise to common responses to a rising tide of challenges that have in turn, led to predictably similar impacts in enterprises where journalism is but one ingredient of the 'product'. It suggests a need for mechanisms to protect what Jones (2009, 1) calls "serious news, the iron core of information that is at the centre of a functioning democracy".

It is unnecessary to reiterate the doom scenarios for a dying press, beyond noting that the worst case is that the paper edition of the *New York Times* will disappear in 2014⁹, while the more optimistic view is that newspapers will struggle on until 2043 (Meyer 2004). However, the concern should not be with the predicted demise of the ink-on-paper edition, but with possible death of the type of serious journalism for which the printed page has become an idealised metaphor. The difference was recognised by the Knight Commission which stated that from the standpoint of public need, the challenge was not to preserve any particular medium but to "promote the traditional public service

⁸ After the introduction of computerised editorial input and pagination had radically reduced the number of pre-press printing staff.

⁹ In *Epic 2014*, an online film made by Robin Sloan and Matt Thompson based on a 2004 presentation to the Poynter Institute.

functions of journalism” (2009, 27). That is why the focus of this thesis is on structures that will promote such journalism.

2.1 The flawed model

The corporate history of newspapers since the Second World War can be divided into four phases: growth, consolidation, destabilisation, and high risk. While there are variations in timescale and detail within the Anglo-American markets, the patterns of development generally follow these phases, and the business model that grew around corporate newspaper ownership is as consistent across the markets as are the journalistic norms that bind the six countries together. Inevitably, the flaws in the model are equally consistent.

2.1.1 Growth phase

The four decades following the Second World War were golden years for Anglo-American newspapers. After the lifting of wartime newsprint rationing, daily circulations rose steadily and the wholesale disappearance of afternoon newspapers (as television began its own rise) was offset by increases in the number and circulation of morning editions. In the United States, total daily circulation rose from 41 million in 1940 to 63 million in 1974, and stayed above 60 million for almost 30 years. In Britain, overall daily circulation that had stood at 17.8 million before the war rose to 28.6 million in 1947, and stayed above 20 million until 1998.¹⁰ Canada showed a similar pattern, with overall daily circulation surging from 2.2 million in 1940 to 3.3 million in 1950, and peaked at 5.7 million in 1989. Australia’s metropolitan/national dailies grew steadily from a 1940 total of less than 1.5 million to more than 3.5 million by the mid 1970s. Regional dailies experienced a significant setback in the late 1960s but they, too, rose steady to peak in the 1980s at more than 650,000. In New Zealand, combined daily circulations that stood at 785,000 in 1957 had reached almost a million copies a day by the mid 1960s, and peaked at 1.06 million in 1985.

¹⁰ Historical circulation figures for Ireland are unavailable. In 1956, the combined circulations of the three Dublin morning newspapers (*Irish Independent*, *Irish Press*, *Irish Times*) was 351,235 and rose only marginally to 369,534 by 1979. Post-1999 circulation is discussed later in this chapter.

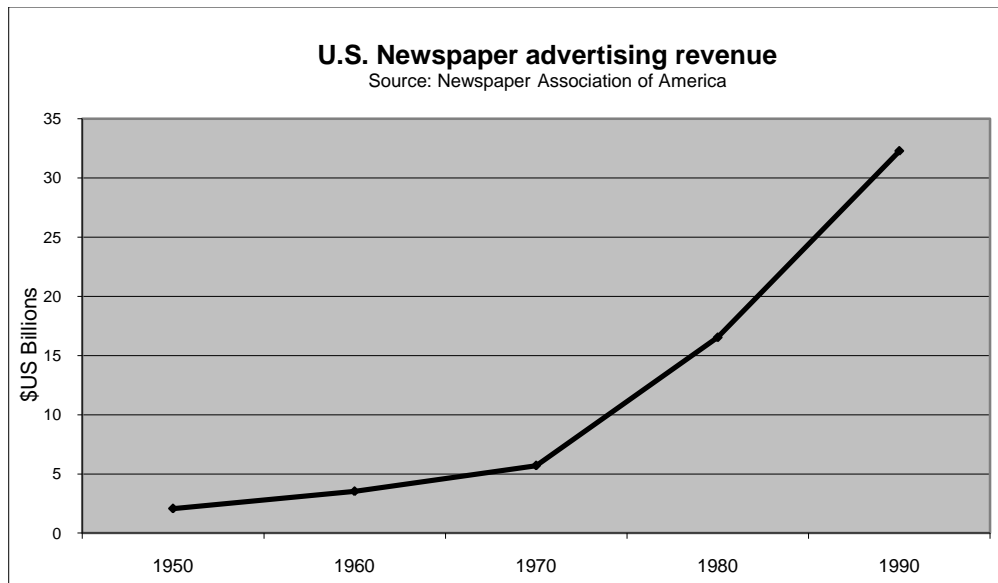
Figure 2-1: Decades of high daily circulation



Advertising revenue displayed similar upward paths. If there was a downturn, recovery occurred within two years and the upward trend continued. Between 1950 and 2000, print advertising revenue in the United States increased by 2251 percent.¹¹ The monopoly positions that newspapers held in most cities enhanced this position. Over time, the composition of advertising revenue changed. The proportion of revenue derived from display advertising dropped and reliance on classified advertising grew. Picard (2002b, 30-1) observes that the shift in the United States changed the business model. In 1950, classified advertising represented 18 percent of U.S. revenue but rose to 40 percent by 2000. Classifieds (car sales, employment, and real estate) were economically sensitive, and contributed to the periodic dips and recoveries in profit (although these ripples were nothing compared to the Internet-induced classified collapse in the first decade of the 21st century).

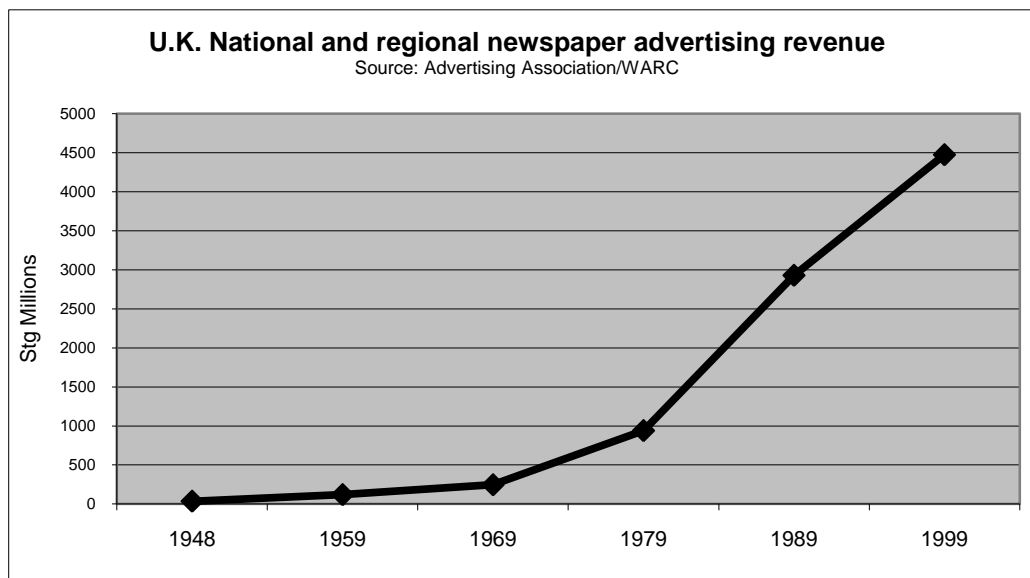
¹¹ Source: Newspaper Association of America <http://www.naa.org/TrendsandNumbers/Advertising-Expenditures.aspx>.

Figure 2-2: U.S. advertising revenue trajectory (nominal dollars)



Similar patterns in newspaper advertising growth were seen elsewhere. For example, national and regional daily newspaper advertising growth in the United Kingdom also was initially relatively modest – between 1960 and 1970 annual growth averaged 7 percent – but accelerated rapidly growing 1800 percent from 1969 to 1999.

Figure 2-3: U.K. advertising revenue trajectory (nominal dollars)



2.1.2 Concentration phase

The upward trajectory had two benefits: profits were enhanced, and the monthly cash flow provided enviable liquidity that began to attract the attention of potential shareholders. There had been various ownership structures in the Anglo-American markets, including family-owned concerns, private companies with unrelated

shareholders, a small number of trusts, and share market listed companies. Their assets ranged from single titles to significant groups such as the Hearst Corporation, although many continued to be strongly influenced by the interests of founder families and few had widely held shares.¹² The United States, which had led the revenue growth path, demonstrated how the new-found value of newspaper companies could be translated into growth and reward through the stock exchange.

The rapid growth in commercial value began to change the U.S. ownership landscape in the mid-1960s for two reasons: to unlock some of that value for existing owners, and to avoid heavy death duties.¹³ In 1963, Dow Jones (publisher of the *Wall Street Journal*) became the first newspaper company in America to be listed on the stock exchange so that its owners, the Bancroft family, could realise some of its growing value while family members retained a majority of shares.¹⁴ The following year, the Chandler family followed suit, and listed the Times Mirror Company while retaining a substantial shareholding (Neiva 1996, 32-3). In order to retain control – benefiting from initial public offerings and subsequent rises in market capitalisation, some families created two-tier share structures that conferred special voting rights. These structures are discussed in Chapter 6.

The third company in the United States to seek share market listing was Gannett, but the reasoning behind the Gannett Company's decision to float in 1967 was different. The company had already embarked on an aggressive acquisition strategy (see Chapter 5) and issuing public stock provided both new capital and tax advantages to the company at a time in which there were willing sellers.

The incentive for families to sell to groups like Gannett was given impetus by the change to IRS estate duty appraisals, and also enhanced the offering of part-payment in shares which gave tax advantages not available in cash sales (*ibid.*, 33). Gannett gave the American newspaper industry a model that others were quick to follow. Stock exchange listing provided capital and tax advantages that facilitated acquisitions that provided a bigger share of a bright and growing market.

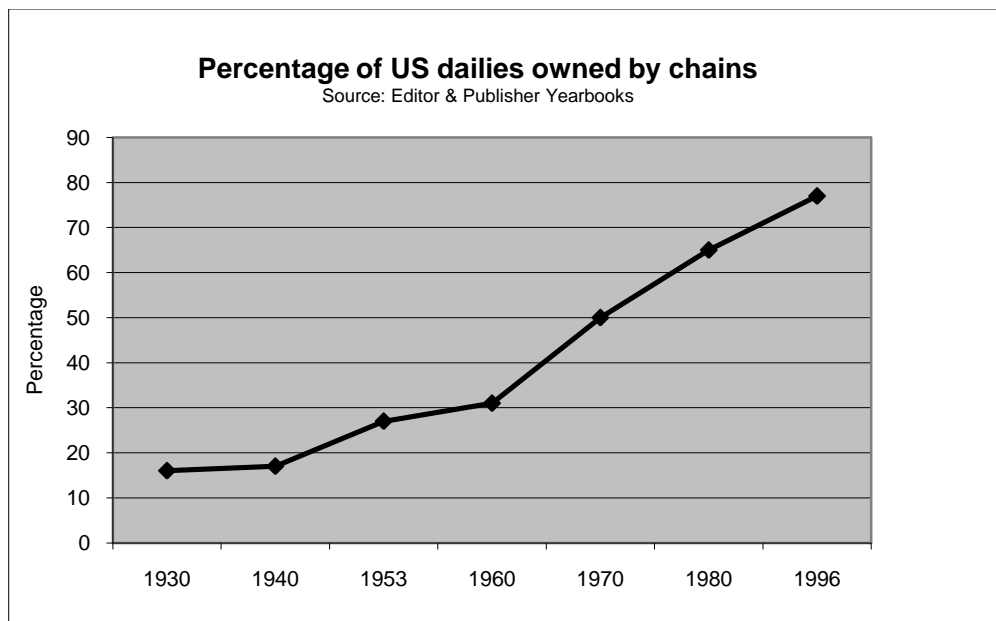
¹² As late as 1977, the Royal Commission on the Press noted that only one group in the United Kingdom – Reed International (owner of the Mirror newspapers) was widely-held.

¹³ Neiva (1996, 26-7) notes that in the early 1960s the U.S. Inland Revenue Service saw the growing affluence of newspaper companies, and sought to reflect this by changing the formula used to calculate newspaper owners' assets for gift and estate duties.

¹⁴ Until the company's sale to News Corporation in 2007.

In 1930, there were almost 2000 daily newspapers in the United States and only 16 percent of them were held in chain ownership. The number of independently-owned titles began to diminish as rapidly as the fortunes of the industry grew. By the 1990s, 77 percent of the nation's newspapers had been consolidated into a diminishing number of increasingly powerful groups, as fish were eaten by bigger fish.

Figure 2-4: U.S. newspaper ownership consolidation



Stock exchanges began to see newspapers as ‘good business’, particularly when their “assets” were in monopoly markets, and were able to withstand the cyclical effects of economically-sensitive advertising like real estate and employment. Gannett provided a perfect example. Spectacular growth was fuelled by the acquisition between 1970 and 1989 of 69 daily newspapers, 16 television stations, 29 radio stations, and an outdoor advertising business with 45,000 billboards in the United States and Canada.

Between 1967 and 1987, the company had an uninterrupted pattern of growth (Neuharth 1989, 180):

- Annual revenue rose from \$US186 million to \$US3.1 billion.
- Annual profit increased from \$US14 million to \$US319 million.
- The company experienced 80 uninterrupted quarters of earnings gains.
- Shareholder dividends increased 20 times in 20 years.
- The value of 100 shares purchased in 1967 increased, with stock splits, from \$US2,700 to \$US74,588.

- Within five years of stock exchange listing, Gannett stock was selling at twice the average Standard & Poor price-earnings ratio.

Gannett smoothed out its earnings by investing in plant and staff during periods of growth and cost cutting in lean years. In doing so, the company satisfied what Meyer described as the financial analysts' "lust for predictability" (1995, 42). This earnings management provided a further model for other owners to follow, but also created an unfortunate pattern of fluctuation in editorial resources and the amount of space devoted to editorial content.

In his autobiography, Neuharth sets out the strategy he employed to convince analysts that his recently listed company was worthy of their endorsement. It is the blueprint for relations between media companies and analysts throughout the Anglo-American financial markets. Analysts, he said, did not want to know how many journalism prizes had been won or the quality of editors and journalists. The bottom line was paramount: "Gannett was a dependable profit machine in good times and bad" (1989, 178).

Media companies in other markets saw the advantages of acquisition, but not always as the buyer. In Britain, where the number of newspaper-owning companies dropped from 490 in 1961 to 220 in 1977, international conglomerates (many with significant interests outside the news media) began buying newspapers. Between 1969 and 1986, nine multinationals bought 200 newspapers and, as Curran notes, exposed titles to influence from the financial and industrial sectors because of conflicts of interest (Curran & Seaton 1997, 82).

In Ireland, Dr Anthony O'Reilly began to create what was ultimately a star-crossed media empire by buying the *Irish Independent* in 1973 and Ireland's *Sunday Herald* in 1978.¹⁵ In Canada, 75 percent of newspapers were chain-owned by 1980. This percentage of chain-ownership was matched in New Zealand by 1985, while by 1989 Rupert Murdoch's News Limited controlled 70 percent of Australia's metropolitan daily circulation.

Murdoch took News Limited from Australia to the United Kingdom and the United States, beginning with his purchase of the *News of the World* in 1968 and culminating

¹⁵ In the 1990s his group expanded into the United Kingdom (*Independent*), South Africa (The Argus Group), Australian (Provincial Newspapers of Queensland) and New Zealand (Wilson & Horton).

by 1990 in his entry into both markets with direct-to-home satellite broadcasting – having collected the *New York Post*, *The Times*, the *Sun* and 20th Century Fox along the way. It was at this point that gravity began, metaphorically speaking, to re-assert its force in a portent of what would befall others almost two decades later.

2.1.3 Destabilising phase

In 1990, Murdoch's News Corporation,¹⁶ which had been propelled skyward by huge bank loans, ran out of fuel and stalled. Banks would no longer add to his company's \$US7.6 billion debt, and News Corporation found itself on the brink of foreclosure.

The empire was saved only after a masterful effort by Murdoch who negotiated with 146 banks to reschedule the debt, perhaps relying on the belief that the debt level was so high the banks could not afford to let News Corporation fail (Greenslade 2003, 559). However, Murdoch also enacted a clearly-explained recovery strategy that included share issues, significant sale of assets, cost cutting, restructuring, and commitment to a diversified entertainment industry profile. Within a year, profit had risen by 315 percent and the company's share price had quadrupled from a low in January 1991 of \$AU2.65.¹⁷ There were four lessons in the near-disaster:

- Leveraged acquisitions must be kept within manageable limits.
- Divestiture may be a strategic necessity.
- Transparency in governance and strategic management re-assures lenders.
- The share market rewards profit.

The lessons may have influenced the future activities of News Corporation, but they were not universally acknowledged or followed by others. Indeed, debt-funded acquisition became a regular occurrence.

By the early 1990s, the transnational conglomerates (Atlantic Richfield, Lonrho, Reed International, Thomson, and Trafalgar House) had sold their U.K. papers, and not always to august buyers. Reed International's Mirror Group was sold to Robert Maxwell (whose embezzling was discovered after his death), the *Daily Telegraph* to the Hollinger Group (whose chief executive, Conrad Black was later jailed for fraud), and

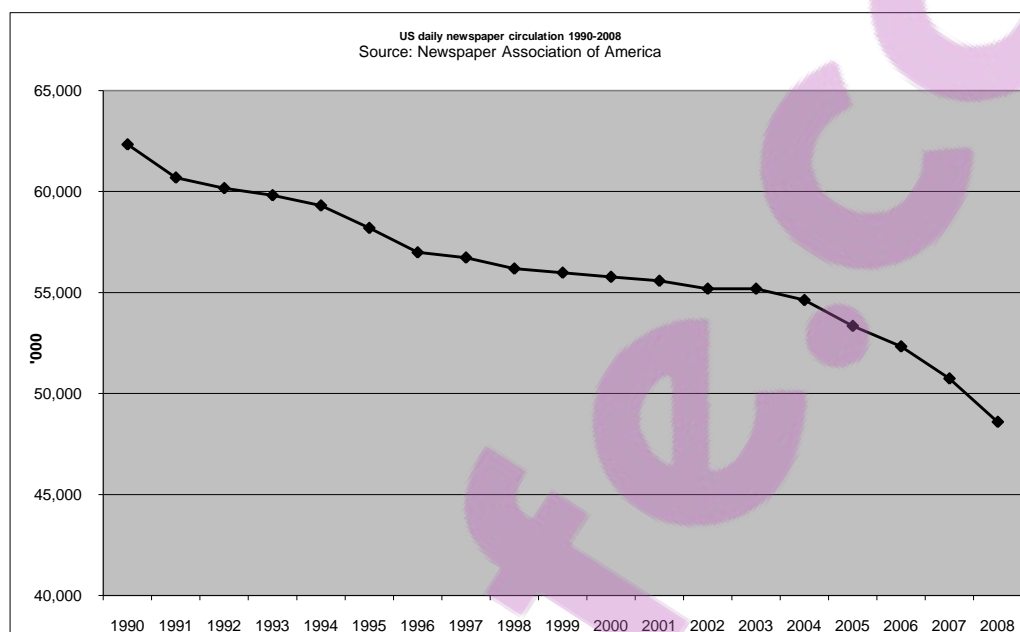
¹⁶ The group changed its name from News Limited to News Corporation in 1979.

¹⁷ "Back from the Brink", *The Economist*. London: Dec 7, 1991. Vol. 321, Issue. 7736, p. 77 (2 pages).

the *Express* newspapers to Richard Desmond (owner of a pornography empire). This phase also coincided with other notable changes in the newspaper environment.

U.S. daily newspaper circulation in 1993 dipped below 60 million for the first time in 30 years, and marked the beginning of a year-on-year decline that continued unabated, and which began to accelerate in 2004.¹⁸

Figure 2-5: Years of circulation decline



The American newspaper industry had been relying on basic circulation sales figures for decades and had painted pictures of a strong industry. However, there had been signs of decline well before 1993. The proportion of the population reading daily newspapers dropped from 78 percent in 1960 to less than 40 percent by 2000 (Meyer 2004, 16).¹⁹ There was a similar trend in Britain, with the proportion of the public reading a newspaper dropping from 85-90 percent in the mid-1960s (Tunstall 1996, 223) to 45 percent in 2006.²⁰

In circulation terms, the first decade of the 21st century was a picture of decline across most Anglo-American markets. While some major metropolitan dailies (nationals in the case of the United Kingdom) enjoyed occasional lifts in circulation, the general trend

¹⁸ Source: <http://www.naa.org/TrendsandNumbers/Total-Paid-Circulation.aspx>.

¹⁹ Television's evening news audience also declined – from 52.1 million in 1980 to 28.8 million in 2004 (*State of the Media 2005* report by the Project for Excellence in Journalism).

²⁰ The number of hours per year spent watching terrestrial television news in Britain also declined – from 108.5 hours in 1994 to 90.8 hours in 2006 (*Ownership of the News*, House of Lords Select Committee on Communications 2008 Vol. 1, p. 24).

has been downward. The sole exception has been Ireland, which experienced later circulation gains on the back of the *Celtic Tiger*. Circulation of all Irish dailies rose from 567,000 in 1999 to 833,000 in 2008, and fell to 767,000 in 2009 as recession battered the Irish economy, with the *Irish Times* and the *Evening Herald* recording drops of 7.4 percent.

Table 2-1: Relative 21st century decline: Circulation '000

Year	Canada	U.K.	Ireland	Australia	NZ
2000	5,167	18,609	574	3,083	777
2001	5,185	18,297	588	No data	764
2002	5,005	18,349	591	No data	745
2003	4,930	17,450	772	2,582	739
2004	4,911	16,679	742	2,563	739
2005	4,799	16,571	758	2,555	729
2006	4,573	16,133	800	2,531	721
2007	4,699	15,482	797	2,513	711
2008	4,295	14,995	833	2,484	653
8-year change	-16.88%	-19.42%	+45.12%	-19.43%	-15.96%

Source: World Press Trends 2010

In order to offset these declines, and to meet the demands of shareholders, newspaper-owning companies capitalised on their unique position in print advertising. Many advertisers were hostage to what was often the only daily newspaper in town, because they sold products or services that could not be advertised as efficiently in other media. Supermarkets and department stores were particularly vulnerable because of the multi-item nature of their display advertising.

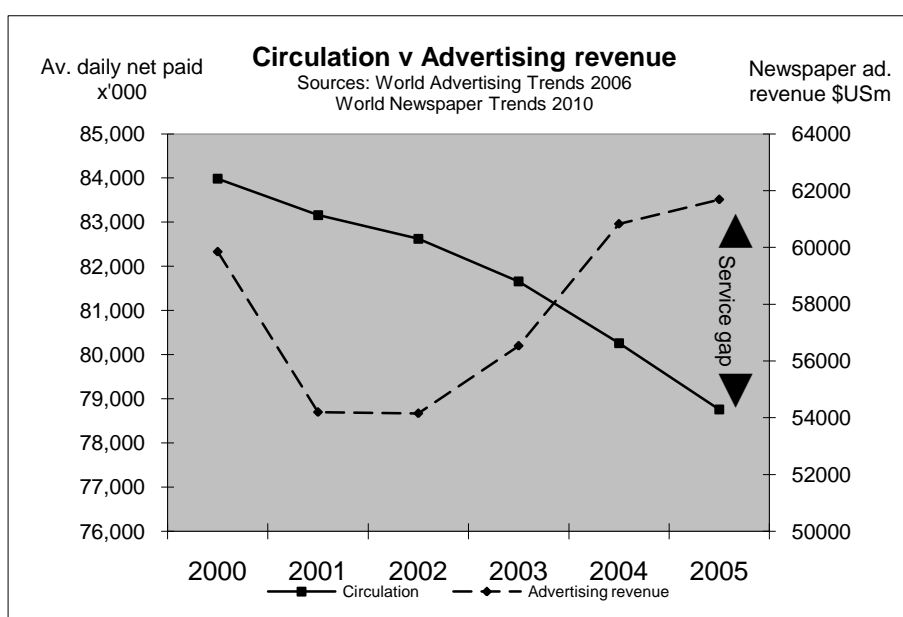
Newspapers continued to increase their advertising charges even though they delivered fewer potential customers, creating a service gap that would return to haunt them as alternative media became available. Most of the Anglo-American countries suffered revenue downturns in the economic shocks that followed the 9/11 attacks, but quickly recovered.

With the exception of the United States (which had experienced an unusually high increase in advertising revenue across all media in the millennium year) all countries had print advertising revenue in 2005 that was well ahead of 2000. In Ireland, revenue increased by 55 percent (circulation change up 32 percent) over the period, in Australia

by 49 percent (circulation down 17 percent)²¹, in New Zealand by 39 percent (circulation down 6.6 percent), in Canada by almost 32 percent (circulation down 7.1 percent), in the United Kingdom by 17.5 percent (circulation down 9.3 percent). In the United States, newspaper advertising fell 3.8 percent (circulation down 4.4 percent) over the period, although between 2002 and 2005 it increased by 7.5 percent.

Shirky notes that American newspapers had been in a market governed by supply rather than demand, and were able to over-charge and under-serve.²² Figure 2-7 combines the circulation totals and newspaper advertising revenue totals of the U.S., U.K., Canada, Australia, Ireland, and New Zealand and clearly shows that the decline in circulation and rise in revenue created the growing service gap that was common across the Anglo-American press. Only Ireland could claim to have a reasonable correlation between circulation and advertising revenue, when its cumulative inflation rate of 18 percent between 2000 and 2005 is factored into the increase.

Figure 2-7: Six-country aggregation of circulation and advertising revenue



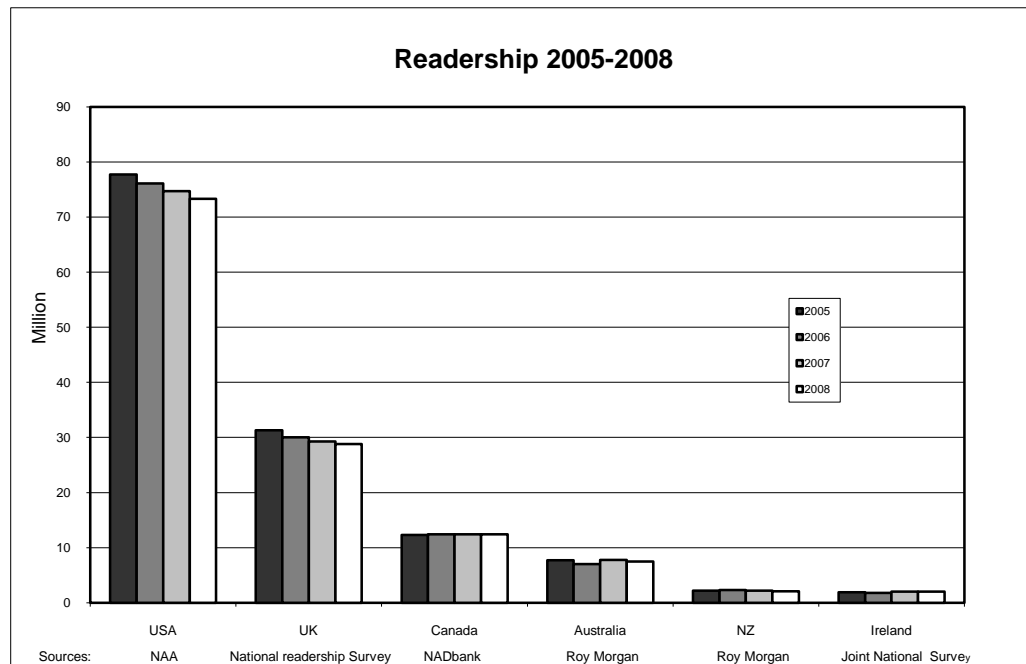
As circulations declined, newspaper managements turned increasingly to the use of readership figures rather than circulation, as a measure of audience reach, employing a

²¹ No nationwide Australian circulation figures are available for 2001-2002. For this exercise, the midway point between 2000 and 2003 figures (2,750,000) has been applied in both years. There are inconsistencies between sets of World Association of Newspapers data on Australian circulation between 1999 and 2003 and the apparent circulation decline 2000-2005 of 17 percent may be overstated. Australia represents approximately 3.5 percent of the combined average daily circulation of the six countries.

²² Clay Shirky, Address to Shorenstein Centre, Harvard University, 22 September 2009. Transcript downloaded from <http://www.niemanlab.org/2009/09/clay-shirky-let-a-thousand-flowers-bloom-to-replace-newspapers-dont-build-a-paywall-around-a-public-good>.

myriad of statistical permutations such as audience and section segmentation to persuade advertisers that print reached their target markets. However, analysis shows that on overall readership, the Anglo-American press did not close the service gap (Picard 2003, 130).²³

Figure 2-8: Declining or flat readership 2005-2008



Newspaper managers could not have been blind to the growing service gap, although they did little to reflect it in their pricing policies. They would have also seen over time, the declining share of the advertising spend that was going to newspapers. In the United States, the percentage declined from 36.9 percent to 28.9 percent between 1996 and 2005. The pattern was repeated elsewhere: The United Kingdom down from 40.4 percent to 35.5 percent, Canada from 40 percent to 35.1 percent, Australia from 41.7 percent to 38.7 percent, and New Zealand from 41.2 percent to 38.8 percent. Only Ireland's newspapers fared reasonably well with a 60.6 percent share in 1996, two-thirds of the market in 2001, and back down to 59.2 percent in 2005.²⁴

2.1.4 High-risk phase

Such statistics persuaded newspaper groups to 'up-size', by taking over other groups whose revenue could be added to their own to give an impression of growth. However,

²³ Methodologies for determining readership differ between the countries under examination. Analysis has been limited to assessing trends within individual countries between 2005 and 2008, the latest year for which figures were available in all cases.

²⁴ Source: *World Advertising Trends 2006*, World Advertising Research Centre, Henley-on-Thames.

the industry was by now in what might be termed third-stage acquisition. The first stage had been the buying of single newspapers by companies only a little larger than themselves. The second stage was the acquisition of one relatively small group by another of roughly similar size. The tertiary phase that now presented itself was one in which few independent titles of any worth remained on the market, and individual groups had grown in size on the back of the prosperity of the 1970s and 1980s leaving only relatively large organisations as the most likely acquisition targets. The erosion of foreign media ownership rules in a period of neo-liberal market reform also meant that news media groups could look beyond their own shores, but offshore acquisitions also were on a group scale.

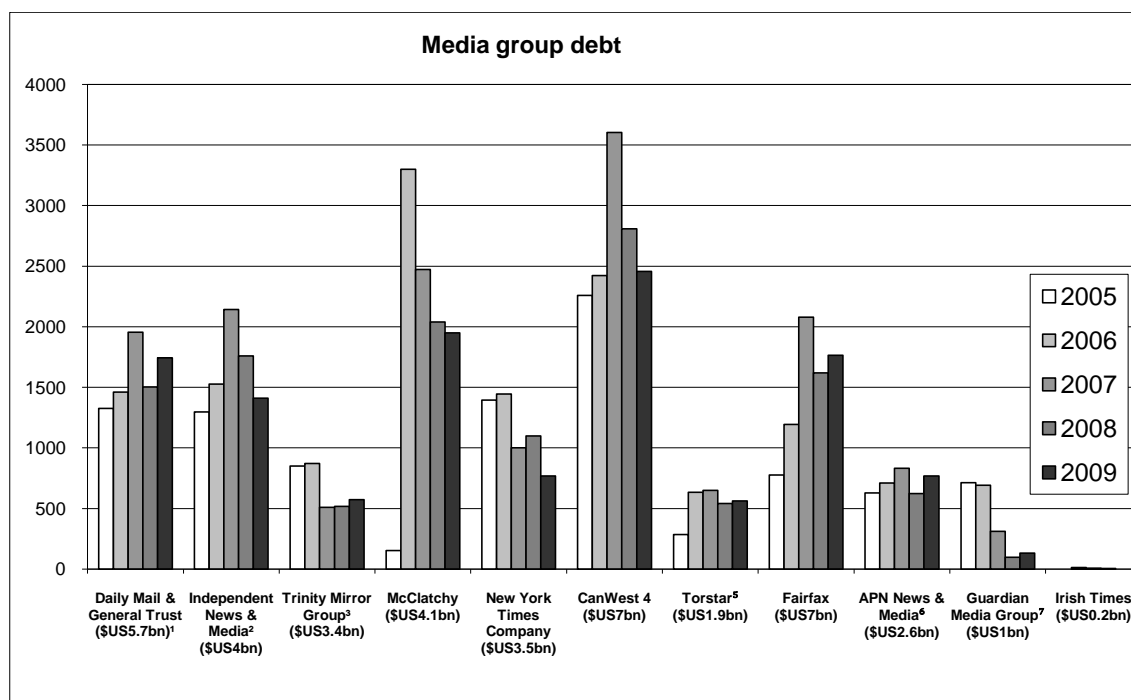
The news media groups were operating in mature markets, and saw little choice but to acquire the existing revenue streams of other groups, rather than invest in elusive organic market growth. They trusted that size would bring with it a form of protection (Gershon 2006, 213).

These mergers and acquisitions took place during a period when media stock prices were high, and this was reflected in the multiples demanded for the sale of these 'lucrative' businesses. Companies failed to heed the debt lesson presented by News Limited's near-collapse in 1990. Rupert Murdoch attracted criticism over the amount his group paid for Dow Jones in 2007 – News Corporation had the financial strength and diverse revenue streams to sustain the high-priced purchase.²⁵ The purchase of Dow Jones – \$US5 billion for an asset with operating income of \$US100 million is an extreme case, but it indicates the manner in which media companies discounted the relevance of revenue multiples in determining the prices they were prepared to pay to increase the size of their businesses. In so doing, those without diversified profit bases made themselves vulnerable. Conservative debt-to-equity ratios gave way to highly leveraged regimes, in which the servicing of debt and the maintenance of profit levels became a difficult juggling act that had a greater sense of urgency than Neuharth's revenue/cost management of the 1970s and 1980s. In fact, groups were building increasingly high debt mountains as they sought to use acquisition as a substitute for

²⁵ News Corporation's debt rose from \$US11 billion in 2000 to \$US14.3 billion in 2009. The diversified conglomerate's assets of more than \$US62 billion, a cash balance of \$US6.5 billion (at the end of 2009) and decreasing reliance on advertising revenue allowed the group to maintain stable credit ratings.

organic growth. The buying spree reached its zenith in 2006-2007, on the eve of the credit crisis.

Figure 2-9: High debt burdens



Note. Group assets in 2009 shown in brackets (DMGT assets 2007); INM Group 2009 figures as at 30 June; Trinity Mirror 2009 as at 25 October; CanWest 2009 as at 30 November; Torstar 2009 as at 30 September; APN News & Media 2009 as at 30 June; currencies converted to \$US at mid-market rates at noon on 1 December in relevant year.

These were not isolated excesses by one or two groups: There was an almost boilerplate institutional response to the newspaper industry's declining economic indicators. The common strategy was to buy groups similar to their own (or be bought) and to acquire digital (Internet) properties irrespective of the inability to apply traditional due diligence to their sales forecasts. The Jordan, Edmiston Group reported that, led by the online media and marketing services sectors, M&A for the U.S. media and information industries reached record highs in 2007 with 838 transactions and nearly \$110 billion in value for the year – up 32 percent and 79 percent, respectively, over 2006 levels. The scale of the newspaper company mergers and acquisitions can be judged by the fact that while the number of sales dropped by almost 40 percent to 45 transactions, the combined value rose by over a third – from \$US10.3 billion to \$US13.8 billion. In Britain, PriceWaterhouseCoopers reported that the media sector's M&A activity hit a record level in 2007. The publishing portion was substantially boosted by the Canadian Thomson Corporation's acquisition of the Reuters News Agency for €13.5 billion, which accounted for more than half the total value of media acquisitions that year. In

Australia in 2007, Fairfax completed its \$A9 billion merger with Rural Press, while in New Zealand, Ironbridge (an Australian-based private equity company) paid \$NZ741 million for radio and television broadcaster MediaWorks. That year, Independent News and Media – the group led by Sir Anthony O'Reilly, made an unsuccessful bid for the remaining shares in the trans-Tasman group APN News & Media in which it had a 39.2 percent holding. The bid valued the company, which publishes New Zealand's largest daily newspaper (the *New Zealand Herald*), at \$A2.97 billion.

Such mergers and acquisitions added materially to annual operating accounts. For example, in 2006 the total revenue of the Australian Fairfax group was \$A1.9 billion and only two years later (after its merger with Rural Press) revenue had increased to \$A2.9 billion. Thomson's revenue in the year before its merger with Reuters was \$US11.7 billion and a year later had risen to almost \$US13 billion.

The emphasis on growth and the bottom line (Baker 2007, 28-9) was enhanced by the widespread practice of 'incentivising' senior executives against profits. Bonuses were based on profit margins and year-on-year growth – both of which encouraged expansion and rigorous cost-containment. A component of the annual bonus was often given in share options, which provided an added incentive for executives to impress analysts and keep the share market happy. In effect, encouraging rises in stock prices and preaching the industry's bright future put extra money in the executives pockets. In 2007, the chief executives²⁶ of prominent newspaper-owning companies had significant share options or incentive shares that were exercisable at varying times and under varying conditions. These options or incentive shares were often addition to existing holdings in an organisation's ordinary shares, and while share prices remained high, these men and women could display significant paper wealth.²⁷

²⁶ Deputy CEO in the case of Fairfax. He was acting CEO and later was confirmed in that position.

²⁷ Jensen & Meckling (1976) and An, Jin & Simon (2006) found that equity holding by managers tended to lower debt-to-equity ratios. Acquisition raised the asset base of these companies at the same time as it increased the debt servicing burden.

Table 2-2: Executive share options 2007

Company	Options held by CEO
McClatchy (USA)	1,020,000
Gannett (USA)	1,057,000
Trinity Mirror (U.K.)	562,000
Johnston Press (U.K.)	472,600
Independent News & Media (Ireland)	5,200,000
APN (Australia)	2,500,000
Fairfax (Australia)	1,074,000

Then, to return to our opening metaphor, Pompeii was engulfed in a massive eruption. Financial institutions that had begun to look unstable late in 2007, began to tumble in 2008 as a liquidity crisis in the American financial sector deepened and infected other countries. The effect on the newspaper industry was three-fold: it lost the ability to re-finance its debt, advertising and circulation dropped, and its share prices plummeted.

2.2 Crisis

High debt burdens left these companies ill-prepared to weather the recession, and their newspaper subsidiaries in more dire straits as the common practice had been to burden the subsidiaries' balance sheets with debt. As a result, newspaper subsidiaries that may have been marginally profitable in an operating sense were plunged into large deficits by the requirement that they carry the debt on their books.

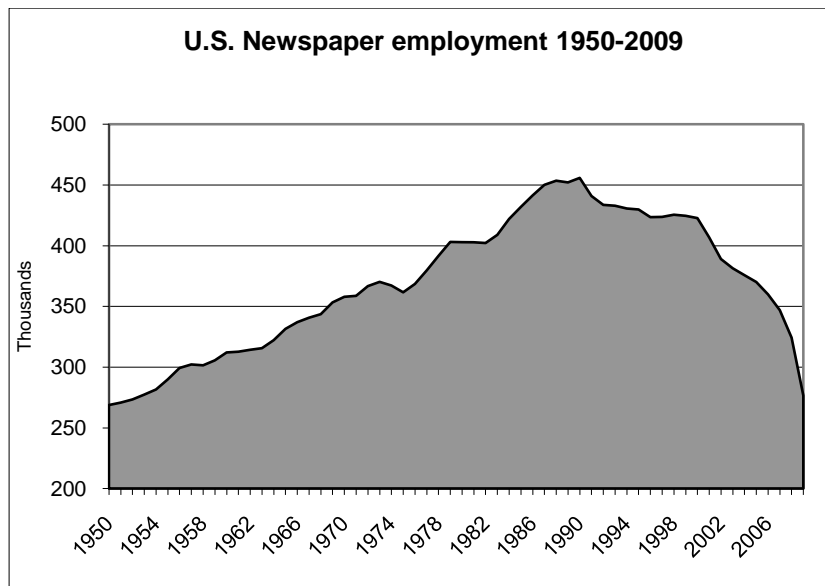
The adverse impact in 2009 exceeded the effects of the economic downturn that followed the bursting of the dot com bubble, which had in turn been compounded by the terrorist attacks in New York and Washington. U.S. newspaper advertising revenue had fallen by 9 percent in 2001, Ireland's by 9.3 percent, Australia's by 11.8 percent (2000-2002), Canada's by 3 percent, and the U.K. by 2.3 percent (although national revenue dropped by 8.4 percent). New Zealand newspapers had shown a modest 1.6 percent gain overall but the country's largest newspaper, the *New Zealand Herald* suffered a three percent drop. Staff and budget cuts had been widely applied during that period, so by the time the recession of 2008 hit, newspapers throughout the Anglo-American market were operating at or below credible editorial minima.

Advertising revenue was hit in 2008, but the statistics for 2009 provide a picture of full-year impact. In the United States, newspaper advertising revenue dropped 27 percent on

the previous year – to the lowest level since 1986 – and some newspapers reported their advertising sales were down by half. In the United Kingdom, press advertising²⁸ dropped by 23 percent and in Ireland national newspaper advertising revenue was cut by a third, while in New Zealand and Australia advertising revenue was down by 18 percent and 15.7 percent, respectively. In Canada, total print revenue dropped by 18 percent.

As a result, companies took desperate measures and instituted large cost-cutting measures that had immediate effects on staffing levels. In Britain, the National Union of Journalists estimates that more than 1500 journalists lost their jobs on local newspapers between May 2008 and May 2009.²⁹ Employment in U.S. newspapers, which had hovered around 423,000 in the second half of the 1990s, dropped to 406,700 in 2001 and 389,000 the following year. The rate of decline in US newspaper employment then steepened, but in 2008 it gained alarming momentum. The graph below illustrates the apogee and perigee of American newspaper employment, which by 2010, sat below that of 1950.

Figure 2-10: U.S. employment decline



The Pew Centre's *2010 State of the News Media Report* estimates that the number of reporting and editing positions in U.S. newspapers shrunk by 27 percent between 2007 and 2009. In Australia, Fairfax Media announced it would cut 550 jobs in 2008, and the

²⁸ Includes magazines and directories.

²⁹ U.K. House of Commons Culture, Media and Sport Committee, *Future for Local and Regional Media* April 2010 p. 12.

number of full-time journalists was estimated to have declined by 13 percent across all Australian media between 2001 and the end of 2008 – approximately from 8,500 to 7,500.³⁰

In a number of cases reductions were not enough, and in the United States and Britain, newspaper closures began. Fifty-three regional and local British newspapers closed, and an analyst giving evidence to the House of Commons inquiry into the future of local and regional news estimated that by 2014 half of the 1300 titles would no longer exist.²⁵ In London, the *Evening Standard* and the *Independent* titles were sold to Russian oligarch Alexander Lebedev for nominal sums.³¹ In the United States in 2009, 11 city newspapers, including the *Rocky Mountain News* and *Cincinnati Post*, were closed. The *Philadelphia Enquirer* and *Daily News*, which had been bought for \$US560 million in 2006, were sold four years later for \$US140 million – to creditors who were owed \$US360 million. More than 100 American newspapers reduced the number of days on which they published and the *Christian Science Monitor*, which is discussed in Chapter 5, moved its weekday print edition online in 2009 and printed only a weekly magazine.³²

The debt position of some companies sent them over the brink into bankruptcy. The largest collapse in the U.S. newspaper market was the Tribune Company, which had been subject to a 2007 buyout led by real estate investor Sam Zell that was so highly leveraged that creditors in subsequent bankruptcy proceedings alleged “fraudulent conveyance”. The \$US8.2 billion buyout was, they alleged, so debt-burdened that the company was insolvent from the beginning. The Tribune Company, which owns the *Los Angeles Times* and *Chicago Tribune* as well as television stations, filed for Chapter 11 protection in December 2008. In January 2010, the parent company of MediaNews (publisher of the *Denver Post*³³ and 53 other daily newspapers across the United States) also filed for Chapter 11 protection with liabilities “between \$US500 million and \$US1 billion”. In Canada, CanWest Global Communications failed to make an interest

³⁰ *Life in the Clickstream: The future of journalism*, Sydney 2008, Media Entertainment and Arts Alliance.

³¹ Dublin-based Independent News & Media was paid £1 for the *Independent* and *Independent on Sunday* but agreed to pay Lebedev £9.25m over 10 months to take on the paper's liabilities and obligations.

³² The *Monitor*'s Editor, John Yemma, told *Poynter Online* on 23 October 2009 that 93 percent of the printed daily's 43,000 subscribers agreed to switch to the new weekly print magazine and its circulation had increased to 67,000 fully paid subscribers plus 18,000 trial subscribers in seven months. Page views on its daily website had increased 20 percent in the same period.

³³ Direct competitor of the *Rocky Mountain News* which closed in 2009.

payment of \$US30.4 million on senior subordinated notes in March 2009, but secured a series of extensions while it sought to restructure its debt. In January 2010, its publishing division (which owned the nationally distributed *National Post* and 10 metropolitan dailies) went into bankruptcy protection and four months later was sold to a group of unsecured creditors for approximately \$US1 billion. The company owed more than \$US900 million in secured senior debt (mainly to Canadian banks).³⁴ In February 2010, the second largest newsprint manufacturer in North America – White Birch Paper Company, filed for bankruptcy protection in Quebec citing a decline in newspaper demand.

Some avoided bankruptcy. In Britain, regional newspaper publisher Johnston Press restructured its debt in August 2009 only days before its loan covenants were due to be tested. In March 2009, it had warned that its future as a going concern was uncertain without debt restructuring. In Ireland, Independent News & Media was unable to repay bonds in May 2009 and received extensions, but five months later was forced into an equity swap with bondholders, which reduced the shareholding of Sir Anthony O'Reilly who had retired as chief executive in May.

2.3 Root causes

There is no doubt that the credit crisis and resultant recession created extraordinary circumstances, but the newspaper companies with parents listed on the stock exchange were predisposed to infection. They succumbed to the flaws in their business model.

A.J. Leibling said that the function of the press in society was to inform but its role was to make money (1964, 6). The newspaper industry in 2009 had reached a low point, because fundamentally, it had lost sight of the functional side of Leibling's equation in its quest to fulfil its role as a money-maker. Its ownership structure had changed to one primarily based on publicly traded shares held by investors attracted by years of profit margins that exceeded Fortune 500 and FTSE averages. Then, spurred on by market expectations, companies had their judgement clouded by a self-induced belief that they must expand or die. Incaution was fed by ready access to credit, by a culture of management incentives and bonuses, and by a sense of legitimacy instilled by mergers and acquisitions across the media sector. However, market expectation and economic

³⁴ A statement by CanWest on 10 May 2010 said the buyers (a group led by the *National Post* president and CEO Paul Godfrey) intended to publicly list the new company.

reality were separated by a widening gulf. The notion of newspapers generating sufficiently large profits to sustain both handsome dividends (for a large shareholder base) and debt servicing fell into that chasm.

The newspaper industry reached a point where it was faced with the following irreversible conditions:

- Its traditional advertising monopolies had been broken by the Internet.
- Benefits such as de-manning and productivity improvement that had accrued from editorial computerisation in the 1970s and 1980s had fully depreciated.³⁵
- Circulation declines could not be substantially redressed and cover price increases became counter-productive.
- The ability to extract costs became progressively more difficult and damaging.

Newspaper executives have not been blind to these developments, but the business model under which they all operated was incapable of overcoming the effects. Without comparable alternative revenue sources (and they have proven elusive), newspapers cannot continue to provide above-average profit margins and highly attractive year-on-year growth. They cannot service high debt levels to sustain growth-through-acquisition in markets that are, in any case, already concentrated to levels that risk regulatory intervention. In short, the future is one of contraction rather than expansion, which suggests that newspapers' attraction as commercial investments will also decline. That is not to say that newspapers are finished, but rather that the scale and structure are likely to change. Media companies will need to diversify to remain attractive to the share market (News Corporation has shown the way), and newspapers are likely to become minor parts of their portfolios. Those companies in which families continue to hold sway through two-tier voting systems will face mounting demands from public shareholders for voting parity which could push the enterprises toward more profitable business. Investor pressure may lead to divestiture of newspaper titles or further closures – and in the midst of these structural changes, professional print-standard journalism is under immense pressure – caught between budget cuts and the Internet.

³⁵ Introduced to the U.S. in the 1970s and to U.K. national press in 1986. First used in N.Z. at *Timaru Herald* in 1988 (New Zealand Press Association introduced computerised wire services in 1978).

2.4 Journalism's future

Professional journalism has always had its own flaws, and some would argue that commercial news media have never satisfactorily discharged their functions in the service of democracy. McChesney and Scott (2004, 7) argue that in the American context at least, failure by the commercial press to meet these obligations is now mainstream media theory, and that the notion of a press that has served the ends of democracy has been illusory. Numerous texts suggest newspapers were in trouble well before the dawn of the Internet, and when the Internet arrived, journalism itself was in a 'full-blown crisis' involving the 'near total elision of public service priorities by commercial imperatives' (*ibid.*, 2).

There is no single source for the malaise that confronts journalism. It is possible however, that its roots can be traced to changes in the way news has been conceptualised – not by audiences but by those who purvey it. The advent of commercial television led to news being treated as entertainment (Postman 1984) and, the stock market listing of news media companies, bringing with it a business ethos driven by the bottom line led to its commercialisation. The news came to be regarded by media executives as a 'product' no different from the other commodities with which investors were familiar. News media, which had previously been set apart from other businesses by their 'fourth estate' status, became integrated into the business world, culminating in mass consolidation and absorption in some cases into conglomerates with wide-ranging interests. Group owners, often removed from the cities in which they had news media outlets, were less constrained by local community pressure in adopting policies and practices. These approaches occurred in parallel with a decline in civic engagement (Putnam, Cappella & Jamieson). Consequently, by the time the Internet began to challenge traditional media, the intrinsic worth of news had already been devalued, and the survival of traditional journalism as a significant social force was under threat.

News as entertainment did not begin with commercial television. The lurid details of crimes and misdemeanours that filled the pages of the 19th century *News of the World* and *New York Herald* were designed to entertain and titillate their readers. Later, the emergence of news feature sections and supplements in quality newspapers was recognition that even 'serious' publications could entertain as well as inform.

Television, however, brought a fundamental change in thinking about what ‘the news’ was and how it should be presented to audiences. News became part of a programme mix: vying with comedy and quiz shows, crime dramas, and ‘dramatised’ history. It was given a prime time place in the programme schedule that may have emphasised its importance, but also placed strong pressure on its journalists to perform. As Postman says, “a news show, to put it plainly, is a format for entertainment, not for education, reflection or catharsis” (*ibid.*, 87-88).³⁶ And it worked. Television advertising revenue in 1981 represented 62 percent of the newspaper spend in the United Kingdom and 58.5 percent in the United States.³⁷ In both countries a decade later, the figures had risen by 10 percentage points.³⁸

The response, over time, was to recognise that newspapers could not beat television – so they should join it. There were the obvious moves where regulation allowed, of buying television stations, but there was also a more subtle and corrosive development. Newspapers began to treat news as entertainment and to mimic the devices that were television’s stock-in-trade.³⁹ Stories began to reflect the shorter, simpler construction of television news with lower levels of detail, qualification, and explanation. Story angles, while always designed to engage the reader, began to titillate and entertain. Wherever possible, stories were personalised (the way television brings the all-important visual element to a story that otherwise ‘lacks pictures’) and framed in ways that readers would ‘enjoy’. What had been primarily a textual medium also became more visual, with significant increases in the use of photographs and graphic elements. Page design became more modular. Where once the vertical column had characterised newspapers, now a square or horizontal box (a subliminal reminder of the television screen) became a characteristic of many newspapers. Political journalism moved from the formal discourse of debate coverage and policy analysis, to a form that had parallels with entertainment such as sport, game shows and, at times, soap operas. It became spectacle and combat, rather than representation and government. In order to entertain, political journalists had to lower the level of esteem in which politicians were held. Context and reasoned analysis became less common, as political journalists strove for effect. As a result, political stories assumed less importance to the audience but they were not alone.

³⁶ Even the model of public service broadcasting, the BBC, was not immune to the effects that the medium had on the news. It was as aware of visual impact as its commercial counterparts (Born 2005).

³⁷ U.S. total includes broadcast television and cable TV.

³⁸ Sources: AA/WARC and U.S. Television Bureau of Advertising.

³⁹ See, for example, Stepp 1990.

Adding entertainment to the news generally diminished the perceived importance and credibility of the information, and if news became less relevant, so too did the media that distributed it. Newspapers contemplating more graphical designs (as a response to claims young readers were more visually oriented) risked losing some of their previous gravitas if they adopted the approach or some of their advertisers if they did not.

Advertisers who exerted a strong influence over commercial television schedules, began to influence the structure of the newspaper. Technical constraints often limited the size of the main news section of newspapers (the prime location for advertising) and publishers had to find ways of attracting advertising to other sections. Lifestyle and special interest sections proliferated and attracted advertising. Advertising grew because such sections were popular with readers.⁴⁰ These sections proliferated as ownership aggregation and conglomerate control increased. Their inclusion in publications was consistent with conglomerates' revenue expectation and their familiarity with entertainment and consumer goods. Newspapers' sky boxes or promotional panels at the top of the front page highlighted specialist sections ahead of the news and reinforced the entertainment/consumer focus.

This consumer focus became increasingly prevalent, and as the power within news media organisations shifted from editors to business managers, it was reinforced in both overt and subliminal ways. News media companies either established or expanded marketing departments that applied the same market research techniques to news, as had been used in consumer goods and services. The audience segmentation in this research correlated with advertising demographics, and inevitably, any data that led to editorial change to meet a perceived reader need, also benefited advertisers. Schultz, citing Australian examples, notes that strategies to provide more high quality journalism 'barely figured' in marketing plans (Schultz, 190) but these departments were deeply involved in the creation of new sections of the newspaper. Marketing departments were at the forefront of treating the news as a commodity, 'normalising' news content, so that it could be regarded in the same way as the other consumer goods with which they were familiar. They were aided by managers who no longer referred to the newspaper as a

⁴⁰ Advertisers continue to be drawn to such sections. The New Zealand Newspaper Advertising Bureau reported in June 2008 that 1.2 million people (out of a total population of 4.2 million) read at least one newspaper lifestyle section a week. The NMR "National Readership Survey" Q2 2007-Q1 2008 quoted by the bureau, found 78 percent of lifestyle section readers decide where to purchase goods and services using their daily newspaper.

‘publication’, but as a ‘product’ or a ‘brand’. It signalled the downgrading, in the minds of managers, of the journalistic ethos that had previously ranked above or outside business considerations.

Commoditisation of the news not only characterised it as a familiar commercial object. but by suggesting that news was no longer ‘special’, gave the appearance of a reduced sense of obligation to meet certain public needs and civic responsibilities. In parallel with this terminological change and marketing focus, there was an administrative shift in many media companies that drew editorial departments into the same management practices as commercial departments including performance monitoring,⁴¹ and the creation of detailed budgets that, by costing coverage of unspecified news events, attempted to predict the unpredictable. Attempts were made to ‘benchmark’ journalistic performance because, as the World Association of Newspapers noted in 2002, editors needed to “demonstrate the quality, value and efficiency of their resources”.⁴² Many journalists saw these moves as the removal of some of the symbolic practices that set them apart from ‘the business side’. When combined with the cuts to editorial budgets and resources that became a familiar consequence of company takeovers and of economic downturns, the impact on journalistic autonomy became manifest (Underwood 1995). Commoditisation, trivialisation, and conglomeration became recurrent themes in media criticism. Not only were academics alarmed by the effects of the phenomena, but the general public displayed a growing antipathy toward the media and toward journalists (Downie & Kaiser 2003, 28). There was a decline in reader and viewer loyalty that was reflected in both circulation and television audience ratings. Any sense of foreboding on the part of owners was ameliorated, however by continuing increases in overall advertising revenue, the trend that, as has been noted, fuelled investor expectations of high margins and double-digit year-on-year growth. The benefits of higher revenue were taken to the bottom line, rather than investment in journalism. The net result was that, by the time significant Internet services made their appearance in the latter part of the 1990s, the delivery of traditional journalism was already in trouble.

⁴¹ Management ‘tools’ such as Key Performance Indicators (KPIs), 360-degree assessments, and ‘performance’ bonuses.

⁴² *Shaping the Future of the Newspaper*, Vol. 1 No. 5 May 2002.

The impact on newspaper advertising (particularly classified listings) is well documented. The revenue decline was damaging, but it also occurred in parallel with a growing public belief that informational needs could be met entirely by the Internet and it would be 'free'.⁴³

The Internet holds out two basic democratic promises. The first is access to a cornucopia of knowledge. The second is the creation of a non-commercial information common within which citizens can freely exchange that knowledge and form opinion. There is little doubt that with 119.3 million websites on the Internet, the first promise has been met.⁴⁴ Some would say it has been over-subscribed. The second promise however, may be seen as a glass half full or half empty. The issue is not the quantity of material being placed on the Internet, but its nature, quality, and distribution.

The optimistic view is one of empowerment. A report by the Aspen Institute's Forum on Communications and Society in 2007, said the Internet "represents a direct challenge to the primacy of market-based production with a new model of 'social production'". It reported that 47 percent of Americans who used the Internet felt empowered by it, and listed politics, healthcare, commerce, creative arts, and 'the millions of people who have started blogs to share their opinions with the world at large' as areas where the Internet had engendered a sense of involvement and choice.⁴⁵

The pessimists see the Internet as being overwhelmingly colonised by commerce, which has applied proprietary principles to create an 'anti-commons' in which the individual's voice and civic empowerment has been subsumed. The non-profit sector through which citizens organise themselves for collective efforts shows no greater 'share of market' in the new medium than it did in traditional media, buried under commercial content (Hunter 2003, Chester & Larson 2005). Even the pessimists however, acknowledge that the Internet has already met some of the promise.

Are we at that critical juncture, where citizens have overcome the impediments that have stood in the way of their producing material to rival the output of professional reporters, and are able to counteract the effects of mainstream media decline? There are

⁴³ A 2008 Digital Future study by the Annenberg School of Communication at USC found that 21 percent had cancelled newspaper or magazine subscriptions because content was available online, and 27 percent stated they would not miss the print edition of their newspaper if it was no longer available.

⁴⁴ Total number of active registered websites recorded by domaintools.com as at 29 May 2010.

⁴⁵ Aspen Institute 2007, *Next Generation Media: The global shift* (Richard P. Adler, *rapporteur*).

numerous potential ‘suppliers’ on the Internet. Some organisations have in fact come to resemble traditional media, employing trained journalists and observing journalistic norms and ethics. An example is the commentary website talkingpointsmemo.com, whose founder Joshua Marshall received a George Polk Award in February 2008 for legal reporting. It carries advertising, utilises public fund-raising, and has a paid staff of 20 (including a five-person Washington bureau).⁴⁶ It has six associated websites and a high level of reader contribution. Huffingtonpost.com in the main aggregates the work of other media and hosts 3000 bloggers. It has a similar structure to traditional media organisations, and a newsroom employing professional journalists. In 2009 it increased from 49 to 89 full-time employees, although only 11 were devoted to producing original content according to the *Los Angeles Times*.⁴⁷

Other ‘independent public interest’ news sites rely heavily on professionals, and it is difficult to define their output as ‘citizen’ journalism. They might more accurately be described as non-profit news organisations. The Hauser Centre for Non-Profit Organizations at Harvard University has compiled a list of 39 non-profit news organisations, of which 20 are wholly or principally web-based.⁴⁸ Some web-based news organisations seek to fill gaps left by the shrinkage of traditional coverage. VoiceofSanDiego.com for example, was a prototype for non-profit news start-ups and is now a major source of news in the southern California city. It was created in 2005, following dissatisfaction with local coverage and employs a full-time staff of nine journalists. MinnPost.com was established in 2008 following retrenchments at the two newspapers serving Minneapolis-St Paul. It has a full-time staff of seven, and 40 freelance contributors. The latest addition to donor-supported enterprises is Baycitizen.com, a website in San Francisco that began operation in May 2010 as an online-only rival to the *San Francisco Chronicle*. It has a staff of 15 professional journalists, and is funded by a private equity billionaire with contributions from other donors. The San Francisco newspaper has been particularly hard hit by the Internet. The city has high Internet usage, is home to the classified advertising website

⁴⁶ Marshall’s coverage of the firing of eight United States attorneys under political circumstances contributed to the resignation of United States Attorney-General Alberto Gonzales. In September 2009 *The Atlantic* listed him among America’s 50 most influential commentators. Staff numbers cited are at 18 January 2011.

⁴⁷ James Rainey, “Will the Huffington Post Strategy Pay Off?”, *Los Angeles Times*, December 18, 2009.

⁴⁸ List compiled by Dr William Baker, a senior research fellow at the Hauser Centre.

Craigslist.com, and has been predicted to become one of the first major American cities with no daily newspaper.⁴⁹

The changing media landscape has also given rise to specialist organisations. ProPublica.org, which is examined in Chapter 8, exemplifies a new form of philanthropy-funded journalism. It specialises in investigative reporting and utilises both a website and arrangements with traditional media. It was established by professional journalists – Paul Steiger, the former managing editor of *The Wall Street Journal* and Stephen Engelberg, a former managing editor of *The Oregonian* and former investigative editor of *The New York Times*, and received a large grant from the Chandler Foundation. The staff of 32 includes seven Pulitzer Prize-winning reporters and editors. Some specialist groups hope to be self-sustaining. GlobalPost, for example, was established in 2009 to provide an alternative to what was seen as a shrinking coverage of international events. It has a network of correspondents in 50 countries, and has partnership agreements to supply foreign news to the *New York Daily News* and CBS News as well as its own website.

A number of projects are university-based. The Schuster Institute for Investigative Journalism was America's first such investigative reporting centre. It was launched in 2004 by Brandeis University "to help fill the void in high-quality public interest and investigative journalism and to counter the increasing corporate control of what Americans read, see, and hear". Charles Lewis, a former investigative journalist with *60 Minutes* who had pioneered the concept of specialist investigative entities when he set up the Centre for Public Integrity in 1989 (also discussed in Chapter 9), established the Investigative Reporting Workshop at the American University in Washington DC in 2008. The United Kingdom has an investigative reporting centre which emulates ProPublica. The Bureau of Investigative Journalism was established at City University in 2010.

These operations lie at the high end of what Bruns describes as "an emerging new media ecosystem – a network of ideas" (2008, 94). Below these websites are those that have professional editors who process material supplied by public contributors⁵⁰ (OhMyNews.com) and those with a more egalitarian outlook in which contributors also

⁴⁹ Richard Pérez-Peña, "As Cities Go From Two Papers to One, Talk of Zero", *New York Times*, 12 March 2009, p. A1.

⁵⁰ Who observe professional norms and ethics.

act as editors in citizen cooperatives (Indymedia.org). At the other end, are idiosyncratic ‘bloggers’, who may have their own weblog⁵¹ or contribute to social media sites such as Facebook, registering opinions and comments. Ordinary citizens who may not be regular ‘bloggers’ have contributed often graphic eye-witness accounts of news events such as Cyclone Katrina in 2005, and the Christchurch and Japanese earthquakes of 2011. Images also have formed a significant part of these contributions. The following – which took the viewer into the tragedy by showing what the victims experienced, is an example from the London bombings of 2005.

Figure 2-11: Passengers evacuate along Underground line after London train bombing.



Picture: AP (Used with permission)

Citizen cooperatives and regular bloggers who, as Blood (2003) puts it, “are doing journalism some of the time”. This journalism often takes the form of what Bruns calls ‘gatewatching’, a shift away from the publishing of noteworthy information to the “*publicising* of whatever relevant content is available anywhere on the Web (and beyond) and a subsequent evaluation of such material”. It is a function which its proponents believe can ‘limit or eliminate the need for journalistically trained staff’ (Bruns 2005, 2). Others go further and claim that the list of contestable activities is so wide-ranging that the question ‘who is a journalist?’ could be met with the answer ‘everyone’ (Friend & Singer 2007, 35-42).

⁵¹ Defined by Drezner and Farrell (2008) as “a web page with minimal to no external editing, providing on-line commentary, periodically updated and presented in reverse chronological order, with hyperlinks to other online sources”.

Does this level of direct information retrieval and creation, in fact allow society to forego the services of professional journalists? Gurevitch and Blumler (1990, 25-26) provide a useful normative check-list of what the public require of professional journalism and its institutions.

The press is capable of meeting the needs they enumerate, because they have been granted, or have appropriated, the status needed to meet them. They have access to information, the ability to interpret and evaluate it, and the means by which it can be disseminated to a broad and attentive audience. The effect over time has been the accrual of economic and political status that amplifies its power to the point where none of the functions identified by Gurevitch and Blumler is beyond its reach. The key to its power is critical mass.

This critical mass is what differentiates it from the Internet communities that are said to challenge mainstream news media. It can be explained first, by analogy. Imagine each member of the public as a feather and each journalist as an ounce of lead. Many feathers are required to fill a large, fluffy one-ton bag; far fewer units of lead are needed to form a one-tonne block. Both weigh the same but, when thrown, the impact of the former is far less than that of the latter. The greater impact of the press is due to its density – a concentration of resource, content, audience, and influence. It is this mass that allows it to assert its power and independence. The Internet by contrast, has a dispersed structure and multiplicity of ‘sole traders’ whose ‘weight’ is minimal, unless they are able to attract the attention of mainstream media outlets.

Fragmentation, and the tendency for Internet users to interact with those who share the same interests – what Sunstein describes as “echo chambers of their own design” (2007, 6) is an impediment to realising the democratic potential of the Internet. Equally injurious is the failure of the Internet to achieve the same simultaneous ‘reach’ as nightly television news or daily mass circulation newspapers. The risk is that common views, or a ‘national consensus’ will be eroded. There is no mechanism by which a majority of citizens can be expected to have accessed the same body of information on the Internet within a short timeframe. Indeed, it has been argued that Internet users do not constitute an ‘audience’ because the medium is a multipurpose technology loaded with a broad range of communication functions that does not denote the sharing of a common text (Liebes 2005). While such a claim is a step too far (individual websites do

have audiences that share common texts) it is recognition of the Internet's diverse purposes and emphasises its atomised nature. It is this atomisation that denies online contributors the critical mass necessary to create – and, more importantly, demonstrate the broad-based public opinion that is capable of swaying government policy. Where Internet contributors disclose wrong-doing by politicians or government officials, their role is catalytic: their claims generally lack strength until acted upon by mainstream media who may subject the allegations to further scrutiny.⁵²

The press' imprimatur is important, as it is seen to invest reports with the benefits of professional standards that the Internet may lack, because of its almost literal acceptance of the belief that the truth will emerge in the marketplace of ideas. Bruns' view of citizen journalism, for example, relies heavily on an assumption that the checks and balances inherent in journalistic norms will be provided by the scrutiny of many users – 'the power of eyeballs', who have the ability to correct mistakes. He likens the process to that of open source software which is progressively debugged by users (Bruns 2008, Ch. 3 & 4). It is at best, a haphazard approach to fairness and accuracy, and one which political elites and officials are apt to discount.

The direct contribution of weblog content to political education, choice, and involvement in established democracies is at best, inconsistent and inconclusive (Livingstone 2005, Cook 2005, Jenkins 2006).⁵³ The majority of political weblogs are a form of (usually partisan) political expression rather than participation and may be, on domestic politics at least, an echo chamber of what appears in mainstream media (Wallsten 2005). They may be less read than has been thought, command little trust, and may have 'failed miserably' when they tried to shape political outcomes (Drezner and Farrell 2008). They are an emerging form of expression and their eventual impact should not be under-estimated. But it is not journalism. Rosen claims that "When the people formerly known as the audience employ the press tools they have in their possession to inform one another, *that's* citizen journalism."⁵⁴ In fact, few do employ the 'press tools' that determine the qualities of professional journalism. The most likely outcome for these citizen commentators is that they will provide an 'alternative press' in

⁵² 'Bloggers' may influence mainstream media to revisit stories. Lessig (2004) claims they led to mainstream media reviving a report of Senator Trent Lott's comments about segregationist politician Strom Thurmond, which led to Lott's resignation as Republican Senate Leader in 2002.

⁵³ The word 'direct' must be emphasised as the capacity of weblogs to alert mainstream media to potential stories is acknowledged.

⁵⁴ Jay Rosen: <http://journalism.nyu.edu/pubzone/weblogs/pressthink>.

which minority views are emphasised and celebrated. They are what Wolfe calls “the new pamphleteers”.⁵⁵

This should not be taken as a dismissal of the worth of user content, or of the belief that it can improve professional journalism. It has the potential to influence professional journalism and, in some areas, sit comfortably alongside it. However, citizen participation is not a replacement for professional journalism. The Internet, or other forms of digital delivery (such as cellular-linked eReaders and tablet computers) may well ultimately replace the ink-on-paper daily edition of a newspaper, but they will not obviate the need for either professionals or the institutional structures that underpin the richness of Leibling’s deceptively simple functional description of the press. If professional journalism does indeed have a use-by date, it will not be because non-journalists on the Internet have provided a substitute for it. Rather, it will disappear because it has been denied the material support necessary for its survival as an institution. Will that be allowed to happen? The answer almost certainly is that the importance of journalism to democracy – an ideal that grows in scholarly appreciation in inverse proportion to the erosion of the traditional media’s capacity to serve it – will lead to some form of intercession to prevent its demise. The price of that intercession however, may be structural change and a demand that journalism lives up to the ideals that began to erode long before Sir Timothy Berners-Lee mooted the World Wide Web in 1989. Subsequent chapters explore the role that trusteeship may play in such reshaping of journalism.

⁵⁵ *New York Times Sunday* Book Review 11 July 2004.

Chapter 3: Legal foundations

The trust is the whole juridical device: the legal relationship between the parties with respect to the property that is its subject matter, including not merely the duties that the trustee owes to the beneficiary and to the rest of the world, but also the rights, privileges, powers and immunities that the beneficiary has against the trustee and against the rest of the world.

A W Scott and W F Fratcher, *The Law of Trusts*, 1987

3.1 Introduction

There is an interesting connection between the examples at the centre of this study and the development of the system of trusts in English legal history: Both have their foundations in power and control. Beginning in the Middle Ages, there was a proliferation of legal devices as a means of transferring the use of property from one party (usually a family member) to another.⁵⁶ These instruments had consequential effects on royal feudal rights and, hence, revenue due to the Crown. Henry VIII reacted, characteristically, by proposing a draconian bill, the Statute of Uses, which would render land inheritance illegal and restore the revenue he believed was due to the Exchequer. It had a tortuous six-year passage before an out-manoeuvred parliament passed it in 1535, and had two unforeseen effects: it became one of the principal grievances of the popular uprising known as the Pilgrimage of Grace, and it led to the creation of a new raft of complex instruments aimed at protecting property owners from both real and potential government excess. These evolved into the doctrine of trusts (Ives 1967, 673).

From these origins, the trust has been developed and modified to the point where its application has moved beyond family affairs and the transfer of property, to become a powerful legal covenant in commerce and charitable endeavours. A wide range of purposes (that are at odds with gratuitous transfer), have been added to its original intent (Langbein 1997, 166). They include attempts at tax avoidance, but the trust has also become a means to uphold public-spirited ideals laid down by an enlightened originator who wishes to both empower and constrain the administrators of the good work.

⁵⁶ The inadequacies of feudal law initially led to 'right of use' devices to either circumvent the rules surrounding land tenure, provide for land inheritance, or for the protection of women's property rights in marriage. However, they were also used fraudulently to, for example, avoid payment of debt.

This chapter examines the nature of trusts. It seeks, in particular, to determine the forms of trusteeship that derive pre-determined public benefits and, after further discussion, describes an exemplar of trusteeship – the Wellcome Trust, a global charity that is the largest non-governmental source of funds for biomedical research in Britain. From the Wellcome Trust, we can draw vital lessons for the successful establishment of media trusts, because its history illustrates the need for clear and enduring objectives, robust asset management, and clearly delineated governance and management. These prerequisites have not always been evident past, and even present, media trusts. Chapter 3 is a precursor to the following three chapters that examine the history of media trusts, and the contemporary use of trust structures and trustee-like governance to achieve the aims that are at the core of this thesis.

3.2 Trust types

In essence, a trust is “an equitable obligation binding on one person to deal with property for the benefit of another” (Gunasekara et al 1994, 201).⁵⁷ Within that requirement however, there may be a high degree of flexibility in determining how that obligation should be discharged. As will be seen in the study in Chapter 7 of the Scott Trust and its flagship newspaper – *The Guardian*, obligation may require a degree of interpretation.

Trusts may be a means of transferring wealth within a set community of interest (such as a family), a vehicle for profit-based or non-profit business activity, or a means of proscribing certain actions within a business. They may be either a gifting arrangement between settlor (the legal term for the benefactor) and beneficiaries, or the result of negotiation or bargaining between parties. Trust deeds set out the terms of such arrangements and the duties of trustees on whom the trust assets are nominally settled but who must act in the interests of the beneficiaries.

Trusts may be established by different means. The most direct manifestation of a settlor’s intentions are in a trust set up during the settlor’s lifetime that declares his or her wishes in relation to how and why the property is to be administered and for whose benefit (an ‘express’ trust). The trust may be no more than a vehicle to facilitate administration on behalf of a beneficiary or beneficiaries, with varying degrees of

⁵⁷ The law of trusts is a section of equity law which centuries of legislation and litigation have rendered complex and expansive. A short, all-embracing, definition is therefore elusive.

control over the distribution of assets. It may also be an instrument to prevent feckless beneficiaries from squandering their inheritance ('protective' trusts). In some cases, the initial gifting will be via a will rather than a trust deed, with a trust being established to give effect to the will's provisions after the death of the testator or maker of the will (a 'testamentary' trust). Trusts may also be entered into by beneficiaries to create powers over the control of property that has not been subject to predetermined disposition – new assets may, for example, have grown out of the original bequest – and which affect either the rights of participants or of third parties (a 'private purpose' trust). Trusts and trust-like structures may also be established by the state. They may not be subject to a formal trust deed but operate under a form of trustee-like governance through which the public are the beneficiaries. Typically, this form includes state-owned entities that operate at arms-length from government.⁵⁸ They may be governed by legislation, charter, or contract of service. Finally, trusts may be set up to administer assets for charitable purposes ('public' or 'charitable' trusts).⁵⁹ All of these purposes have been behind the establishment of trusts and trustee-like governance in news media.

Trustee provisions can exist without the transfer of property. Within private and public companies, trust instruments may be adopted to serve specific purposes – such as powers to prevent (or facilitate) certain actions by directors or stock holders, and, as will be seen, are employed for this purpose in a number of media companies.

Trusts may have a finite 'life', which poses problems if they have been established to fulfil enduring purposes. Under English common law, private trusts could not be created in perpetuity but terminated at the latest 21 years after the death of the last identifiable individual living at the time the interest was created. However, statutory provisions in some jurisdictions have varied this approach. In the United Kingdom, trusts established before 1964 follow the common law rule, but there is greater discretion over the 'lifetime' of trusts created since that time. In the United States, state legislatures have taken a variety of approaches, some abolishing the perpetuity rule altogether, others

⁵⁸ Representative government is our most pervasive form of trust. Both the legislature and the executive hold power on behalf of the electorate and translate its will within boundaries that define the limits of their respective power. The bureaucracy discharges a similar form of trusteeship subject to the oversight and direction of the executive. State-owned entities that require independence from government (state-owned broadcasting an appropriate example) have empowering legislation or regulation that establishes and protects such independence.

⁵⁹ It is unnecessary in the present context to canvass 'resulting' trusts that are implied in law through the nature of certain transactions.

providing court discretion. Provinces in Canada have allowed court discretion. In Australia and New Zealand, trusts generally cannot exist for more than about 80 years although there is provision – a ‘wait and see’ clause that provides discretion for continuation.⁶⁰ Even in jurisdictions with limits to the ‘life’ of trusts, there are processes of renewal that allow the purposes of trusts and their assets to be transferred (see Scott Trust in Chapter 7).

In order to set parameters for the remainder of this chapter, it is necessary to examine the issue of intent. Langbein (1995, 627) states that “the distinguishing feature of the trust is not the background event, not the transfer of property to the trustee, but the trust deed that defines the powers and responsibilities of the trustee in managing the property”. A trust rests on what the trustees must do, can do, and must not do. Nevertheless, the background event may define the true purpose of the trust, and in circumstances to be discussed below, reveal the trust to be worth less than its face value.

Trust deeds and kindred mechanisms are only as philanthropic as their creators intend them to be. It would be wrong to assume that trusts are universally imbued with altruistic purpose, in spite of the ‘gifting’ that is said to underpin such legal instruments. Ulterior motive is as old as the trust instrument itself, as is the legal ingenuity employed to further such aims. Indeed, Henry VIII’s attempts in 1535 to curtail the use of trust-like instruments to avoid dues payable to the Crown, were circumvented by their being reconstituted in a more complex form (Gunasekara et al 1994, 202). Hannsman and Mattei are on solid ground when they say that “the protean nature of the trust makes it particularly well-suited to efforts at fiscal and regulatory avoidance” (1998, 479).

While legal tradition characterises trusts in terms of gratuitous transfer, Langbein argues that, in fact, the majority of American trusts are instruments of commerce (1997, 166). He cites as examples pension funds, investment trusts including mutual funds, and real estate investment trusts, regulatory compliance trusts used in company liquidations and lawyers’ trust accounts, and remedial trusts set up to resolve disputes. He also recognises the benefits accruing from the use of trust instruments: Insolvency protection, the avoidance of entity-level taxation, and the protection for investors that is imposed by the special fiduciary duties that trustees must discharge.

⁶⁰ Perpetuities and Accumulations Act 1968 s. 5 & 6 (Australia); Perpetuities Act 1964 s.6 & 8 (NZ).

3.3 Trustee duties and powers

Countless volumes have been written on fiduciary duty, and the judiciary has left trustees in no doubt as to their solemn and onerous obligations. For the purposes of this thesis, administrative duties are deemed unremarkable, but the duty of care and financial responsibilities are important – the former because it establishes the standards against which a trustee’s actions are measured (Haley & McMurtry 2006, 350), and the latter because of their particular significance in media trusts.

Trustees have a duty of care to avoid loss or injury as a result of their actions in relation to a trust, and the test of their conduct varies depending on their status. The test for amateur trustees is whether these are the actions of a normal prudent person, while paid professional trustees are expected to have exercised the special skills and judgement they profess to possess. The distinguishing factor for our purposes however, is the effect that the trustee’s duty of care has on business investment. A 1886 judgement.⁶¹ decreed that investments by trustees required not only normal prudence but the added care “an ordinary prudent man would take if he were minded to make an investment for the benefit of other people for whom he felt morally bound to provide”. Failure to meet such a standard could render a trustee personally liable to make good any investment losses. Haley and McMurtry state that this duty of care prevents trustees from engaging in speculative investment, a temptation from which some private and listed media companies have not been immune.

All fiduciary relationships are based in law on *uberrima fides* (the standard of utmost good faith) but central to the fiduciary duties of trustees is the additional dictate that they do not profit from their positions.⁶² This disengagement from personal gain differentiates trustees from company directors. The common practice of company directors also being shareholders, produces an incentive to maximise returns to enhance share prices and dividends, which directly benefits the director. Trustees must avoid such self-interest. To illustrate the prohibition on profit-taking: If trust-owned shares are used to vote a trustee on to a company board, the director’s fees must be paid to the trust and any director independently elected to a company board must exercise particular care to avoid conflicts of interest. Unless expressly permitted by the trust deed, trustees

⁶¹ Lindley L.J. in *Re Whitely* (1886) 33 Ch. D.347 at 355 quoted in Haley & McMurtry 2006, 350.

⁶² There are provisions for trustee remuneration and fees but these must not constitute inducements that conflict with the duties to a trust.

acting in a private capacity cannot buy trust property even if a fair market price is offered. The cumulative effect of the fiduciary provisions is to require trustees to act only in the interests of beneficiaries and to suffer legal redress if they fail to do so.

But what if the beneficiaries are the general public? Charitable trusts for example, may be set up to assist the poor or afflicted. If a fiduciary duty exists (and there may be reasonable moral arguments in favour of this) it is not directly recognised in law because such a duty must be owed to identifiable individuals.⁶³ Destitute men or paraplegics may not take legal action against a trust if they believe it is failing to help the poor or afflicted. At best, the state may take action because of the relationship that exists between *it* and the trust through registration as a charity. Registration as a charitable purposes trust bestows on the organisation a series of benefits, ranging from a relaxation of personal liability to special tax status and, importantly, the removal of the need for identified beneficiaries ability to enforce the trust's obligations. Such provisions may appear attractive to a media organisation seeking relief from a collapsing business model, but the requirements for registration⁶⁴ reduce or eliminate such a prospect in the jurisdictions under study unless (a) the enterprise is very small or (b) there is legislative change. There are alternatives which are discussed later in this thesis (see Chapter 9) but no option exists for a private trust simply to nominate the general public as its legal beneficiary. In the absence of the dispensation given to charitable trusts, *prima facie* such a trust would be void because it lacks an identifiable beneficiary to whom it owes fiduciary duties.

The duties of trustees have been described as "...an irreducible core of obligations"⁶⁵ but there are powers accorded to trustees that loosen the straitjacket. In particular, they have entrusted to them all the powers of a legal owner of the property. Unless prohibited by provisions of the trust deed, they can sell the assets or use them to raise capital. A trust deed may grant express powers but in general, trustees have the power to

⁶³ The relationship between the state and native peoples is different. The Treaty of Waitangi Act in New Zealand, *Mabo* in Australian and *Guerin* in Canada have recognised an equity relationship (native peoples are – or were – property holders under customary title) that gives rise to a direct fiduciary duty on the part of government.

⁶⁴ Only certain activities qualify for registration. There has been a reluctance to develop a legal definition of 'charity'. Instead, purposes regarded as charitable have been enumerated in legislation and regulation. The Preamble to the Charitable Uses Act 1601, for example, sets out a wide range of charitable purposes from the 'marriage of poor maids' to 'the supportation...of persons decayed'. Unsurprisingly, it does not list journalism as such a purpose.

⁶⁵ Millet L.J. in *Armitage v Nurse*, quoted in Haley & McMurtry 2006, 349.

make decisions on investment and for the maintenance and advancement of the trust's assets – subject to the restraining hand imposed by the “irreducible core of obligations” that prevents their taking unacceptable risks or pursuing self-interest.

3.4 An exemplar

3.4.1 Background

Trustees may be prevented from pursuing self-interest but, as we shall see it can be a strong motivator in the *establishment* of trusts. Of course, this is not so in every case. There are notable examples of trusts as manifestations of extraordinary philanthropy. Between the extremes are those trusts that speak for well-meaning pragmatism. These differences are evidence of the flexible nature of trusts, and the need to ensure that the form of trust structure (particularly one that might preserve democratically significant professional journalism) is clearly understood. The path to defining an appropriate structure can begin by moving outside the media industry, to an organisation that embodies ‘best practice’ in public benefit trusteeship and the recognition of ethical and social imperatives.

The following exemplar is discussed in some detail because, although it may seem a world away from newspapers and broadcasters, it embodies the same pursuit of noble aims to which democratically significant journalism aspires. It too, is bound by ethical considerations and the transparent application of standards, and must have a governance structure that supports such processes. Of critical importance is the over-arching need to sustain itself in order to continue its good work. And its history is an instructive journey from a well-intentioned but flawed instruction from the grave to a well-articulated and flexible model of modern governance.

The Wellcome Trust is the largest charitable foundation in the United Kingdom and the second-largest in the world.⁶⁶ Its annual distribution of funds for bio-medical research and to foster knowledge of human and animal disease exceeds £600 million and it has investment assets of more than £13 billion (2008). It was established in 1936 under the terms of the will of Sir Henry Wellcome, who placed in the hands of its five trustees the entire share capital of the pharmaceutical manufacturing company into which his

⁶⁶ Exceeded only by the \$US34 billion Bill and Melinda Gates Foundation established by Microsoft founder, Bill Gates.

diverse interests had been consolidated in 1924. He had called the company the Wellcome Foundation Limited, which reflected the fact that into it had been placed not only a pharmaceutical manufacturer, but also custody of Wellcome's extensive collections and ownership of a number of research laboratories.

The Wellcome Trust is a shining current example of philanthropic trust management. It stands as an exemplar, not because of its enormous wealth, but because on the one hand it demonstrates model present-day governance and, on the other, provides important historical object lessons in trust administration. Not least of these lessons is the realisation that a benefactor's will (even one containing 21 detailed clauses and the addition of a 12 clause memorandum) does not necessarily provide trustees with sufficient guidance and power to discharge their duties. The passage of time provides a further lesson – the provisions of a trust deed may not be as enduring as its architects would hope.

When Henry Wellcome died in 1936, the consolidated pharmaceutical group he had co-founded (with fellow American Silas Burroughs) had been managed by the autocratic hand of his deputy and general manager George Pearson, for more than a decade. It was clear from a memorandum attached to Wellcome's will that he wished Pearson to remain firmly in control of commercial activities. In the memorandum he stated that he wished him to be a "special adviser to my trustees", and that he "should always be treated liberally by my trustees and that his views should always receive full consideration". While the will guaranteed trustees' access to company records and documents, there were strong inferences that they should adopt the same role as Wellcome himself had done in his latter years – looking after philanthropic endeavours and support of research while Pearson ran the business.

In any event, the Wellcome Trust had little time in its formative years to interfere in the drug company's operations. Wellcome had made insufficient provision for death duties, and notwithstanding the consolidation of a number of companies into The Wellcome Foundation Limited, his extensive interests were complex and required time and effort to disentangle. And, for all the effort Wellcome had put into his will and the company's articles of association (Section 52 signalled his intention to bequeath his shareholding to trustees for charitable purposes), the legacy presented ongoing legal issues (Williams 2010, 6-9). In its establishment year, the trustees were forced to seek a declaratory

judgement from the Chancery Division on provisions needed in the trust deed. This ushered in 60 years of periodic applications to the Court of Appeal, the High Court, and the Charities Commission for amending orders and schemes to empower the trustees to act, as they saw it, in the best interests to the trust. A 1998 copy of the will carries a 33-page appendix setting out the amending effects of the orders. Not all applications related to omissions from the will, or lack of adequate clarity regarding Wellcome's wishes. A trust deed promulgated in 1936 – to give effect to a desire to fund medical and scientific research utilising relatively modest company proceeds was to become increasingly inadequate to deal with scientific advances, the spectacular growth in the value of the assets held by the trust, evolving expectations in corporate governance, and changing views relating to diversified investment.

The relationship between the trust and the company was characterised by a degree of separation redolent of the traditional barriers that existed between commercial and editorial departments in newspapers, often referred to as Church (editorial) and State (commercial).⁶⁷ The arm's length relationship may have been assisted by the differing personalities and interests of Pearson and the trust's second chairman,⁶⁸ eminent scientist Henry Dale, but there were practical considerations that made separation of company and trust more than desirable. Under English laws governing charities there were (and are) limits and liabilities related to charitable organisations' direct involvement in trading enterprises. Charities enjoyed a special tax status that could be compromised and there was potential conflict between a trustee's paramount duty (to the trust) and commercial decisions that, if they put assets at risk, could render trustees personally liable for losses.

There would have been real risks in the Wellcome trustees taking a direct interest in the running of company. Between the 1924 consolidation and 1950, there was a period of commercial stagnation, the genesis of which lay in Pearson's highly conservative management, but which persisted after he relinquished the helm in 1940 (Macdonald 180, 31-3). Had the trustees attempted to re-energise the company they would almost certainly have exposed themselves to financial liability if the strategy had failed. Instead, they kept their distance and as a result, the trust received a modest annual dividend for many years. It was also faced with the burden of the £2 million in death

⁶⁷ See Chapter 5.

⁶⁸ The first chairman, solicitor G.H.H. Lyall, served only two years in the position.

duties for which Henry Wellcome had made inadequate provision and, consequently, distributed only £1.2 million in the first 20 years of its existence.

The company was near crisis point when new directors and management were appointed in 1949, and while this led to rapid improvement, considerable investment was needed to overcome decades of relative decline. An ‘understanding’ between the company and the trustees meant that between 1950 and 1979 about 70 percent of the after-tax profit was ploughed back into the company and not distributed to the trust (*ibid.*, 113-114). The ‘understanding’ symbolised the relationship between the company and the trust, which may be described as ‘gentlemanly’. So distanced were they, that the trust reportedly did not access the company accounts in spite of the provision in Wellcome’s will granting it the right to do so. In spite of the fact that it was the sole shareholder, the trust did not know the annual profit – which gave the company chairman the upper hand at a yearly private meeting with his trust counterpart to set the dividend to be paid.⁶⁹ This was an inherent weakness of the structure that Wellcome had decreed in his will. His determination to guarantee Pearson a free hand created obvious problems for the trust – ownership without control.

While it remained a shareholder in the Wellcome Foundation Limited (and its successor, Wellcome plc) the trust would play no role in the management of the drug company and have no representation on the company’s board of directors (Stonham 1993, 159). However, total reliance on the fortunes of the company began to concern the trustees as the doctrine of portfolio diversity grew in investment circles and in 1986, with the support of company executives and prior approval from the Charity Commissioners, the trust’s shares in the Wellcome Foundation Ltd were transferred to Wellcome plc, which was listed on the London Stock Exchange as the new holding company for the group. Some 20 percent of the trust’s shares were sold and at the same time new shares were issued by the company to raise £50 million, reducing the trust’s holding to about 75 percent (Stonham 1993b, 291). The £211 million raised was used by the trust to begin a process of diversified investment.

Between 1986 and 1992 the capital value of the company rose from £1 billion to £9.7 billion – faster than the growth in dividends, which meant the yield on the trust’s

⁶⁹ Interview with John Stewart (Head of Legal and Company Secretary, Wellcome Trust), London 23 March, 2009.

investment was reducing. Under its charitable status the trust could not disperse its capital in grants – only its income – which effectively nullified the benefit of the company’s burgeoning value. At the same time the trust was facing increasing requests for research funding. By 1992 the trust had a new chairman, Sir Roger Gibbs, whose father had been a trustee of the Nuffield Foundation, the fortunes of which had declined after trustees had failed to persuade Lord Nuffield to remove its total reliance on holdings in the doomed British motor industry.⁷⁰ Gibbs, like his predecessor, saw the need for the Wellcome Trust to diversify its investments and in 1992 the trust decided to sell a large proportion of its shares in the drug company.

This proposal caused some concern within the company’s management and board of directors, who feared the sale of a large amount of stock would depress the share price. They also wished to continue to have a strong association with the trust, because it had kudos and enjoyed an excellent reputation in research and government circles.⁷¹ The sale also raised the possibility of losing autonomy the company had enjoyed thanks to its arms-length majority shareholder. For its part, the trust realised that without the cooperation of the company, no prospectus for the sale of shares could be drawn up because the company held the financial information. In order to proceed with sale, and to assuage concerns within the company that this was the beginning of a plan to quit its holdings in the pharmaceutical group, the trust entered into a memorandum of understanding that confirmed its intention to be long-term holder of at least 25 percent of the company’s shares, promised to consult the company, “and use all reasonable endeavours to agree with Wellcome plc” on any further share sales, undertook not to solicit or encourage any takeover of the company for a period of at least five years, and agreed to consult with the company before making any approaches to the Charities Commission seeking approval for further share sales. The trust also signed a legally-binding Deed of Covenant, under which it would endeavour to ensure that if any sale took place within a five year period, it would endeavour to ensure that no single shareholder held more than 10 percent of the company (Lilja 1997, 12).

Armed with the memorandum of understanding and the deed, the company agreed to cooperate in the sale, and the trust engaged advisers to organise what was to become the

⁷⁰ Interview John Stewart (Head of Legal and Company Secretary, Wellcome Trust), London 23 March, 2009.

⁷¹ By this point the trust was making significant research grants each year.

largest non-privatisation second offering on the London Stock Exchange (Stonham 1993b, 291). The innovative five-phase process for the sale (described in detail by Stonham) raised £2.3 billion for the trust to place in diverse investments and made it the world's largest grant-making charity at the time. The sale reduced its interest in Wellcome plc to 40 percent. I signal this diversification because the ability to spread assets across a range of activities to manage risk is an attribute that media companies should adopt. If they are able to do so, they insulate themselves against the volatility of advertising and circulation.

The radical changes to the value and nature of the Wellcome Trust's investment portfolio did however create a problem that had been foreseen in the early stages of the share sale planning: Under trust law, the trustees had personal liability in the event of financial failure. In May 1992, the Chancery Division of the High Court granted permission (following an application that also sought permission for the share sale) to reconstitute the trust as a new corporate entity (The Wellcome Trust Ltd) which became the sole trustee. The restructuring removed personal liability from the individual trustees, who became governors of the trust corporation.

Following the 1992 sale, Wellcome plc had a much broader institutional shareholder base drawn from Britain, Europe, the United States, and Japan. Although it remained the largest shareholder, the trust maintained an arm's length relationship. The company's fortunes continued to burgeon, largely on the back of two 'blockbuster' drugs: Zovirax (used in the treatment of herpes) and AZT (used in the treatment of HIV and Aids). The trust's governors saw potential for the trust to benefit from the growth in the capital value of Wellcome plc by selling more shares,⁷² but their next attempt brought them into direct conflict with the company's executives. While a distanced relationship may have suited both parties in the past, it was now to contribute to a final separation and divorce.

On Monday 23 January 1995, the pharmaceutical conglomerate Glaxo, made an unsolicited public offer for all of the shares in its competitor, Wellcome plc, at a 50 percent premium above the existing market price. On the preceding Friday, Glaxo had secretly informed the trust that it would proceed with a full takeover, but only if the

⁷² As noted earlier, capital value was of limited benefit to the trust because, under the Charities Act, it could only distribute revenue and pharmaceutical companies did not deliver the highest dividends.

trust entered into an agreement *before* the public announcement – to sell its 39.5 percent holding. There was a further condition – the trust must not inform Wellcome plc of its intentions under any circumstances. Yet how could the trust make such an agreement with Glaxo, when it had undertaken (in the 1992 Memorandum of Understanding and Deed of Covenant) that secured Wellcome plc cooperation for the large share sale that year) to consult with the company before it sold any more of its shares? The Glaxo requirement appeared to be in direct conflict but the 1992 agreement was in fact, a Trojan horse, and the trustees undertook to enter an agreement with Glaxo that would lead to the sale of its shares and facilitate the takeover offer.⁷³ The present Wellcome Trust company secretary, John Stewart (an American-trained lawyer who joined the trust later in 1995), outlined the history of the Glaxo bid in an interview with the author, and describes the 1992 memorandum as a document created by clever lawyers that appeared to prevent a sale without company approval – but which had a hidden ‘out’. When the trust sought High Court approval for the 1992 share sale, the court agreed that because the trust was a charity, the discretion of its trustees could not be entirely fettered. The 1992 prospectus for the share sale noted in fact, that neither the memorandum of understanding, nor the deed of covenant could require the trustees to do, or omit to do, anything which they considered to be contrary to best interests of the trust. It must therefore, have the ability to accept an offer in certain circumstances, and, says Stewart, those circumstances presented themselves in 1995,⁷⁴ adding “The company was very bitter. [Its executives] thought they had been double-crossed.”

Wellcome plc publicly attacked the trust, claiming it was in breach of its 1992 agreement, and that the trust’s agreement with Glaxo had prevented the company directors from seeking counter bids before the offer became public. The enmity that had been created, was evident in a public comment by the chairman of directors, John Robb, after the Glaxo offer went public: “I have nothing but admiration for Glaxo...but I can’t say the same for our major shareholder. To have sold its interest in the company without talking to the management is something many employees in the company will never forgive the trust for.” (Lilja 1997, 20). In fact, the trustees were doing no more than meeting their fiduciary duties – the sale of Wellcome plc shares at a good premium and

⁷³ The agreement, signed a week later, gave the trustees the right to accept a subsequent higher bid none was forthcoming – and acknowledged that the sale was subject to High Court approval (granted on 17 February 1996).

⁷⁴ The Glaxo offer was regarded as exceptional and a sale at such a high premium was clearly in the best interests of the trust.

the ability to use the proceeds to further diversify the trust's investment portfolio to reduce risk were in its best interests and took precedence over any considerations that the drug company felt were owed to it.

The sale increased the trust's total assets from £5.3 billion to £6.8 billion and, because the offer had been partly in shares in the merged company, left it with a 4.7 percent holding in the merged group, Glaxo Wellcome. After a further merger with Smith Kline, and rapid growth in the value of the conglomerate, the sale in 2002 of most of the trust's shares in the company realised an additional £1.78 billion. The trust now has no holding in GlaxoSmithKline, and the link with the pharmaceutical group has been severed.

However, while its wealth grew the trust continued to need recourse to the courts and the Charities Commission to validate its decisions. In 1998, Stewart began negotiating with the commission for a new trust constitution (with associated memorandum and articles for the corporate trustee) that modernised the wishes of the benefactor, provided a modern working structure, removed the need to refer to the numerous orders and schemes that littered the trust's past, and reduced the need to seek declaratory judgements. The new constitution and articles were granted in 2001. Table 3-1 on page 55 illustrates the greater scope and clarity that is apparent in the modern trust deed, compared with the attempt by Sir Henry Wellcome to anticipate the future. The trust's objectives are entirely altruistic. By contrast, the 1986 Memorandum of Association of the pharmaceutical group, the Wellcome Foundation Limited, (a section of which is set out in Table 3-1) also offered wide scope, but significantly, allowed the company potentially to benefit from the results of scientific endowment by adding a rider: "...whether such institutions or organisations be strictly or directly incidental to the main business of the Company or not".

However, the real benefit of the trust's 2001 constitution and associated documents lies not in their commendable clarity, but in the flexibility that they embody. The breadth and depth of powers and functions set out in the documents, allow the trustee considerable freedom of action within clearly set responsibilities. The three schedules to the constitution set out powers to be exercised in furtherance of the trust's aims, plus administrative and investment powers. They anticipate situations that may sit outside the present framework, and provide both the capacity to amend the constitution and the

safeguard of an approval process through the Charities Commission that is likely to obviate the need for resort to the High Court. The documents recognise the complexity of the environment in which the trust operates, and the fact that the organisation is entrusted with husbanding very large sums of money through diversified investment. The constitution is attached as Appendix 2.

Table 3-1: Wellcome Trust objects

Objects pursuant to the will of Sir Henry Wellcome	Object in the 1986 Memorandum of Association of the Wellcome Foundation Ltd ('the company')	Objects contained in the 2001 Wellcome Trust constitution
<p>"... the advancement of research work bearing upon medicine, surgery, chemistry, physiology, bacteriology, therapeutics, <i>materia medica</i>, pharmacy and allied subjects, and any subject or subjects which have or at any time may develop an importance from the invention and improvements of medicinal agents and methods for the prevention and cure of diseases and control or extermination of insect or other pests which afflict human beings and animal and plant life in tropical and other regions and elsewhere..."</p> <p>"...for the maintenance, equipment and/or extension of any of my research museums or libraries now in existence and founded by me and/or for the establishment and future maintenance of any new research museum or library... and conducting researches and collecting information connected with the history of medicine, surgery, chemistry, bacteriology, pharmacy and allied subjects..."</p>	<p>(c) To acquire, carry on and control, develop, extend and finance, either at its own discretion or subject to the control and direction of any other person or persons, any institution or organisation having as its object the development or carrying on of scientific research, and in particular to build, found or endow, enlarge or equip, and carry on and manage any laboratory, institute, club, museum, library, school, college or other organisation in any part of the world having as its principal object the increase and dissemination of scientific methods and scientific knowledge in the treatment and alleviation of diseases, whether of mankind or animals, and whether such institutions or organisations be strictly or directly incidental to the main business of the Company or not.</p>	<p>(1) To protect, preserve and advance all or any aspects of the health and welfare of humankind and to advance and promote knowledge and education by engaging in, encouraging and supporting:</p> <p>(a) research into any of the biosciences; and</p> <p>(b) the discovery, invention, improvement, development and application of treatments, cures, diagnostics and other medicinal agents, methods and processes that may in any way relieve illness, disease, disability or disorders of whatever nature in human beings or animal or plant life; and</p> <p>(2) To advance and promote knowledge and education by engaging in, encouraging and supporting:</p> <p>(a) research into the history of any of the biosciences; and</p> <p>(b) The study and understanding of any of the biosciences or the history of any of the biosciences.</p>

3.4.2 The contemporary trust

In parallel with the empowering 2001 documents, the Wellcome Trust operates model systems of internal organisation and governance. Overall responsibility lies with an 11-person board of governors, which at January 2010 comprised:

- Six professors in the life sciences (five British, one American).
- Two banking and investment directors.
- One lawyer.
- One healthcare company director.
- One retired senior civil servant.

Below the governors, is a trust director/chief executive and nine-member executive board that manage the day-to-day activities of the following divisions:

- **Directorate** – director’s office, communications, strategic planning and policy.
- **Science Funding** – scientific strategy and management of research portfolio.
- **Technology Transfer** – facilitation of early-stage projects.
- **Medicine, Society, and History** – fosters understanding of the role of medicine.
- **Investment** – management of trust’s assets.
- **Operations** – internal support services including legal and financial.

The board of governors sets the overall investment policy and the spending limit on grants. The decision on the overall amount to allocate each year in grants is based on a formula, in force for more than a decade, which takes a weighted average⁷⁵ of the value of investments in the previous 12 quarters and applies (currently) 4.5 percent of that value to grants.

An investment committee (comprising two governors, four external (expert) members and up to four staff members) oversee investment strategies and the detail of investment policy. Decisions on actual investments are made by a professional investment team, (within the Investment Division) which is insulated from the possible influence of the day-to-day financial needs of the trust. The finance department responsible for cash management and liquidity sits within the Operations Division.

⁷⁵ A weighted average smoothes out the effects of short-term financial market volatility and one-off effects on investment performance. Recent quarters are weighted higher.

The Board of Governors sets investment policy based on advice from the Investment Division and spending policy based on advice from the Operations Division.

The investment strategies employed by the trust are by most measures, astute. Since the inception of the investment portfolio in 1985, it has provided a total return averaging 14.5 percent a year.⁷⁶ Key investment strategy factors include:

- Good risk management which, in the past four years, have included limiting exposure in weak equity markets,⁷⁷ and using macro-economic hedges in currency positions and equity index futures to smooth market volatility.
- Maintenance of high levels of liquidity to meet charitable grant and investment commitments, thus avoiding the need to sell high-value assets at distressed prices during the recession.
- Investment in high-quality assets.
- Investments are not based on predetermined strategic asset allocation but on the following beliefs:
 - Sufficient liquidity must be maintained to avoid the forced sale of assets at distressed prices. However, real assets offer the best long-term growth prospects and provide protection against inflationary pressures.
 - In order to maximise investment returns from global economic activity, the portfolio should be very broadly diversified with no innate geographical bias.
 - The Trust seeks to use the advantages of its long-term investment horizon, its ability to tolerate high levels of short-term volatility, its AAA balance sheet, and its proactive governance structure in its investment portfolio.
 - The best returns will be driven by combining aligned partnership with the strongest external managers, and building in-house resource to own selected assets directly.
 - The Trust is generally flexible as to the nature of the vehicles in which it invests, whether public companies or private partnerships.⁷⁸

The trust does not hold more than 25 percent of the equity in any company. In some cases, its investment secures it the right to appoint a director, and while the right has

⁷⁶ The Wellcome Trust Annual Report 2009, 10.

⁷⁷ Between March 2006 and May 2008, the Trust sold more than £4.5bn of equities, mainly in U.K. equities, reducing its equity holdings from 69 percent of its portfolio in September 2005 to 38 percent in September 2008 and removing what had been a domestic investment bias (Annual Report 2008, 11).

⁷⁸ The Wellcome Trust Annual Report 2009, 15.

been exercised, its use is uncommon. There are some restrictions on levels of ownership dictated by the trust's charitable status in some jurisdictions.

There is a clear separation of the investment and granting activities of the trust, at operational as well as governance levels. Indeed, there are parallels with the arms-length relationship that had existed between the trust and the pharmaceutical group.

The tight focus on respective roles below board level avoids what Stewart sees as “the real danger of mixed motives” in which marginal investments could be made because they may also have a charitable outcome. Mixed motives lead, he says, to bad investments and bad charitable outcomes:

We have been very careful to separate the two things out. It's actually quite dangerous to mix them. What I used to say when we debated this internally was that, when someone was coming to us on an investment basis we should look at it as a good investment and, if it was a good investment, we should put money into it for investment purposes and not pretend that we also wanted to get a charitable benefit. The flip side is also true. If it's a good charitable use of money we should do it for charitable purposes and not look at the financial return.⁷⁹

A strategic grants committee comprising the board of governors, the trust's chief executive, and two divisional directors is the principal body overseeing the grants process (it also makes strategic grants that fall outside established areas) but grant applications themselves are considered by a large number of advisory committees – currently 30 – comprising external experts from different fields but no members of the trust's staff. Biomedical research carries strict requirements in ethics and probity, that are reflected in the committees' consideration of grant applications and rigour applied to the process, which also involves a peer review of grant applications by members of an international body of expert referees numbering several thousand. An example of advisory committee expertise is set out below.

⁷⁹ Interview with John Stewart, London 23 March 2009. The trust does not place restraints on types of investment. Its investment philosophy states: “The Trust is generally flexible as to the nature of the vehicles in which it invests, whether public companies or private partnerships”.

Table 3-2: Example of advisory committee expertise

Molecules, Genes and Cells Funding Committee

Professor S G Oliver (Chair) University of Manchester	Professor T Hyman Max Planck Institute
Professor K R Ayscough University of Sheffield	Professor J Iredale University of Edinburgh
Professor P Beales University College Lond.	Professor M Jobling University of Leicester
Professor N Brockdorff University of Oxford	Professor J Ladbury University College Lond.
Professor S Brunak Technical University of Denmark	Professor G Murphy University of Cambridge
Dr R M Cooke GlaxoSmithKline	Professor B V L Potter University of Bath
Professor J Errington Newcastle University	Professor L M Roberts University of Warwick
Dr A P Gould National Institute Medical Research	Professor E J Robertson University of Oxford
	Professor C E Sunkel University of Porto, Portugal
	Professor A B Tobin University of Leicester

Grant applications are first reviewed by staff before being sent to experts for peer review. On their return, they are considered by the advisory committees who meet four times a year. The applications are ranked and grants made, according to the amount of money made available by the Governors in a given year. The strategic grants committee's projects are subjected to a similar external peer review. The vast majority of grants are made through established bodies, such as universities and research institutes, and are seldom made directly to individuals. While this approach may seem divorced from the type of funding process that media entities employ, applications for philanthropic funding by start-up specialist journalism units such as those described in Chapter 3 may well be put through rigorous review processes.

Once Wellcome grants are made, the trust relies on established institutional peer review processes, with responsibility placed on the employing bodies (such as universities) to ensure that ethical guidelines are followed. While these institutions have processes to deal with misconduct, the trust reserves the right to investigate if it believes there has been a 'whitewash'.

3.2.3 An alternative structure

The structure of the London-based philanthropic organisation has been trust-based since the death of Henry Wellcome, but an alternative structure was employed when a North American equivalent was formed in 1955. At that time, Britain was still subject to currency export restrictions, and although the American-based Burroughs Wellcome subsidiary produced a large part of the pharmaceutical group's profit, only small

amounts of money could be returned to North America for charitable purposes. To redress the imbalance, a sister organisation was formed in the United States, but unlike the Wellcome Trust in Britain, it was constituted as a corporate foundation. The Burroughs Wellcome Foundation (BWF) was separate from the Burroughs Wellcome drug company – it was not for example, a shareholder, but received all of its funding from that company. Under American law, this allowed the BWF to achieve a charitable tax status that would not have been available to the company if it made direct research grants. The fund's directors were drawn from within the pharmaceutical group, although BWF's bylaws made it clear that grants were not to be influenced by the company's interests (Kossoff 2005, 21).

For many years, the association between the BWF and the drug company continued, although there were no guarantees of annual sums, and the company determined how much it would give each year.⁸⁰ By the 1980s, the annual amount given to BWF was \$US5 million to \$US7 million. However, when the Wellcome Trust benefited from the 1992 sale of shares in the parent company, BWF was offered a share of the proceeds – \$US400 million. However, British tax regulations dictated that the Wellcome Trust could not be perceived to be giving money to an organisation that was regarded as part of the company. As a result, BWF severed its ties with Burroughs Wellcome and became an independent private foundation. To that point, BWF had depended on the company for paying its employees, meeting the cost of employment benefits, and providing office space and furniture. It became responsible for its own overheads, and as a further display of its independence from Burroughs Wellcome, reconstituted its board with the inclusion of three medical academics as directors.

Of greater significance, was the change brought about by the size of the endowment from the Wellcome Trust. BWF's modest capital had been conservatively invested in the past, with 60 percent invested in U.S. stocks and 40 percent in bonds. The enlarged fund required sophisticated investment strategies, and the creation of an investment division. A sound revenue-generating strategy was necessary, because in order to enjoy the tax benefits available to private foundations in the United States, BWF was required to disperse five percent of its assets each year. This, in effect, required it to have an annual return on assets in excess of five percent if it was to maintain (and increase) its

⁸⁰ In lean years there was no transfer of funds (Kossoff 2005, 32).

capital base. As will be seen in the following chapter, this requirement can prove onerous and precipitate strategies that might not otherwise be contemplated. Failure to meet the requirement can result in the imposition of a 15 percent tax penalty.⁸¹

Unlike the Wellcome Trust, BWF was able to significantly upsize and change its organisation without recourse to the courts or to state or federal regulatory bodies. It was able to do so because private foundation status, while requiring strict financial reporting processes and imposing grant criteria, offers considerable freedom of action so long as the social contract is fulfilled.⁸²

This freedom stands in contrast to the controls placed on the Wellcome Trust, which remains under the watchful eye of Britain's Charities Commission from which it must still seek approval for changes that have not been anticipated in the 2001 trust constitution. The closest British equivalent to the American private foundation is the company charity, a limited company with charitable aims. It has a legal identity separate from its members, and its directors are agents of the company and not personally liable for its debt.

Such a structure may well be preferred by the Wellcome Trust – company charity status would, for example, have removed the need in 1992 to alter the structure to create the Wellcome Trust Limited as the single (corporate) trustee to remove liability from the governors – but it is hostage to its history. The will of Henry Wellcome created it as a trust – and a trust it appears destined to remain.

Had Henry Wellcome established the trust during his lifetime, some of the initial difficulties confronted by the trustees may have been avoided. However, the majority of issues that have taxed them have been matters that could not have been foreseen. The structural needs of an organisation like the Wellcome Trust, require a balance to be struck between the extent to which a governing body is able to modernise *itself* versus the extent to which it *actually needs* permission from a regulator to do so. The real need is for flexibility, and the discretion of allowing trustees to determine how best to run the

⁸¹ BWF's return on assets suffered during the worldwide recession and it was forced to suspend its usual competitive grant programmes for 2010 and to extend the payout period for existing grants (Open letter from BWF president, J.E. Burns, on 23 February 2009).

⁸² Private foundations may also not own or operate significant for-profit businesses.

organisation to meet its aims. The trust now enjoys a larger measure of that than it has at any time in its past.

3.2.5 Lessons

The size and purpose of the Wellcome Trust are far removed from the business of newspaper publishing, but there are valuable lessons that can be applied. The following are some of the attributes drawn from the Wellcome Trust experience, that are instructive when considering the structure of news media trusts which aim to deliver quality journalism:

- Clear trust deed objectives.
- Flexible trust instruments that offer sufficient freedom of action while protecting assets and objectives.
- An appropriate balance between trustee powers and liabilities.
- Trust assets sufficiently diversified to protect their overall financial position.
- Comprehensive investment risk management.
- Lack of nostalgia (the Wellcome Trust has no special attachment to pharmaceutical companies as investments). Not to be confused with a sense of history, which the Wellcome Trust has in abundance.
- Comprehensive internal governance and operational structures to ensure the separation of business and non-commercial functions.
- Separated management functions.
- Financial transparency to ensure that trust objectives are optimally pursued.
- The relationship between trustees and executives weighted in favour of the long-term benefit of the trust and its objectives.
- The possibility that structures other than formal trusts may provide trustee-like governance.

By following the example of the Wellcome Trust as it is presently constituted, some of the pitfalls encountered over the past 75 years could have been avoided. However, the history of news media trusts has more in keeping with the Wellcome journey than with its destination and there the parallels are limited. Their path has been difficult – many

travellers have fallen by the wayside, brigands have sometimes joined the caravan, and reasons for making the journey have sometimes been selfish. The following three chapters take us on the odyssey.

Chapter 4: Genesis of media trusts

...it is safe to predict that, if the usefulness of a non-commercial newspaper be demonstrated, funds will be forthcoming. In the cities, where the secret control of the channels of publicity is easiest, there are likely to be found financially independent newspapers, the gift of public-spirited men of wealth.

Edward A. Ross, 1912⁸³

4.1 Introduction

The aptly named Yorkshire Conservative Newspaper Company, publisher of the *Yorkshire Post* and *Yorkshire Evening Post*, had a clause in its articles of association that allowed it to refuse to register any share transfer if the potential owner did not have conservative opinions. The *Liverpool Daily Post* and Echo Ltd, for its part, had articles of association that ensured that the liberal outlook of the *Liverpool Daily Post* would be maintained. These are examples (commendable or otherwise) of the use of trustee principles by newspaper owners. There are others: A trilogy of trust types were described in the 1949 Report of the Royal Commission on the Press. It showed that in Britain there were three existing newspaper ownership trusts, two undertakings operated under a deed of trust, and three whose articles had provisions for the appointment of trustees with power to restrict the transfer of control.⁸⁴ The trilogy illustrated the principal types of trusteeship to be found across the history of modern news media. It also displays the core element of trust law – protection in one form or another – and not least of those is the protection of the editor against undue influence. This chapter demonstrates, on one hand, the mechanisms employed to shield editors and to guide their editorial policies and, on the other hand, the sometimes fatal chinks in that armour. It begins by examining English practice before moving on to other parts of the Anglophone world.

In 1949, the oldest newspaper trust in Britain was the Daily News Trust (established 1911). In its evidence to the Royal Commission, it described its ownership as “voluntary agreements of owners to limit their own sovereignty in the public interest”

⁸³ “The Suppression of Important News”, from *Changing America* (1912, New York, The Century Co) reprinted in McChesney & Scott (eds) *Our Unfree Press: 100 years of Radical Media Criticism*. 2003, New York, The New Press.

⁸⁴ See Royal Commission on the Press, H.M.S.O. 1949 Appendix VI. The Yorkshire Conservative Newspaper Company and the *Liverpool Daily Post* and Echo Ltd are examples in the final category.

(1949, 24). The Royal Commission, after enumerating the types of trust instrument it had found in its enquiry, expanded the definition:

The objects of these arrangements are one or all of the following: to prevent the control of the undertaking from falling into unsuitable hands, to perpetuate the character and policy of a paper, to avoid the crippling effects of death duties, and to ensure, through the limitation or the ploughing back of profits, the preservation or expansion of the undertaking. (1949, 24)

Nowhere in the commission's definition was there an acknowledgment that trustees necessarily embraced the public interest objective claimed by the Daily News Trust. Rather, it saw trust arrangements in 'business as usual' terms, although it did accept that the articles of one publication (*The Economist*) specifically protected the independence of the editor. The wide-ranging recommendations of the commission's report did not include the use of trusts as a solution to the "growth of monopolistic tendencies in the control of the press".⁸⁵ While some witnesses saw trusts as a means of drawing newspapers away from the negative effects of commercialism, the Royal Commission did not agree. It stated that trusts did not necessarily remove a newspaper from ordinary commercial ownership, did not necessarily protect the editor, nor necessarily produce higher-quality publications. It did however, acknowledge that a trust could be "a valuable means of preserving quality where quality already exists" and expressed the hope that the number of newspapers "so protected" would grow (1949, 156-8).

The Royal Commission was correct in determining that a trust was not (and is not) a universal cure for the illnesses that afflict the news media. It is not a panacea, because like the human body, the news business is complex and sometimes mysterious. We can liken the trust to a medicine – it may have limited curative properties, compete against other medical products, be wrongly prescribed, be misused, but sometimes eradicate a disease. Its effectiveness depends not only on its pharmacological properties but also on the purpose to which it is put.

An historical examination of the use of trust mechanisms in the ownership and control of newspapers since the early 20th century shows why they cannot be simply assumed to benefit the public interest. This chapter reveals that the motivation for establishing media trusts has ranged from the unalloyed altruism exemplified outside the news

⁸⁵ Contained in a motion placed before the House of Commons on 29 October 1946 by two MPs (both journalists) calling for the Royal Commission. Quoted in Royal Commission Report (p. 3).

media by the Wellcome Trust, through attempts to exert power (often from beyond the grave), to cynical misuse for personal gain. It illustrates that public-spirited schemes are not guaranteed survival, and that selfish schemes can endure in spite of their obvious shortcomings. It also underlines the part played by strong personalities. At the same time, the history of media trust ownership and trustee governance identifies the components from which public interest media trusts may be created and some of the traps to be avoided. The chapter sets the foundation on which rest the media trust structures of the 21st century discussed in later chapters.

4.2 Britain

4.2.1 Ownership trusts

In 1959, a British research organisation, Political and Economic Planning (P.E.P.),⁸⁶ produced a report, *The Work of Newspaper Trusts*,⁸⁷ which investigated the three ownership trusts identified in the Royal Commission's report – The Daily News Trust, Scott Trust, and Observer Trust. In each of these ownership trusts, principled journalism was the aim that trustees were to support and facilitate. Even if the provisions of their trust deed did not legally bind them, they had a strong moral obligation to follow the spirit and intention of the trust founder's wishes.

However, the report began by noting that while trusts had been touted in Britain as a means of preserving integrity and ordering future conduct of a newspaper, they raised many more problems. The report then set out to determine whether or not trusts helped “toward a better Press” in the United Kingdom.

Only one of the three ownership trusts – the Scott Trust, survives today.⁸⁸ It is the subject of its own case study in this thesis, but some provisions in the now-defunct ownership trusts are worthy of note as their genesis differed from that of the survivor, and their trust deeds contain provisions that were not replicated by the Scott Trust.

⁸⁶ In 1978, P.E.P. merged with the Centre for the Study of Social Policy and was renamed the Policy Studies Institute, which became part of the University of Westminster in 2009.

⁸⁷ P.E.P. produced an extensive *Report on the British Press* in 1938 and a further report on press ownership in 1955.

⁸⁸ The Daily News Trust sold its newspaper interests to the Daily Mail & General Trust in 1960 and the *News Chronicle* was subsequently closed. *The Observer*, run by a trust set up by the Astor family in 1945, went through a turbulent change of ownership before being added to the Scott Trust's Guardian Media Group in 1993 following allegation of editorial interference by its then owner, Tiny Rowland.

The Daily News Trust was owner of the *Daily News* and acquired the *Chronicle*. The two newspapers were later merged to become the *News Chronicle*. The first newspaper ownership trust in Britain, it was formed in 1911 by chocolate magnate George Cadbury after he had bought out his fellow *Daily News* shareholders.⁸⁹ The trust deed allowed for profits to be given to charity or staff members, but did not include the founder's purpose in forming the trust, nor his preferred editorial stance. To have done so, would have bound trustees. Instead, Cadbury (who was a Quaker) set them out in non-binding memoranda and authorised the trustees "to follow their own conscientious convictions [for] circumstances change, but the spirit of Christ's teachings is unchangeable". He further wrote:

I desire, in forming the Daily News Trust that it may be of service in bringing the ethical teaching of Jesus Christ to bear upon National Questions, and in promoting National Righteousness; for example, that Arbitration should take the place of War, and that the spirit of the Sermon on the Mount – especially of the Beatitudes – should take the place of Imperialism and the military spirit... Much of current philanthropic effort is directed to remedying the more superficial evils. I earnestly desire that the Daily News Trust may be of service in assisting those who seek to remove their underlying causes.

Owen, 1964, 442

Three editors came and went after Cadbury, and his shareholding syndicate bought the *Daily News*. In each case, the reason was disagreement over editorial policy. The editor at the time the trust was created, A.G. Gardiner, "gradually acquired complete editorial control" during his 18-year tenure, but had to endure letters of criticism from Cadbury's wife that invoked her husband's name. He was forced from the editorship in 1918 as circulation fell and his editorial stances on David Lloyd George (a friend and political ally of Cadbury) and the Treaty of Versailles were at odds with Cadbury's views. Cadbury's son was by then general manager of the company (Boyd-Barrett et al. 1977, 288). The liberal views held by Cadbury continued to be reflected in the newspapers of the Daily News Trust until the *News Chronicle's* demise in 1960 after five years of heavy losses. Greenslade describes the *News Chronicle* at the time of its closure by the new owners, the Daily Mail & General Trust, as "unsmart, inefficient, non-hip, elderly" (*ibid.*, 102).

⁸⁹ The newspaper was loss-making and Cadbury's acquisition of remaining shares was a means of ensuring its survival.

The Observer Trust deed also gave trustees the power to prescribe the general policy to be adopted by the newspaper and it too, had religious overtones. It was strongly Protestant in several of its provisions. No person could become or remain a trustee who was not of the Protestant religion, a term to be interpreted “in the widest and most liberal sense”. Directors, managing director, editor, and business manager were to be Protestants. It further allowed them to appoint directors responsible for the business operations of its trading company, and required their approval before an editor could be dismissed.

Like George Cadbury, the trust founder Viscount Astor, used memoranda attached to the deed to set out his views on the relationship between trustees and editors, and the direction he wanted the newspaper to take. In 1945 he prepared a memorandum that set out his wishes:

- The purpose of the *Observer* should be “to reflect and guide public opinion in the ways of good citizenship” – and to pay its way.
- “The editor will naturally desire to keep in touch with the proprietors to retain their confidence. The character and quality of a newspaper are the concern and responsibility of the editor. He (sic) should be a person with independent views and the trustees should not play for safety by appointing someone who will be neutral. The editor must not feel himself in the hands of a committee, whether of the trustees or the directors. He should have the full and independent right of running the newspaper. He should not be neutral on controversies, nor tied to one political party. He should be responsible for everything printed in the newspaper (except advertisements) and for the appointment of editorial staff. If there is a lack of confidence on major policy the editor and proprietors should part company. On occasional or minor differences the editor should decide.”⁹⁰
- Contact between the editor and the proprietors or trustees is especially desirable before a general election or highly critical national issue.

In 1949, the trustees themselves added a further memorandum on commercial policy that required the reinvestment of all profits for the following purposes:

⁹⁰ The editor of the *Observer* from 1908 to 1942 was J.L. Garvin, who enjoyed a good relationship with the owner, Viscount Astor, until a disagreement over wartime editorial policy saw him ousted over what Astor claimed was a breach of contract. In 1948, David Astor (son of the trust founder) became editor, replacing Ivor Brown who had taken the chair while David Astor did military service. For a positive view of David Astor’s editorship see Roy Greenslade, *Press Gang*, 2004, London Pan Macmillan (p. 24). Greenslade notes that Astor always ensured that appointees to the trust chairmanship were people who held views similar to his own.

- To ensure the continuity of the character of the *Observer*, and to enable it to achieve excellence and the greatest possible success within its defined character.
- To extend the service to the community, which it is hoped the *Observer* will do by starting new publications or aiding by investment existing publications which aim at the same ideals.
- To help raise the standards of British journalism by whatever educational means seem appropriate.
- To perform purely charitable acts, chiefly within the world of journalism.

One could speculate that the 1945 memorandum was in fact designed to give the editor (and effective owner), David Astor, institutionalised freedom of action when he took the editorship from the *Observer*'s wartime substitute. The 1949 addition did not interfere with editorial independence and bound the trustees to use the company's finances to improve the newspaper as Astor had envisaged. Whether that was the case or not, two things are apparent: his editorship was consistent with emphasis on responsibility and public spirit in the memoranda; and the clauses provide a worthwhile template that other newspaper ownership trusts could usefully employ, particularly by inclusion in a trust deed to make them binding. It would be naïve to think that such clauses would give an editor complete protection. The case of the *Daily News*' editor, A.G. Gardiner (and countless examples from non-trust newspapers), prove that in the event of a serious policy disagreement, there could be only one outcome – the trustees would prevail, and the editor would resign or be dismissed. Viscount Astor was being no more than realistic when he wrote about the role of the editor in his 1945 memorandum, but implicit in the section is the need for trustees to use their judgement. An occasional or minor disagreement was not seen as grounds to “part company”, so the inference is that the use of their ‘nuclear option’ should be a weapon of last resort. It is also apparent from the manner in which the memoranda were written, that the members of the Observer Trust were expected to follow their direction irrespective of their legal status. In observing that trustees were “morally bound by the spirit and intention” of the memoranda, the P.E.P report acknowledged the strength of documents that clearly were not intended to be seen as mere afterthoughts and “are probably of more practical effect than any legally framed document could be” (p. 144). It is important to also note that the 1945 memorandum bound not only the trustees. It was a clear message to the editor of the *Observer* on how he or she should operate.

4.2.2 Deeds of Trust

Deeds of trust adopted by, or in some cases imposed on owners often embodied similar moral obligations, but their principal purpose was to restrain the owners from certain activities. For example, the purchasers of the Birmingham Post & Mail company were required by the executors of the estate of the late owner, Sir Charles Hyde,⁹¹ to enter into a deed of trust designed to ensure that, for the following 21 years, the company “shall carry on the newspaper substantially on the same lines and with substantially the same policies as pursued by Sir Charles Hyde, and in particular: (i) provide a full impartial news service with only such comment as is fair and free from bias; (ii) preserve the independence and local character of the newspapers and their freedom from control by any political party or trade association or any London newspapers or any combine or syndicate of newspapers”. Hyde has been described as one of the regional newspaper proprietors in Britain who “represented the kind of sturdy independence, the incorrigible, sometimes eccentric individuality which condemned metropolitan values and whose papers reflected their pride in local achievements and an intimate involvement in local affairs” (Scott 1968, 178). His contempt of the press barons of Fleet Street was summed up in his reaction to news that Lord Rothermere (owner of the *Daily Mail*) was planning to launch his *Evening World* newspaper in Birmingham to challenge ‘an old family property’ – “Tell Lord Rothermere that, far from being a decayed old family property, the papers are owned by a young bachelor who will fight him until his blood’s white if he comes to Birmingham” (*ibid.*, 179).

Rothermere turned his sights elsewhere and found similar attitudes. He became embroiled in a prolonged newspaper war in Bristol that led to the creation by prominent citizens of a new newspaper, the *Bristol Evening Post*, to compensate for the loss of independent titles. It ended in a ‘deal’ between his interests and those of the local competitor. A new company was formed, in which the Rothermere interests held a majority of shares, but which was governed by a trust deed was signed by the parties guaranteeing that the papers *Evening Post’s* had independence under its own board of management. In 1939, a transfer of shares returned a majority of control to the local

⁹¹ He was the grandson of the founder of the *Birmingham Post*, John Frederick Feeney, and inherited the company from his uncle. He is credited with playing a major role in the modernisation of the Press Association in Britain in the 1920s (Scott 1968, 160; Moncrieff 2001, 77). His contempt for the mass-circulation London papers was a reflection of his traditionalist beliefs and dignified approach to journalism. In 1921 he was created Baron Hyde of Birmingham. He died without an heir in 1942 and the baronetcy became extinct.

interests (Royal Commission Report 1949, 23). The P.E.P Report states that in 1947, the directors reinforced the provisions of the deed of trust by passing a resolution, stating the company policy of the *Bristol Evening Post*, which the report recognised as familiar. In fact, it was taken directly from the will of Adolph Ochs, proprietor of the *New York Times* (to which we will return to in the next chapter), but the Bristol directors felt it also summed up their approach to company policy. The resolution had no legal status, but the directors told the P.E.P that they felt bound by it and expected editors to follow its provisions (P.E.P Report, 148). The resolution stated:

To perpetuate the *Bristol Evening Post* as an institution charged with a high public duty and to maintain the *Bristol Evening Post* as an independent newspaper, entirely fearless, free from ulterior influences and unselfishly devoted to the public welfare without regard to individual advantage or ambition, the claims of party politics, or the voice of religious or personal prejudice or predilection;
To reflect the best informed thought of the country, honest in every line, more than fair and courteous to those who may sincerely differ from its views;
To present, without recognising friend or foe, the news of the day “all the news that it is fit to print” – and to present it impartially, reflecting all shades of opinion;
To conform to the highest standards of business ethics in its business departments, and to treat all persons associated or connected with any of the departments of the *Bristol Evening Post* organisation with justice and generosity.

The newspaper continues to be published, but is now an integrated element of Northcliffe Newspapers, the regional arm of the Daily Mail & General Trust controlled by the fourth Viscount Rothermere. It shares a number of editorial departments⁹² with its morning stable mate, the *Western Daily Press*, and is produced at a group printing site at Didcot in Oxfordshire. Its editor in 2009 was also editorial director of the Northcliffe West and Wales regions.

Deeds of trust have also been used by British news agencies to secure their news service functions. Important principles and safeguards were incorporated in the Reuters Trust Principles that are discussed in Chapter 9. Also examined in that chapter is the recent formation of a trust by the (British) Press Association, to ensure that its editorial objectives continued to be met as it diversified its range of activities.

⁹² Including features, business, and sports departments.

4.2.3 Articles of Association

The P.E.P. report examined the Articles of Association of a number of publications. *The Economist*, *The Times*, and *Spectator* each had provisions that imposed trust-like requirements on their owners that were designed to ensure continuity of the character and traditions of the publications. The report noted that only *The Economist* had formal safeguards for the editor.

The Economist acquired trust provisions in 1860 on the death of its founder James Wilson, whose estate was held in trust for his widow and six daughters. His executor, and arguably the newspaper's most renowned editor was Walter Bagehot. He was also a trustee, but his co-trustees gave him a free hand (Edwards 1993, 256) until his death in 1877 when his Scottish-based successor George Wilson (brother of the founder), began what has been characterised as an "interventionist regime". He was aided and abetted by some of the daughters, who joined "Uncle George" in discussions over the appointment of editors and aspects of *The Economist* editorial policy. James Wilson's offspring had a long association with the newspaper. The last daughter did not die until 1933, and the daughters were referred to as the "dear old ladies" by an editor, and dismissed by the trustees during the First World War for expressing pacifist views (*ibid.*, 542).⁹³

In spite of the "dear old ladies" periodic appearances at *The Economist's* offices, and a sometimes active role by their trustees in the pursuit of *laissez faire* policies, the hold on ownership was less than tenacious. There was no resistance in 1928 to a proposal by then-editor Walter Layton, that the newspaper be sold to a number of investors including Financial Newspaper Proprietors Ltd which over time metamorphosed into the current major shareholder, Pearson (publisher of the Financial Times).⁹⁴ Layton later wrote: "A family trust...is not an instrument well fitted for the management of an important journal of opinion. With every decade that passes its members get more scattered and out of touch with the paper and with one another" (*ibid.*, 617). It is a phenomenon to which we will return to in Chapter 5.

As part of the change, Layton demanded and received built-in guarantees of editorial independence. He had, on his appointment as editor in 1921, signed a contract that

⁹³ The dismissal of Francis Hirst in 1917 was described as being "handled in an entirely civilised manner" (Edwards 1993, 542).

⁹⁴ The trustees did retain an ownership interest which continues to be reflected in the shareholding.

required him to “obey and comply with all lawful orders and directions given to him from time to time by the proprietors” while being free to do whatever he considered “*bona fide* and to the best of his judgement conducive to the interests of the proprietors” (*ibid.*, 610). The articles of the new company formed in 1928 contained provisions for the appointment of *independent* trustees who had the following powers:

- The right to veto the appointment or dismissal of any editor – but the editor was to have sole responsibility for the policy of the paper so long as he remained in that position.
- The right to veto the transfer of voting shares in the new company.
- The right to be represented on the board of directors.

Layton experienced attempts by the first chairman of directors, Henry Strakosch, to interfere in the policy of the newspaper and to remove Article 105 in the company constitution that gave the editor what he described as “dictatorial powers”. There is no evidence that Layton asked the independent trustees to fight the battle on his behalf. Instead, he dealt with Strakosch’s criticism of his editorship by issuing a withering rebuttal that ensured that, thereafter, *Economist* editors were protected by unchallengeable guidelines set out in his defence (*ibid.*, 731-741).

It is thus clear that when the constitution was drawn up, the public was intended to understand that the Board would not function as a body to control policy as is normal with an ordinary newspaper, but the ultimate responsibility would rest with independent trustees functioning through an editor in whom they had confidence. I venture to think that these provisions have achieved their object and that it would be detrimental to the paper if they were whittled away...I am opposed to the simple deletion of Article 105, because I think that however smoothly things may work in the immediate future, it will mean that ultimately it may be taken for granted that normal Board-room control over policy may be legitimately exercised. Indeed it seems likely that sooner or later it will be so exercised unless a particularly strong-minded editor refuses to take instructions and shelters himself behind the Trustees (*ibid.*, 739).⁹⁵

Layton’s successor, Geoffrey Crowther,⁹⁶ suggested in correspondence that the role of *The Economist*’s trustees was a benign one: “...the business (which normally consists only of approving the occasional stock transfers) is conducted entirely by

⁹⁵ Layton agreed to an amendment to Article 105 that recognised the editor’s responsibility to maintain the general character and tradition of *The Economist* and that “with a view to doing so” the editor would meet with the Board of Directors “from time to time (Edwards, 739n).

⁹⁶ Whose editorship stretched from 1938 to 1956 and was followed by chairmanship until 1962.

correspondence, and so far as I know nothing has arisen in the 24 years that the present company has been in existence that has occasioned any argument” (*ibid.*, 627). Later, trustees began the practice of meeting annually with the editor. The remarkably stable shareholding in the private company, has contributed to a benign relationship between editor and trustees, although the possibility in the late 1980s of Rupert Murdoch’s News Limited becoming a significant shareholder in the *Financial Times* raised the prospect of the trustee shield being raised to protect the editor by opposing the transfer of shares. The News Limited foray into the *Financial Times* petered out (*ibid.*, 622-3).

The same could not be said of Murdoch’s designs on *The Times*, and although the P.E.P Report was written over 20 years before his purchase of the venerable title, it stated categorically that the editor of *The Times*: “far from having his independence guaranteed, is on paper entirely in the hands of the Chief Proprietors who are specifically empowered by the Articles of Association to control editorial policy” (1959, 151). The articles did however, provide for a committee of notables with power to veto share transfers that were incompatible with “maintaining the best traditions and political independence of *The Times* and national rather than personal interests, and eliminating as far as reasonably possible questions of personal ambition and commercial profit”. The P.E.P Report asked, perhaps prophetically and certainly with some disdain, whether a foreigner could tell that *The Times* was covered by trust provisions.

What might be described as a committee of notables that was supposed to afford *The Times* a measure of trustee protection, had its origins indirectly in the insanity of a major shareholder, Lord Northcliffe, and the calamity over ownership that surrounded his madness and subsequent death (Times History 678-721 & 740-766). Northcliffe’s dictatorial manner as The Chief⁹⁷ had been endured by then-editor Wickham Steed who was dismissed when control passed to Major (later Lord) John Astor⁹⁸ in 1922. Steed advised his successor to make his position “bomb-proof” (*ibid.*, 777) and when Geoffrey Dawson assumed the editorship (for the second time) in December 1922 he preceded acceptance of the appointment with a lengthy memorandum, in which he stated that any editor worth his salt would require a ‘free hand’ and added: “The power of the Proprietors is exercised properly by the appointment and dismissal of the Editor,

⁹⁷ In America, William Randolph Hearst luxuriated in the same title.

⁹⁸ In partnership with John Walter, a descendent of the newspaper’s renowned 19th century proprietor and editor of the same name.

not by interfering with his work or doing it themselves” (*ibid.*, 779). Astor and his partner agreed with the sentiment, but this return to the traditional relationship that prevailed before Northcliffe’s proprietorship was always understood to mean that the policies of the editor were in broad agreement with the views of the proprietors, or did not at least, conflict with them (*ibid.*, 784). It was, perhaps, their familiarity with Dawson’s policy direction that led them to see no inconsistency between their acceptance of the memorandum (together with subsequent statements that the editor had a “free hand”) and their inclusion in the Articles of Association of the proprietary control over policy that the P.E.P Report derided.⁹⁹

The proprietors were in fact, more concerned about stability of ownership and the preservation of *The Times* as a national institution than the relationship with the editor. The Northcliffe experience had been unnerving, even before the press baron’s descent into madness in France in June 1922,¹⁰⁰ but there had also been irritating challenges to the power of the Chief Proprietor (the Walter family) by factions of minor shareholders through much of the 19th century (*ibid.*, 786). Initially, Astor and his partner John Walter III considered placing their shares in the hands of 10 ‘governors’, ‘referees’, or ‘trustees’ who would each hold a parcel of shares in trust, and none could be transferred without the agreement of a majority of holders. However, there were legal impediments to this arrangement, and instead an Article was included in The Times Holding Company’s constitution in 1924 to provide for the formation of the committee of notables to safeguard the future transfer of shares.¹⁰¹ The article said, in part:

...the Committee, in coming to their decision, shall have regard to the importance of (a) maintaining the best traditions and political independence of *The Times* newspaper, and national rather than personal interests, and (b) eliminating as far as reasonably possible questions of personal ambition or personal profit.

It was to be more than 40 years before the committee was to have a serious role to play. In the 1960s, the economic burden of *The Times* was too great for the Astor family to sustain, and both merger and sale were considered. The Canadian newspaper owner

⁹⁹ Dawson did in fact, enjoy considerable autonomy. When John Walter disagreed with *The Times*’ appealing tone over the Sudetenland in 1938, he began his letter to Dawson thus: “You sitting at the centre of events will I am sure not resent my offering the following criticism, although you may not agree with it”. Dawson replied that he did not resent the criticism and did not agree with it, but would be happy to talk about it.

¹⁰⁰ Northcliffe died in London on August 14, 1922.

¹⁰¹ The committee comprised the Lord Chief Justice, the Warden of All Souls College (Oxford), the president of the Royal Society, the president of the Institute of Chartered Accountants in England and Wales, and the Governor of the Bank of England.

Lord Thomson made a successful offer in 1966 to purchase *The Times*, and the committee raised no objections after the sale was approved by the Monopolies Commission.¹⁰² Thomson replaced the committee of notables with four independent directors who sat on the main Times Holdings board. He agreed to run the newspaper for at least 21 years, with a guarantee of editorial independence (Greenslade 2004, 200). The editorial guarantee was honoured (Evans 1983, 127; Shawcross 1992, 222), but the 21-year tenure pledge disintegrated when Thomson lost patience with unions that resisted direct editorial input and photocomposition (Melvern 1986, 75-6). Industrial action closed *The Times* and the *Sunday Times* for a year, and Lord Thomson of Fleet put his London titles up for sale in 1981.

The successful suitor was Rupert Murdoch, who negotiated new terms of ownership and who avoided referral to the Monopolies Commission with the assistance of the Thatcher Government and a loophole that allowed the sale of unprofitable companies to proceed without referral.¹⁰³ The bid was approved by a *Times* vetting committee, that included the independent directors and the editors of *The Times* and *Sunday Times*. Murdoch had given guarantees of editorial independence, and undertook to create a Court of Appeal role for the independent directors (which he proposed to increase from four to six) in any dispute between proprietor and editor. The negotiation process was documented by Evans in 1983 and 2009,¹⁰⁴ although written in the light of his antipathy toward Murdoch, following his forced resignation as editor of *The Times*, suggests Murdoch made sufficient concessions and undertakings to convince the vetting committee that editorial independence was safeguarded and that the independent directors had an effective trustee role. He agreed that:

¹⁰² Legislation had been passed the previous year requiring sale or merger of newspapers to be referred to the Monopolies & Mergers Commission under certain circumstances. The 1977 Royal Commission on the Press noted that seven cases had been referred to the commission since the enactment of the law and all were approved (Royal Commission Report 1, 10). Jenkins (1986, 54) described the Monopolies Commission enquiry into *The Times* purchase as “an extraordinary parade of Fleet Street self-importance” and “an Establishment initiation rite” [for Thomson]. Thomson’s offered to add four independent directors to the Times Holdings Company board (which he did) and was characterised by the Monopolies Commission as “window-dressing” because they lacked any real power (Evans 1983, 128).

¹⁰³ *The Times* was losing money, but its stable mate the *Sunday Times* was profitable. While the decision not to refer the sale has been criticised, there was a real possibility that *The Times* would have been abandoned to enhance the likelihood of a successful application for the purchase of one newspaper, rather than two titles. Murdoch was also rumoured to have told the Thatcher Government that he would abandon the bid if the sale was referred to the commission (Greenslade, 377-8).

¹⁰⁴ Shawcross (1991) largely repeats Evans’ version of events. Evans revisits Murdoch’s actions with the benefit of almost three decades of reflection in his autobiography *My Paper Chase: True stories of vanished times* and states that he has “no residual emotional hostility toward him” (2009, 442).

- *The Times* and *Sunday Times* would remain in their own company which had its own board of directors and would not simply become a subsidiary of News International.
- National (independent) directors would be appointed for three years and could “suggest” their successors – although Murdoch would have a power of veto on appointments.
- The number of national directors would be increased from four to six, with the additional directors nominated by Murdoch.¹⁰⁵
- The appointment and removal of editors would require the approval of the board and a majority of the national directors.
- Editors would have discretion within agreed budgets, which could be reviewed every six months.
- Editors would have sole right to give instructions to editorial staff.
- Editors would have sole control of the selection and balance of news and opinion.¹⁰⁶
- The character of *The Times* as a paper of record and of the *Sunday Times* as an investigative newspaper would be maintained.

The first attempted breach of the agreement was over the retention of the newspapers in a separate corporate entity. Less than a year after buying the newspapers, an attempt was made to take the titles under the News International umbrella. The chairman of Times Newspapers at the time, Sir Denis Hamilton, describes the episode in his 1989 autobiography, in which he states that the managing director of Times Newspapers, Gerald Long, and a News International executive, Richard Searby, had attempted to amend the Times Newspapers articles of association in Murdoch’s absence. At that point, Hamilton resigned and Long and Searby attempted unsuccessfully to put through the proposal via the company’s executive board.

The national directors had not been consulted, there was a public outcry, Rees-Mogg¹⁰⁷ made a public protest and, together with my resignation, this put Murdoch in a very bad light, forcing him to reconsider. To his embarrassment and shame, his executive board’s decision had to be rescinded, leading ultimately to Gerry Long’s own departure (1989, 183).

¹⁰⁵ He chose the appointees.

¹⁰⁶ While Murdoch reserved the right to discuss politics with editors, he agreed they would have the final say.

¹⁰⁷ Former editor of *The Times*.

In the most celebrated test – a challenge to the protective shield around the editor, the guarantees and the power of the national directors again were found to be more apparent than real. In March 1982, Evans (who had moved from the editorship of the *Sunday Times* to *The Times*) was forced by Murdoch to resign. His departure followed months in which Murdoch had adroitly circumvented (if not the letter) then the spirit of the agreement. Evans' dismissal was neither debated nor sanctioned beforehand by the board of directors and, particularly by the national directors who under the articles held the prerogative to decide the editor's fate.

The episode demonstrated the frailties of both editorial independence and of apparent trust-like safeguards written into the constitutions of corporate entities whose real purpose is to satisfy their principal private shareholders. Murdoch was able to:

- Circumvent guarantees of editorial independence by limiting his definition of interference to formal instruction.
- Subject Evans to continuing telephone calls and memoranda outlining his views and wishes in terms that carried an expectation of compliance.
- Influence editorial content by refusing to set a formal budget (in spite of undertakings to do so), thus requiring the editor to seek approval for assignments involving significant expenditure.
- Appoint national directors who were sympathetic to his views.
- Appoint and dismiss editors of *The Times* and *Sunday Times* with impunity.

Andrew Neil (editor of the *Sunday Times* 1983-1994) claimed in his autobiography (1996, 38) that he was under no illusions about safeguards when he accepted Murdoch's offer to edit the *Sunday* title:

...I never regarded the national directors of Times Newspapers as much of a safeguard should my job security be in jeopardy. The directors had been appointed at the insistence of Parliament and the previous owners (Thomson) when Murdoch bought Times Newspapers in 1981; their function was to protect the editors from proprietorial interference; in theory, Rupert even needed their permission to hire or fire an editor, though it was usually easy for him to square them in advance. They were not that independent; after all, Rupert had hired them. But they were a distinguished bunch and even included my friend and mentor, Alastair Burnet.¹⁰⁸ But it was a peculiarly British conceit, doubtful in principle, unworkable in practice: why should the owner not be the final arbiter of what was

¹⁰⁸ Editor of *The Economist* when Neil was employed on that newspaper.

in his paper? In any case a proprietor can make life hell for an unwanted editor, as Harry Evans had found. In his struggles the national directors had proved an inadequate, paper-thin shield. I would place no faith in them.

Chapter 5 shows how, in a more contemporary setting and in another hemisphere, the Bancroft family members justified the sale of Dow Jones and the *Wall Street Journal* by placing their faith in similar safeguards only to find that, once again, they were paper-thin and inadequate.

The P.E.P Report also noted other publications with articles that appointed a number of trustees whose approval was required before any sale of shares or any substantial part of the assets took place. At the *Spectator*, any attempt to gain more than 49 percent of control would trigger the formation of a committee whose members were to include the chairmen of the London County Council and the Headmasters' Conference, plus the presidents of the Royal Society, Royal Historical Society, Law Society, and Institute of Chartered Accountants. They were required to "have regard to the importance of: (a) maintaining the best traditions and political independence of the *Spectator*, and national rather than personal interests; and (b) eliminating as far as reasonably possible, questions of personal or commercial profit". These provisions did not prevent the ultimate sale of the magazine to its present proprietors, the Telegraph Group which is a private company owned by the Barclay brothers.

Other publications were found to have provisions in their articles of association that the P.E.P. Report stated were "designed to keep control in the hands of particular people or particular kinds of people". Many newspapers at the time were owned by private companies in which the transfer of shares was commonly restricted, for example, to keep ownership within a family. Some newspaper-owning public companies such as the Yorkshire Conservative Newspaper Company, the Liverpool Daily Post, and Echo Ltd described at the start of the chapter, had written share restrictions into their articles for other purposes. Some mimicked the private company desire to keep ownership in the family. The News of the World Ltd for example, required shares to be offered first to existing shareholders. That Sunday newspaper's position today – firmly inside Rupert Murdoch's stable – is indicative of the failure of articles to protect either publications or proprietors.



4.2.4 The P.E.P Report conclusions

The P.E.P. Report itself was under no illusions about the effectiveness of the various arrangements it had examined. It found that the existence of a trust “does not in itself, however necessarily ensure greater editorial independence and importance”, and noted that of the ownership trusts, only the Observer Trust had entrenched the rights of the editor and protected him from directors.¹⁰⁹ Of the other companies it examined, only *The Economist* had formal safeguards for the editor. The report acknowledged that the relationship between editor and proprietor (or trustee) was complex, and that newspaper production required a “capacity for human understanding”.

One danger of trusts is that unless considerable care is taken they may fail to satisfy the human needs of the enterprise. Like other corporate forms of control also they may, if they are not clear and consistent in playing their role, lead to confusion and blurring of responsibility, simply adding another tier of control to what must inevitably be an intricate structure (*ibid.*, 151-2).

It suggested that the more a trustee was a person with public standing with definite views on public affairs, the more difficult it was to avoid expressing those views to an editor and seeking to influence editorial policy. The report did note that while trustees had the ability to undermine an editor’s prestige through interference, even a trust that did not legally give its editor absolute independence could sometimes provide him with valuable safeguards. However, it issued a warning that a trust deed could be an impediment to trustees exercising a legitimate right to require an errant editor to desist from policies or actions detrimental to the newspaper, or to dismiss him. A trust deed specifically providing editorial safeguards could give an editor “a chance to fight a long delaying action even against his own trustees” (*ibid.*, 153).

It found that the existence of a trust did not automatically convert a newspaper from a commercial to a non-commercial concern, or imbue it with qualities that it had not previously possessed. A trust could in fact, merely substitute one owner for another and the newspaper could still be required to make profits, or to direct profits to causes nominated by trustees (*ibid.*, 151).

¹⁰⁹ It claimed *The Observer*’s editor was not protected from *trustees* (as opposed to the company directors) by the trust provisions, but fails to acknowledge the effect of the 1945 memorandum which makes clear Lord Astor’s determination that the editor should think and act independently even though he needed to enjoy the confidence of trustees.

Turning to the restrictive provisions of deeds of trusts and articles of association ostensibly aimed at maintaining character and tradition, the P.E.P questioned, somewhat rhetorically, whether there was a discernable difference between those newspapers with such provisions and those that did not have them. It went on to ask whether it was significant that some newspapers subject to trusteeships were less successful in terms of circulations than some comparable newspapers with more conventional organisation (*ibid.*, 153-4).

The P.E.P report's conclusions (*ibid.*, 156-8) contains a number of observations and cautions:

- Existing trusts had been formed around existing newspapers. While it was possible, with sufficient financial backing, to create a new newspaper with trust provisions, this would not guarantee its success, quality or character.
- The successful operation of a trust depended on establishing the right context in the form of the trust, on the selection of sound trustees, and the appointment of suitable staff. A great deal depended on the choice of the first trustees and the arrangements made for their replacement.
- Too precise a definition of a trust's aims or ideals could be harmful if circumstances changed. The best trusts may be those where the objects laid down are "quite vague".
- There is no way of controlling the future conduct of a newspaper by legal arrangements, whether as trusts or in any other form. The tradition of a newspaper, the calibre of the people running it and its reputation would govern its future.

The P.E.P Report concluded that only time would tell whether trusts were more successful than other forms of proprietorship or control in preserving and developing the independence and character of a newspaper. Fifty years later we are in a better position to judge, and the following chapters will shed light on how trust instruments were subsequently employed and what they have achieved. The conclusion of this chapter however, will list lessons from the past but, as the following sections show, some are provided by newspapers outside the United Kingdom.

4.3 North America

If England's newspaper history was longer than that in North America, its experience of newspaper trusteeship was not. Forms of trustee ownership of newspapers began to appear on both sides of the Atlantic in the mid-19th century, and as in Britain, American trusts and trustee articles were to serve a variety of purposes – with equally varying degrees of success. Undoubtedly successful was the *Deseret News*¹¹⁰, established under a trust deed by the Church of Christ of Latter Day Saints (Mormons) in Salt Lake City in 1850. It continues to be published and is owned by a for-profit subsidiary of the church.

4.3.1 United States trusts

Endowment trusts to which newspaper assets were bequeathed began to appear early in the 20th century. However, only a small number envisioned the bequest as trusteeship of a public service. The majority were designed to protect family assets for the benefit of family members.

The Hearst family is an example of this. For many years, William Randolph Hearst resisted the pleas from his lawyers that he should draft a will. Finally, in 1947 at the age of 84, he signed a will that would create a series of trusts – one in which his estranged wife was the beneficiary, the Hearst Family Trust that benefited his five sons and their heirs, and two 'charitable' trusts (Nasaw 2003, 584-5). In 1950, he drew up a further secret trust that would have granted control of the Hearst empire to his mistress, Marion Davies. However, after his death in 1951 she relinquished voting rights on her shares, and over time the Hearst Family Trust became the sole owner of the Hearst Corporation. Significant examples of family-based trusts are discussed in detail in Chapter 5.

Trustee ownership of religiously affiliated and funded American newspapers (most of them with small circulations among adherents), was relatively common in the late 19th and early 20th century. The most successful was the *Christian Science Monitor* that was established in only 100 days in 1908 at the direction of Mary Baker Eddy, founder of the Church of Christ, Scientist. A three-member board of trustees had been established to run the Christian Science Publishing Society 10 years before the *Monitor* was

¹¹⁰ Not to be confused with desert – the title is derived from the Mormons' early name for what became the state of Utah.

launched, because the then statutory limits on the earnings of a church interfered with the proper running of the business (Peel 1977, 417). In 1908, Mrs Eddy was the subject of concerted attacks in newspapers owned by Joseph Pulitzer.¹¹¹ Coincidentally, a parishioner wrote to her suggesting a newspaper whose purpose would be to “present the news constructively rather than sensationally and would put ‘principle before dividends’” (*ibid.*, 309). Two months later, she ordered the creation of the *Christian Science Monitor*¹¹² and stated:

It will be the mission to the *Monitor* to publish the real news of the world in a clean wholesome manner devoid of the sensational methods employed by so many newspapers. There will be no exploitation or illustration of vice or crime but the aim of the editors will be to issue a paper which will be welcomed in every home where purity and refinement are cherished ideals.¹¹³

Although it was nominally overseen by the publishing company trustees, the *Monitor*’s policy and destiny were actively guided by Mrs Eddy. The first sheet of the editorial page was sent to her home each day “for her information” (*ibid.*, 497), but she understood that it was first and foremost a newspaper¹¹⁴ and not a church publication. The sole concession she made to its origins was a requirement for the publication of a single religious article each day. Apart from that single religious article which continues to be published each day, the newspaper follows non-denominational, non-partisan journalistic principles. After Eddy’s death, the board of directors of the church assumed oversight over the newspaper’s editorials and editorial cartoons, and continues to do so. The directors appoint the editor, but do not have a record of interfering in the newspaper’s content. The *Monitor* maintains staff writers in eight countries as well as eight cities around the United States. It operates a significant Washington bureau, and employs an extensive international network of non-staff correspondents. However, throughout most of its existence, the newspaper, which continues to be owned by the Christian Science Publishing Society, has been subsidised by the church (\$US12.1 million in 2008-2009). As we saw in Chapter 2, journalism’s ‘perfect storm’ has exerted

¹¹¹ The more populist William Randolph Hearst may have been expected to join the attack, but instead issued instructions that Mrs Eddy and the Church of Christ, Scientist were not to be criticised. Hearst’s infant son was reportedly cured of a wasting illness by a Christian Science practitioner (Peel, 495n). Paradoxically, the *Monitor* has been the recipient of seven Pulitzer Prizes.

¹¹² Her letter to the directors stated “This must be done without fail”.

¹¹³ Quoted in Lee 1947, 185.

¹¹⁴ The early newspaper was innovative and in 1912 it set up a complete newspaper plant at the Republican national convention in Chicago and issued special editions from the venue, while in 1928 it became one of the newspapers that invested in Press Wireless Inc. to provide radio communication for news distribution (Lee 285 & 558).

extraordinary pressures, and at the time of its centennial in 2008 the *Monitor* announced that it would replace its weekday newspaper with an enhanced news website and publish only a weekly magazine.

The longevity of the *Monitor* is unusual. The vast majority of such church-affiliated daily newspapers established before the Second World War, could not sustain their losses, and many failed after a small number of issues. Similarly, worker-affiliated newspapers (often with union or worker ownership) struggled financially in the years leading up to the Second World War. *The Call*, was published by the Workingman's Cooperative Publishing Association¹¹⁵, and was regarded as a "powerful influence" with a credible circulation of 28,000 in 1908. However, the revocation of mail privileges during the First World War¹¹⁶, and a refusal to reinstate them after the Armistice, led to its closure in 1923 (Lee 1947, 191-2). The Communist Party's *Daily Worker* was published in New York from 1924 until after the Hungarian Uprising in 1956, and a succession of small-circulation dailies followed until the 1990s when publication was abandoned.

Trust structures have been used to allow employees to obtain equity in the newspapers for which they worked. In 1926 the *Kansas City Star* and *Times* were sold to employees for \$US11 million, more than three-quarters of which was by way of a mortgage. Despite predictions of failure, the mortgage was repaid two years ahead of schedule (in 1939). Under the terms of the trust deed, employees gave other employees or the company the right to purchase shareholdings when association with the organisation ceased, thus guaranteeing continued employee ownership. However, in 1977 the company agreed to sell its interests to the McClatchy chain. In 1937, the *Milwaukee Journal* (now the *Journal Sentinel*) created an employee stock trust, modelled on the *Kansas City Star* agreement, under which workers received a 25 percent stake in the company. A public share issue was made in 2003, but it included a staff equity incentive plan, discounted staff purchase scheme, and other mechanisms including special voting rights to maintain employee participation in the ownership of Journal Communications Inc.

¹¹⁵ Its 15-member editorial board was composed of tailors, butchers, and mechanics.

¹¹⁶ During the First World War, the U.S. Post Office used the Espionage Act as a pretext to suppress issues of socialist and left-wing publications that were critical of the war, by ruling that they were no longer eligible for the cheaper second class mail rates that newspapers received (Starr 2004, 277).

A small number of proprietors bequeathed their interests to establish either non-profit newspapers for the benefit of the community, or to provide funds for public projects. Dunlap says (in an appraisal of these non-profit enterprises) that the best arrangements “value community responsibility, commitment to local ownership, and a passion for quality journalism”¹¹⁷. One of them (the St Petersburg Times), is owned by the Poynter Institute (where Dunlap is president and a trustee) and is the subject of a comparative study in Chapters 6 and 7. Another example of non-profit newspaper structure and split-interest governance is provided by the New London (Connecticut) Day. The will of Theodore Bodenwein, the publisher of *The Day* from 1891 until his death in 1939, vested the company’s assets in a trust that paid nine-tenths of the dividends to his wife and two children, and the remainder to the Bodenwein Public Benevolent Foundation. Following the death of the last of the trio (in 1978) the trust’s annual proceeds were to be distributed through the benevolent foundation to the Connecticut communities in which *The Day* circulated. The first article of the will set out the newspaper’s continuing purpose:

I have devoted nearly all my life to building up a newspaper in New London which should become a recognized institution in the community, a leading factor in the growth, development, and improvement of the city and vicinity and the happiness and prosperity of the people. I believe a newspaper should be more than a business enterprise. It should also be the champion and protector of the public interest and defender of the people’s rights. I am not unmindful that I owe the success of *The Day* in large degree to the confidence and support of the people of Eastern Connecticut, and I believe the profits of the large business I have created with their help should, except for the provisions I have made for my dear wife and for my children, be returned to the community...

The will provided for the appointment of five trustees, two of whom were to be employees of newspapers published by the trust. It charged them with publishing *The Day* (and other media), and clearly proscribed their ability to sell the company. Grounds for sale were limited to (a) ceasing to publish a newspaper in New London, Connecticut, or (b) failing to pay in each of any two successive calendar years the sum of \$25,000 to the benevolent trust. This provision has guaranteed that the company has remained in the trust’s hands.

¹¹⁷ Dunlap, K. *A Study of Nonprofit Ownership of News Media* (paper to the 2004 Breaux Symposium at theanship School of Mass Communication, Louisiana State University).

Bodenwein also set out how he expected the trustees to run the company. His prescription might be described as a model of newspaper commercial governance, although he made no demands relating to editorial quality beyond the sentiment expressed in the will's first article:

To hold said stock; to manage and operate by means thereof a newspaper to be published in New London, Connecticut, hereinafter referred to as "*The Day*", and morning or Sunday newspapers, or both, should the growth in the field or competition warrant it: to so manage said newspaper or newspapers as to provide liberal compensation and various forms of assistance and rewards, such as insurance, bonuses, and pensions, to its employees; to pay sufficient salaries to assure a high type of executives and skilled writers and workmen; to make provision for providing in the course of time a new building to house the paper and such other tenants as they consider it desirable to provide space for, such building to be distinctive in character, a credit to the City architecturally, and an evidence of a farsighted policy; to constantly improve and maintain the mechanical plant used for publishing the paper; to maintain reasonable reserves for all of the above and for unforeseen contingencies, including taxes; said provisions as to compensation, assistance, and rewards to employees, salaries to executives, the erection of a building, and the maintenance of reserves are to be in every respect at the discretion of said trustees...

The Day Trust has not however, gone unchallenged. In 1984, it brought an action against the Inland Revenue Service (IRS) to confirm its status as a split-interest trust, able to operate a commercial newspaper while supporting the charitable Bodenwein Public Benevolent Foundation. The tax service argued unsuccessfully, that the charitable ends of the foundation were compromised in order to perpetuate a family business and to operate it at an advantage over its competitors due to the foundation's tax exemption.¹¹⁸ Nevertheless, Stone (2000, 440-443) notes that the IRS lawyers accurately pointed to its vulnerabilities:

The stewards of the trust could, and actually did at times, take advantage of the arrangement to reward themselves. Executives could take care of relatives and feather their own nests unfettered by the usual restraints of a stockholding company. Watchdogs occasionally appeared nevertheless to check some of impulses...The importance of guarding against abuses from self-interest presents one of the greatest tests to the future generations of trustees, directors and managers. Yet the Bodenwein will at least still provides a clear direction, and enjoys the force of law for any member of the public, employee, or member of the board to invoke, in the Probate Court if necessary.

¹¹⁸ United States Court of Appeals No. 475, Docket 84-6222, June 1985.

In other words, the trust does not have explicit covenants to prevent personal gain or nepotism, but must rely on the general fiduciary requirements of trusteeship and on recourse to law. The IRS lawyers had assumed the worst of trustees, and Stone regards their performance generally in a better light. He acknowledges that the trustees looked after themselves and brought relatives onto the newspaper's payroll. However, he adds that they also did everything that Bodenwein told them to do, including paying employees liberally, maintaining and expanding the plant, and trying "to run a newspaper that was more than just another business". The 1984 case also placed a spotlight on future governance.

The Day is not a large newspaper – it has a daily and Sunday readership of less than 100,000, but since 1971 it has distributed approximately \$US6.5 million within the 20-town region it covers. However, its altruistic aims have not created a newsroom nirvana. An analysis of non-commercial journalism by Stepp¹¹⁹, noted that the newspaper had no local business reporter for two years, had reduced staff by early retirements, cut the size of its newshole (the space devoted to editorial content) by five percent, and begun charging for obituaries that contained more than basic information. However, Stepp highlights two fundamental differences between *The Day* and its commercial counterparts: the company accepted profits that were half (or less) than that of other newspapers, and when *The Day* missed its budget, had offered 'profit forgiveness' rather than forcing further cuts.¹²⁰

Bodenwein's legacy has been positive – *The Day* continues as an independent company and provided a template that others have followed. The publisher of Alabama's *Anniston Star* (circulation 24,500 in 2009)¹²¹ established a foundation in 2002 that would receive all the shares in Consolidated Publishing, the company that owns the newspaper, and provide funding for journalism education. Publisher H. Brandt Ayers'

¹¹⁹ Stepp, C.S., "Journalism Without Profit Margins", *American Journalism Review* October/November 2004, 36-43.

¹²⁰ Such attitudes could not however survive the effects of worldwide recession. In 2008, the company began forced layoffs and instituted a pay freeze that was due to expire in July 2009. Three months before expiry, and faced with a \$US2 million revenue shortfall, the company extended the moratorium until July 2010, made further staff cuts, and forced employees to take unpaid leave. The Bodenwein Public Benevolent Foundation continued, however, to make grants (\$US50,000 in August 2009) rather than risk triggering the sale provision of the trust deed.

¹²¹ The *Anniston Star* established a strong reputation as a liberal newspaper during the Civil Rights Movement when it advocated racial integration in Alabama schools. It, too, was hit by recession. In November 2008, the newspaper laid off 15 staff and in June 2009 instituted 10 per cent across-the-board pay cuts.

stated object in establishing the foundation was to maintain the independence of the family-owned newspaper after the death of its owner.

Intentions however, may not always be fulfilled. For example, circumstances change – F.G. Bonfils, publisher of the *Denver Post*, who announced in 1927 that he would leave \$US20 million to a foundation in his name “for the betterment of mankind”. When he died five years later, the estate realised only \$US10 million – left largely to the foundation – but the bequest was further eroded by litigation against the trust (Lee 1947, 196-7). And altruism is no guarantee that the placement of newspaper ownership in the hands of a foundation or trust will, in the long run, produce either good journalism or journals dedicated solely to the service of the communities in which they circulate. In 1935, *Time* magazine¹²² lauded the announcement by Frank E. Gannett – owner of a small group of newspapers headquartered in upstate New York, of a new foundation into which he would place his company’s voting shares¹²³ in order to maintain their independence in perpetuity. *Time* described him thus: “Antithesis of the late hated Chain Publisher Frank Munsey, Frank Gannett gives his editor a free hand, signs his name to anything he asks them to publish in conflict with the papers’ policies.” Decades later, Bagdikian offered a biting summation of the empire that grew from Gannett’s beneficence and the group’s acquisition policies recounted in Chapter 2.

The largest and most aggressive newspaper chain in the United States was not so different from other corporate media giants. It was neither the best nor the worst. But Gannett Company, Inc., is an outstanding contemporary performer of the ancient rite of creating self-serving myths, of committing acts of greed and exploitation but describing them through its own machinery as heroic epics. In real life, Gannett has violated laws, doctrines of free enterprise, and journalistic ideals of truthfulness. But its official proclamations are a modern exercise, with appropriate Madison Avenue gloss, of the ancient privilege of the storyteller – transforming the shrieks of private sins into hymns of public virtue.

Bagdikian 2004, 178.

Much of the activity that led to this indictment of the Gannett Company took place after its founder’s death in 1957, but he sowed the seeds of acquisition and the creation of monopoly markets that were to be the hallmark of the group. The ownership structure of

¹²² Monday October 7 1935. Retrieved from <http://www.time.com/time/magazine/article/0,9171,755098,00.html>.

¹²³ The company had two classes of shares: voting shares that had been held entirely by Gannett and non-voting preferred shares held by family members and some company executives that attracted generous dividends.

the company and the governance of his foundation did nothing to ameliorate the corporate activities of a group whose aggregation of newspaper assets became a model for others to follow and from whose lead “the acquisition trail had become a superhighway...” (Neiva 1996, 37). It also developed a reputation for business executives exerting financial pressure that led to the resignation of editors, and a disdain for editorial independence that led to the adoption in 1991 of a corporate head office formula for determining the content goals of each newspaper in the group (Overholser 2001, 177).

Frank Gannett appointed 11 directors, most of them former Gannett executives, who were to serve for life and appoint their own successors. In 1936, he transferred the majority of his voting stock to the foundation, but there was no doubt that for the remainder of his life he controlled the company’s direction. He hand-picked his successor, Paul Miller, who served a 10-year apprenticeship before becoming president on Gannett’s death. Miller and *his* successor, Allen Neuharth, led the company’s acquisition strategy which included the decision in 1967 to publicly list the company to finance its purchases. The conversion of both voting shares and non-voting preferred shares to common stock in the listed company¹²⁴ diluted the foundation’s theoretical power (which had in any event, been deferential in relation to company activities) and, in any event, the chief executive enjoyed the support of company directors who gave him considerable operational latitude. Neuharth’s rapacious acquisition strategy and profit focus saw the company become the largest newspaper group in the United States by the time he retired in 1989, and his corporate legacy was an ongoing reputation for driving out competition (Friedman 1998, 327) and putting profit before journalistic quality (Gissler 1997, 42).

However, the group’s success had a downside that was closer to home. The U.S. Tax Reform Act of 1986 tightened the requirements on foundations for tax exempt status, notably the need to pay out a sum at least equivalent to 5 percent of their assets each year. The Gannett Foundation’s dividends from the company represented only approximately 3 percent of the asset value, and its tax status was therefore in jeopardy. In 1990, the trustees approved the sale of some or all of the shares. The company’s

¹²⁴ Voting shares held by the foundation were converted to 15.9 million shares of Gannett stock, making it the largest shareholder. Preferred shares converted at a rate of one preferred share to 40 shares of common stock, providing a “bonanza” for shareholders (Neuharth 1989, 182).

initial offer to buy back the foundation's block of shares for about \$US523 million was rejected¹²⁵, but a subsequent offer of \$US670 million was accepted¹²⁶ and the foundation¹²⁷ severed its ties with the empire Frank E. Gannett had sought to maintain beyond the grave. When it announced the sale, the Gannett Foundation stated that proceeds would be used to acquire assets that paid a higher income.¹²⁸

The history of the Frank E. Gannett Foundation and its group of newspapers furnishes several lessons. The first lesson is that in the absence of binding trust deed provisions, there are no guarantees that editorial independence and quality will be maintained beyond the active lifetime of the trust's creator. The second lesson is that a forceful chief executive returning good dividends to the beneficial owners of shares is likely to be given a free hand to exploit market opportunities unless there are binding constraints (such as limits on debt/equity ratios and voting rights dilution). The third lesson is that the desire of a benefactor for the retention of newspaper assets may not prevail in the face of unforeseen circumstances, such as legislative or regulatory change, or hard-to-resist market opportunities.

4.3.2 Canadian trusteeship

Legislative change has had a significant impact on trust ownership of newspapers in Canada, where Ontario's Charitable Gifts Act prohibits charitable bodies from holding more than 10 percent of the equity in a business carried on for gain or profit. The Act, which has passed through several iterations, first became provincial law in 1949. Its immediate – retrospective effect, was to thwart the wishes of the recently deceased Joseph E. Atkinson, who had established the Atkinson Charitable Foundation in the expectation that it would inherit his controlling interest in the *Toronto Star*. Atkinson had harboured strong views on the role of the newspaper in a democratic society. The trustees would be bound to administer the foundation in accordance with his stated beliefs which, although not codified in the deed of gift, had been well-documented elsewhere and were summarised by his successors, in what became known as the Atkinson Principles set out on the following page – to use profits from the company for a variety of philanthropic purposes. The Foundation would also retain ownership of the

¹²⁵ *Wall Street Journal*, Oct 2, 1990, B6.

¹²⁶ *Wall Street Journal*, June 20, 1991, B4.

¹²⁷ Subsequently reconstituted by Neuharth as the Freedom Forum. He had assumed the chairmanship of the Gannett Foundation following his retirement.

¹²⁸ *New York Times*, April 26, 1990, D25.

newspaper. Joseph E. Atkinson died in 1948, and while the official reason for the new law was the removal of unfair advantage over commercial owners, there were suspicions that it was retribution for his opposition to the provincial government and to curtail the perpetuation of his liberal views. The longevity of the legislation would suggest the official reason was more credible.

Nonetheless, its passage into law in 1949 which had been opposed by the *Toronto Star* in its editorial columns, gave the Atkinson Foundation seven years to put the business under private control (Kesterton 1984, 87-8). The trustees were faced with a dilemma – the law was clear, but so too were Atkinson’s instructions that the *Star* would be run by those “familiar with the doctrines and beliefs which I have promoted in the past”, and that publication of the newspaper would be conducted “for the benefit of the public in the continued frank and full dissemination of news and opinion”.¹²⁹ The trustees (drawn from the Atkinson family and senior employees) sought and were granted court approval for a novel solution. They purchased the company as individuals, but bound themselves to trust provisions that preserved Atkinson’s intentions. A Voting Trust was formed that bound together the shareholders¹³⁰ who collectively raised \$CA25.5 million to purchase shares in what became Torstar Corporation. Today, the Voting Trust controls 98 percent of the voting shares in the corporation, with restrictions on their sale to ensure the Trust retains control. Non-voting B shares (21 percent of which are held by the ‘A’ shareholders) are freely traded on the stock exchange. The deed forming the Voting Trust stated that its purpose was “to ensure that control of the *Toronto Star* newspaper would be maintained by persons who would continue to honour the doctrines and beliefs of Joseph E. Atkinson”. Since the corporation was formed in 1958, Torstar has become a diversified group, but the *Toronto Star* subsidiary continues to be separately operated, according to the Atkinson Principles which stand for:

- A strong, united and independent Canada.
- Social justice.
- Individual and civil liberties.
- Community and civic engagement.

¹²⁹ Torstar Corporation (Proxy) Information Circular 1 March, 2009.

¹³⁰ In 2009 seven groups representing the descendants of the original five buyers.

- The rights of working people¹³¹.
- The necessary role of government (when the private sector and market forces are insufficient).

Ultimate responsibility for ensuring observation of the principles lies with the Voting Trust, but day-to-day responsibility is delegated to the newspaper's chief executive and to its publisher. It should be noted however, that editorial independence is not included among the six principles¹³², and there is at least one recorded instance of Torstar executives interfering in editorial decision-making. The 1981 Canadian Royal Commission on Newspapers (the Kent Commission) was highly critical of Torstar, which had acquired most of the larger weekly newspapers in Toronto that it did not already own. The Commission stated balding that "Torstar is a conglomerate" and was critical of its ownership of multiple titles (*ibid.*, 240).

In 1985, the group entered into a \$CA220 million share swap with Southam Inc., then the second largest newspaper publisher in Canada. It was a protective move, as Southam had become a takeover target. The agreement¹³³ amounted to a partial merger and raised concern over concentration of ownership, even though the protective screen around the *Toronto Star* was maintained through the Voting Trust's control of Torstar's voting shares. Under the agreement, the two groups agreed not to seek further shares in the each other for 10 years. However, five years later the share alliance was terminated in the face of legal challenges to the arrangement, and Torstar sold its Southam holding. In 1998, Torstar attempted to buy Sun Media, which owned newspapers in Ontario and Alberta, but was outbid. The failure to capitalise on its Southam shareholding, and a series of blunders that led to the failure of the Sun Media bid were seen by critics as fundamental failings of the Voting Trust structure. A (rival) *Globe & Mail* analysis of the Sun Media failure, stated that Torstar had erred in its overall business strategy and that its corporate structure was to blame:

Indeed, some critics now question whether they [the families that inherited the business] have become so preoccupied with social principles that their attention to the core business of newspapers has slipped, thereby allowing more focused,

¹³¹ In 1949, the *Toronto Star* became the first Canadian newspaper to sign a labor contract with the American Newspaper Guild.

¹³² At the court hearing which granted approval of the Voting Trust ownership structure, the shareholders did pledge to uphold principles of liberalism, independence and a free flow of information.

¹³³ Torstar acquired a 23 percent interest in Southam, which acquired about 30 percent of Torstar's non-voting shares.

aggressive and politically conservative competitors to reshape the newspaper business.¹³⁴

The *Toronto Star* itself is generally above criticism of its corporate owner, which is traded on the Toronto Stock Exchange. The Kent Commission applauded the newspaper's decision to become the first Canadian newspaper to appoint a public editor, a person to whom members of the public can complain about the practices of the newspaper and seek published redress. In 2006, the Canadian Standing Senate Committee on Transport and Communications report on the Canadian media suggested other newspapers should follow the *Star's* example.¹³⁵ In 2000, the newspaper formed a community editorial board in response to claims that it did not accurately reflect the issues and concerns of particular communities in the Greater Toronto Area. Membership of the 12-strong board changes each year, to ensure that over time each of the ethnic and territorial communities in the conurbation is represented. It meets monthly with the newspaper's editorial staff, and members write opinion articles reflecting the views of their particular communities that may be critical of the newspaper. It is also apparent that the Atkinson Principles remain the guiding standard in the newspaper's editorial department. The principles are, in the words of a Torstar director Nelson Thall, "like a cult – the belief in the principles keeps us together"¹³⁶ and, in a profile published in 2006, one of the publication's most outspoken columnists, Antonia Zerbisias, stated (in an affirmative way), that they were "tattooed on my ass".¹³⁷ The *Toronto Star* remains Canada's largest daily newspaper with a weekday circulation of 390,000 and 567,000 on Saturday.¹³⁸ It continues to follow a 'liberal with a small l' editorial policy that is a legacy of Joseph Atkinson's stewardship of the newspaper.¹³⁹

4.4 Australia and New Zealand

Australasia presents little of significance in the history of newspaper trusts. Family trusts (and trust-like structures to administer small narrow-interest publications), have existed over the course of the newspaper publishing history of Australia and New Zealand, but trustee-type governance in major enterprises has been limited to the

¹³⁴ "Torstar's family values", *Globe & Mail*. 2 January 1999, Section B.

¹³⁵ Available at www.parl.gc.ca/39/1/parlbus/commbus/senate/com-e/trans-e/rep-e/repfinjun06vol1-e.htm.

¹³⁶ "Torstar's family values", *Globe & Mail*. 2 January 1999, Section B.

¹³⁷ Marco Ursi, "In Your Face", *Ryerson Review of Journalism* Spring 2006.

¹³⁸ 2009 audited net circulation.

¹³⁹ Atkinson is credited with strongly influencing Canadian social policy implemented by the Liberal government led by William Lyon Mackenzie King.

administration of the respective national news agencies (Australian Associated Press and the New Zealand Press Association) and public broadcasting. These entities are discussed in Chapter 9.

Trustee-type governance may have been expected in the Labour Party/trade union newspapers that were established in both countries. They were in fact, registered as businesses, with allotted share capital, boards of directors and importantly, given their financial performance – limited liability. The most prominent newspaper of this type in Australia was the *Labor Daily*, the sole metropolitan survivor of a plan to establish Australian Labor Party newspapers in each state capital. Started in 1922, it was used by New South Wales premier J.T. Lang to further his political aims. After changing its name to the *Daily News* in 1938, it was sold to Frank Packer's *Daily Telegraph* in June 1941, and closed the following month.¹⁴⁰

Trustee governance of a major daily newspaper could have become a reality, had the Australian Labor Party's plans for the resurrection of its dream of a newspaper chain to counter the 'capitalist press' been put into action. The concept had been debated in labour movement circles since the 1890s, but gained momentum with the publication of A.E. Mander's *Public Enemy The Press* in 1944 (Mayer 1964, 251). In 1961, the ALP federal conference endorsed a proposal for an Australian Newspaper Commission, modelled on the Australian Broadcasting Commission, to publish newspapers in parallel with the ABC's radio and television services (Walker 1980, 231). When the Labor Party came to power after a long period in opposition, the proposal was advanced further, after the creation of a Department of the Media by the Whitlam Government. A 1975 paper released by the department, advocated the establishment of the newspaper commission. It also advocated a Royal Commission on the media, a voluntary press council, legislation to restrict ownership of electronic media by newspapers, newspaper licensing similar to broadcasting licences, and the establishment of a government-funded university-based media research unit. O'Malley describes the press reaction as "violent" (1987, 95) and while a voluntary press council was established to pre-empt federal regulation, the newspaper commission was never established.

¹⁴⁰ The publication's history is recounted in detail in R.B. Walker, "The Fall of the *Labor Daily*", *Labour History* No. 38 (May 1980) pp. 67-75.

New Zealand's experience with Labour Party/trade union newspapers was similar to that in Australia. Titles came and went (see Scholefield 1958, 40-43), culminating in the *Southern Cross*, a Wellington-based daily published from 1946 to 1951, that had the capital structure and governance of a standard commercial enterprise.¹⁴¹

There were early, short-lived examples of co-operative ownership in the New Zealand colonial press. The *Colonist* and *New Zealand Spectator* for example, were each established in the 1840s by groups of Wellington settlers. The *Colonist* was short-lived, but the *Spectator* enjoyed a longer live-span. It was initially administered by a "committee of half a dozen of the principle gentlemen in the settlement" elected at half-yearly meetings (Hocken 1902, quoted in Day 1990, 38-9). After two years however, the arrangement began to break down and ownership was eventually vested in the editor, Robert Stokes (*ibid.*, 41). Collective ownership was to become a feature of the daily press in New Zealand, but it would take the form of shareholding arrangements and commercial enterprise.

4.5 Lessons from history

This brief historical overview suggests newspaper proprietors have seen trust ownership and operation as a means of preserving their legacies, when conventional forms of ownership offered insufficient guarantees for the continuation of the culture they had created. It also suggests that legal status – without an ongoing commitment by trustees, shareholders, and executives to the ideals of the founder, may not invest those principles with the longevity that he or she envisaged. It also recognises the legal and political environment in which a newspaper is published, may affect not only the fortunes of a newspaper-owning trust but also its very existence, as the executors of Joseph Atkinson's estate discovered. And it adds weight to the P.E.P's conclusion that a trust may make a good newspaper better but it will not make a broadsheet out of a red-top. From the examples in this chapter, we can distil a number of potential issues in the trust system that could confront present-day and future trustees if they do not possess the mechanisms – and the will to avoid them.

¹⁴¹ Not to be confused with the Auckland-based *Southern Cross* that merged with the *New Zealand Herald* in 1877 (Scholefield 1958, 84).

4.5.1 Founders

While a founder is alive, the trust and its publications are hostage to his or her wishes. Cadbury (and his wife) continued to exert a pervasive influence over the *Daily News*, as did Mrs Eddy over the *Christian Science Monitor*. A strong-willed founder is also predisposed to leave detailed instructions to ensure that influence is as strong in death as it was in life. As the P.E.P report concluded, to be effective, trust deeds and articles must strike a balance between the detail necessary to provide the intended protections and the latitude that provides room for effective action over time. That has not always been the case. Lord Astor for example, left the *Observer* trustees with little discretion and the restrictions on their appointment (a provision also present in the appointment of national directors at Times Newspapers) predisposed them to certain courses of action dictated by their backgrounds or stations in life. The Wellcome Trust clearly demonstrates how defined aims can be problematic as circumstances change with time.

Even founders who have been mindful of such matters have created problems for their trustees by leaving detailed codicils and memoranda which, although they do not have the force of law, are treated as such. Both the Daily News trustees and the Observer trustees treated memoranda not as suggestions but as instructions. Even where such instruments are absent, trustees have felt a need to perpetuate the founder's will in some way. Joseph Atkinson's will stated only that he wished his editorial policies, and the independence of the *Toronto Star* to continue after his death, but faced with the challenge of establishing their own legality, the Torstar Voting Trust went further and drew from his statements and writings the set of principles to which they bound themselves before an Ontario judge.

4.5.2 'Proprietors'

Trustees may not be in full control of their founders' legacies. There are numerous instances where shareholders (e.g. Rupert Murdoch at Times Newspapers), family members (e.g. the Astors at *The Times* and the *Observer*) and strong-willed executives (e.g. Bagehot and Layton at *The Economist*) have asserted themselves in ways that have usurped or marginalised trustees. Trustees may for example, be characterised as an unutilised 'court of last resort', or be overlooked in an act-first-and-see-approval-later stratagem. George Layton at *The Economist* regarded the trustees as a somewhat quaint institution, while News International (in spite of the initial undertakings given before

the sale of Times Newspapers), tried to work around them. An example was the debacle that ensued when the parent company attempted to subsume Times Newspapers. On more than one occasion, Rupert Murdoch has used pillars of society, acting as trustees to prevent excessive use of power, as a lever in the purchase of prestigious newspapers. It was a necessary device in winning government approval for the purchase of Times Newspapers, and was repeated when News Corporation bought Dow Jones from the Bancroft family (discussed in Chapter 5). In neither case, did it prevent (for better or worse) intrusion into editorial departments or the removal of an editor within a year of purchase. Without a strong commitment to their use as effective ‘public representatives’, and the power to assert themselves when *they* deem it necessary rather than at the 11th hour or too late, such trustees (by whatever name) may be no more than hollow effigies towed into place to impress an audience, or modern-day Trojan horses.

In circumstances where trustees co-exist with owners (often in tiered shareholding arrangements), the trust mechanisms that were established to ensure continuity of ownership may be only as good as the resolve of present owners to continue to hold their shares. The determination to retain independent ownership of the *Bristol Evening Post*, *Kansas City Star*, and Reuters news agency (see Chapter 8) changed over time and circumstances led the foundation that was the beneficiary of Frank E. Gannett’s estate to divest itself of Gannett shares. The Wellcome Trust shows how divestiture may in fact assist the long-term fulfilment of the founder’s wishes.

4.5.3 Editors

The relationship between trustees and editors is complex. Trustees have usually been given powers over the appointment of editors, although proprietors may be seen to exercise even greater influence over appointments, and the wording of such provisions in trust instruments requires careful drafting if trustees are to prevail. Once appointed, editors are as bound as trustees by trust provisions, articles of association, and memoranda. The duties may be explicitly stated as was the case with the Birmingham Post & Mail Company, the *Bristol Evening Post*, the *Christian Science Monitor* and the *Toronto Star*, or in cases such as *The Economist* and *The Times* (under Lord Astor), editors may be guaranteed the independence to set editorial policies and ‘govern alone’. Complete editorial independence, as the P.E.P report concluded, has proven a problem for trustees who felt editorial policies had diverged from an established ethos. A trust

deed that too tightly enshrines the rights of an editor may leave no alternative but to exercise a reserve power to dismiss an editor who directly challenges the trustees, as editors of the *Daily News* and *The Economist* found to their cost. At the other end of the scale, guarantees of editorial independence may be narrowly interpreted by a proprietor or a trust, thus nullifying them. Rupert Murdoch (and Lady Cadbury before him), did not issue formal directives to the editors of *The Times* and *Sunday Times*, and was able to claim that he did not interfere – but informal influence was both direct and effective while below the national directors’ radar. Editorial budget allocation, as Harold Evans found, was an effective form of proprietorial control, which because of its operational nature, was deemed to be beyond trustee oversight.¹⁴² Experience shows there is a pecking order – Trustees prevail over editors in a terminal disagreement over editorial policy, and proprietors prevail over both trustees and editors in such circumstances.

4.5.4 Families

Family trusts are discussed in detail in Chapter 5, but the trusts outlined in this chapter have at times been subject to unfortunate effects of family involvement. William Randolph Hearst’s will was pre-destined to cause conflict, and illustrates the folly of creating multiple trusts – to provide legacies to groups with little in common – that can affect the operations of the enterprise. The appointment of family members as trustees carries with it risk. James Wilson was well-served at *The Economist* by his son-in-law Walter Bagehot, but following the latter’s death, the Wilson daughters and the geographically remote but nonetheless interventionist ‘Uncle George’ (Wilson’s brother) interfered with the smooth operation of the newspaper.

4.5.5 Positive outcomes

History has provided evidence of the positive outcomes of trust ownership and trustee governance. We have seen, for example, how public-spirited aims can be embodied in commercial enterprises by embracing trustee-like obligations, as was the case with Torstar in relation to the *Toronto Star*. That newspaper also illustrates how selected publications within a media group can be operated under trustee-like governance while other parts of the enterprise function as normal commercial enterprises.

¹⁴² The author, as editor and editor-in-chief of the *New Zealand Herald*, was not subject to direct editorial interference, but managerial control of budgets greatly influenced the *level* of coverage each year.

Financially, there are some benefits to be gained from trustee governance. Altruistic trusts have the capacity to accept financial performance that would be unacceptable in publicly listed companies, as operations at *The Day* demonstrate, while direct or indirect subsidies may be a welcome addition to revenue. Such has been the case with the *Christian Science Monitor* over its lifetime and, as will be seen in Chapters 6 to 8, has been the lifebelt of the *Guardian*. A more benevolent attitude to financial performance should not however, be seen as a signal that trust-governed newspapers are immune to marketplace realities. Trust-run newspapers have, like their listed company-owned counterparts, been subjected to severe cost cutting during recession. The difference however, is that cuts are made in ways that are calculated to do least damage to the journalistic core to which trustees are bound.

4.5.6 Lessons in summary

These lessons point to the need for considerable care in the crafting of trust documents. While no trust deed is likely to be ultimately immune from concerted action to undermine or undo it, it will be more robust by giving heed to the following:

- Trust deeds must strike a balance between direction and flexibility and recognise that trustees are likely to feel bound by ‘helpful’ memoranda and codicils. Trusts can be compromised by a founder who attempts to ‘direct from the grave’, by dictating the appointment of inappropriate trustees or binding them to restrictive covenants.
- A trust that co-exists with a shareholding ‘proprietor’ may need explicit independent powers to avoid being usurped, circumvented, ignored, or turned to the ‘proprietor’s’ interests.
- The relationship between trustees, ‘proprietors’ and editors is finely balanced, and specifications on how it is to be managed must on one hand, preserve the journalistic principles that are the institution’s foundation and, on the other, prevent any of the parties from assuming unbridled power.
- Flexibility is the key to both the governance and operation of a trust that will endure beyond a generation, and be able to apply the altruistic principles that differentiate it from a profit-driven publicly listed or private company.

Over the next two chapters that examine present-day structures, we will be able to judge how many of these lessons have been taken to heart.



Chapter 5: Keeping it in the family

*The families are not absolute rulers. They, too, must deliver dividends and ascending profit margins. But they can pursue a more distant and responsible vision of success than next month's bottom line.
Long live the monarchy!*

Max Frankel, *The Times of My Life*, 1999, 505

There is nothing unusual about families owning companies. Founding families have control over a third of the top 500 companies in the United States, and more than half the country's public corporations (Villalonga & Amit 2009, 3048). Many of these families use legal devices to retain control of their enterprises after their ownership has been diluted by public share offerings – media-owning dynasties among them. This chapter examines contemporary newspaper companies on both sides of the Atlantic where family involvement stretches back several generations, and in which trust structures play a part in the retention (or loss) of control. These examples are by no means the full sweep of family trusts in the news business. Many families: the Hearst, Pulitzer,¹⁴³ Scripps, and Chandler clans among them, retain trusts to consolidate and manage their investments. However, our focus will be on the Ochs-Sulzbergers and the *New York Times*, the Grahams and the *Washington Post*, the Bancrofts and the *Wall Street Journal*, and the Harmsworths and Britain's *Daily Mail*. The Murdoch Family Trust also will be acknowledged but not dealt with in detail, because its media interests have yet to move beyond the control of its founder Rupert Murdoch. These families have been chosen because their interests include nationally significant publications, and each illustrates an important aspect of trust development or operation. First, however, we will consider some of the dynamics of the 'family firm'.

5.1 Family traits

There is a growing body of research on family firms, much of it based on agency theory and comparisons with companies that have non-family shareholding and management structures. One body of research is an extension of the view that agency costs are minimised in owner-operated firms (Jensen & Meckling 1976), and that family ownership can bring unique positive attributes to the conduct of business (Pearson et al.

¹⁴³ Pulitzer Inc. (which owned 14 daily newspapers, including the *St. Louis Post-Dispatch*, and more than 100 non-daily publications) was sold to Lee Enterprises in 2005 for \$US1.46 billion.

2008). Other research suggests that family relationships can complicate and negatively impact business activity (Schulze et al. 2002). This section highlights a number of generalised findings that have a bearing on the conduct of the family trusts examined in this chapter.

5.1.1 General attributes of family firms

Family businesses have been defined as those whose policy and direction are subject to significant influence by one or more family units, with that influence exercised through ownership, and sometimes, family participation in management (Davis 1983, 47). They are characterised by three interacting elements: the family unit, individual family members, and the business itself. Habbershon et al. describe the family business as a ‘metasystem’ in which the controlling family represents the history, traditions, and life cycle of the family; the individual family member embodies the interests, skills, and life stage of the participating family owners or managers; while the business unit in the entity in which strategies and structures are used to create wealth (2003, 454-5). These researchers believe the systemic influences generated by the interaction of these three subsystems “create an idiosyncratic pool of resources and capabilities...[that] have deeply embedded defining characteristics that we refer to as the ‘family factor’...” (*ibid.*, 460). Davis regards this ‘family paradigm’, in which the sentient elements of ‘family’ (attributes such as loyalty ties and trust) interact with the business unit to produce behaviour that is unique to the family firm. It is likely, for example, that family businesses are “predominantly consensus-sensitive”. He believes that the family paradigm is particularly strong in early generations of the business, and derives from the character of the founder (1983, 52). It is a further characteristic of family firms that it is more likely to be dominated by a strong individual (such as the founder) who is unwilling to cede control to others (Daily & Dollinger 1992, 133) and who, consequently, has a deep and lasting impact on the business.

Social capital theory has been applied to the family firm in an attempt to understand the ‘familiness’ that it possesses. Broadly, the networks of entrenched and dense social ties that bind a family can be transferred to the business, imbuing it with a form of social capital that Pearson et al. believe “is unique in family firms, because it is often embedded in the family’s history” (2008, 957). Dyer and Whetton (2006) see this social capital extending beyond the internal workings of the company to the firm’s external

actions. Their study of firms in the Standard & Poor 500 over a 10-year period suggest that family firms are more likely to be socially responsible, than firms without family involvement: “likely due, in part, to the fact that families see their image and reputation as inextricably connected to the firms they own, and therefore will be unwilling to damage those reputations through irresponsible actions on the part of their firms” (2006, 797-8).

As noted at the start of this chapter, family firms play significant roles in many economies. However, a characteristic noted by Bhattacharya and Ravikumar is that their dominance diminishes as capital markets develop (2001, 188). The factors that lead to the sale of a family firm vary according to economic structure and financial climate, but, although sale of the family firm is not inevitable, the pressure to sell is greater in sophisticated capital markets where family members can achieve greater utility by ‘cashing up’ than by continuing to operate the business. Bhattacharya and Ravikumar assume that although a family cares about bequeathing *wealth* to the next generation, it does not care whether this wealth is bequeathed in the form of an ongoing business, or in the form of proceeds from its sale (*ibid.*, 190). This assumption is tempered however, by the enduring sense of identity that some families derive from their enterprises, and by the experience of some of the families examined in this chapter. It cannot however be dismissed, because experience suggests that eventually, every family will have its price.

5.1.2 Positive attributes of family firms

Family firms have the advantage of integrated decision-making and control that minimise the agency costs that would otherwise be associated with monitoring and bonding (Jensen & Meckling 1976, 312). Such owners make operating decisions that maximise the benefits that fall to them, and therefore there is a greater incentive to seek out new endeavours such as innovative profit-making projects (*ibid.*, 313). These advantages can be matched in other forms of ownership by providing appropriate management structures and incentive bonuses, but there are a number of attributes that are unique to family involvement in business.

Pearson et al. note, that as a result of established patterns of interaction and involvement, families possess internal networks that can be transferred to the family

business (2008, 957) and also have a unique reservoir of social capital that can guide the family firm in ways that non-family enterprises would find difficult to establish and maintain. This social capital provides the family firm with a sense of trust, obligation, stability, and interdependence (*ibid.*, 959-961), and contributes to a belief in commitment and stewardship that enables those family firms that exhibit such traits to be strategically flexible (Zahra et al. 2008, 1039-1040). Family firms, in short, may be based on what Lansberg calls ‘Shared Dreams’ or “a collective vision of the future that inspires family members to engage in the hard work of planning, and to do whatever is necessary to maintain their collaboration and achieve their goal” (1999, 75).

‘Shared Dreams’ may well have their beginnings in the vision of a company founder, whose influence in family firms can pass through generations. Eddleston (2008) argues that “a founder who is a transformational leader is able to establish a common purpose, identity, and shared sense of destiny among family members that help to create positive family cultures that embody commitment, stewardship, and strategic flexibility”. She adds that a family firm is inextricably tied to the founder, because he or she establishes the initial decisions about the firm’s purpose, structure, strategy, and operating methods. Founder influence can persist well into the life of a firm (Nelson 2003, 722) and the founder becomes a role model for both family members and employees. That is certainly the case in many of the family-owned newspapers that are examined here and in Chapter 6.

5.1.3 Negative attributes of family firms

While many researchers acknowledge the *potential* benefits that can accrue from family ownership, there are cautions and qualifications aplenty. For example, Shulze et al. recognise that the altruism that is common in family groups can be displayed in family firms without negative consequences, but there are dangers in putting the family first. Family altruism and owner control combine, they say, to increase the need for formal governance but decrease its use. This decreases the family firm’s ability to compete in the market (2002, 256).¹⁴⁴

Villalonga and Amit identify dual-stock arrangements (in which families retain the voting shares but make non-voting shares available to the public), as creating ‘a wedge’

¹⁴⁴ Bloom and Van Reenen (2007, 1354) found that preference given to family members had a negative impact on non-family staff who perceive fewer opportunities being available to them.

between cash flow and control rights and hence, between family and non-family interests (2009, 3088-9). They conducted a survey of 210 founder or family-controlled firms in the United States and found that 80 percent used investment vehicles to administer their shares (two-thirds of which employed trust structures). Trusts enable the separation between voting and cash flow rights and in the sample there was a clear control purpose – the wedge in the use of the trust structure (*ibid.*, 3069-3072).¹⁴⁵ As will be seen in the following newspaper examples, public stockholders are not always satisfied with an arrangement that provides dividends but no control over the company's fortunes.

The greatest weakness of family firms may however lie in the transition from one generation to the next. An *Economist* article in 2004 stated that family firms combined “all the tensions of family life with all the strains of business life”, and added that “at no moment do both sorts of stress combine so forcefully as at that of generational change”. It quoted from a J.P. Morgan Private Bank survey of 47 family firms, all of them second generation or beyond, that found that 52 percent expected to be family-owned and family-managed in a generation's time, but found from other research that in reality, only one third of firms make a successful transition from one generation to the next.¹⁴⁶ It continued:

Family firms are frequently more riven with intrigue and visceral hatreds than a medieval court – and for similar reasons. Substitute the founder for a medieval monarch and the professional managers for courtiers, add in a pair of rivalrous heirs with jealous wives and scheming cousins, and you have the perfect recipe for a Shakespearean drama.

Sibling rivalry and the growth in family size with each succeeding generation require a daunting level of control and diplomacy. Lansberg notes that in companies that extend over four generations, it is not uncommon to find more than 100 cousins, each holding a small fraction of the company. In many respects, the family firm then takes on the characteristics of a publicly traded firm, but he says the family enterprise often does not have clear boundaries between management and ownership that are a characteristic of most publicly traded companies, and this adds to the complexity of decision making

¹⁴⁵ Villalonga and Amit acknowledge however, the benefits of using trusts to secure professional advice for heirs, to avoid the delays and costs associated with the probate process in wills, and the securing of certain tax advantages.

¹⁴⁶ “Passing on the Crown – Family business; family businesses”, in *The Economist* 6 November 2004 (downloaded from *Academic OneFile* Document No. A124230225).

(1999, 142). It also requires great care in the structuring of cousin consortiums if the potentially destructive effect of unequal distribution of children between siblings is to be avoided. Lansberg, who explores various permutations of the problem at “cousin stage”, says this unequal distribution poses a fundamental problem for shareholding parents – whether to maintain a distribution of stock directly to their own offspring – and thus create a situation whether some cousins will hold more stock than others (or to reallocate shares so that each of the cousins controls an equal amount of stock). The resolution of the dilemma he says, depends on the degree of trust that exists between the various branches (*ibid.*, 143).

Bloom and Van Reenen also see risks in inheritance citing the ‘Carnegie Effect’ that posits that considerable inherited wealth tends to deaden the talents and energies of the beneficiary¹⁴⁷ and identify primogeniture as a major risk. While they found that companies that selected chief executives from among all family members were no worse managed than other companies, the same was not true when the first-born had a right of succession. They find that a combination of family ownership and primogeniture family management “significantly damages company performance” and suggest several causes: the absence of an ability-based selection process, the Carnegie Effect, and the likelihood that such a form of succession suggests the persistence of ‘old-fashioned’ management techniques. Their findings were drawn from a survey of more than 700 mid-size manufacturers in Britain, France, Germany, and the United States, and an associated paper (Dorgan, Dowdy & Rippin 2006) noted that the prevalence of family-owned companies run by eldest sons in France and the United Kingdom appeared to account for “a sizeable portion” of the gap in the effectiveness of management between those countries and the United States and Germany.¹⁴⁸ They believe that primogeniture may be a disincentive for the first-born to acquire the skills and knowledge that would be sought in a broader selection process.

Each of these researchers temper the discussion of systemic weaknesses by acknowledging that family firms (even those that survive over successive generations) have positive attributes, but optimum family involvement requires sound judgement –

¹⁴⁷ Named after the philanthropist Andrew Carnegie, who stated that such inheritance would tempt a son to lead a less useful and less worthy life than he otherwise would.

¹⁴⁸ Bloom and Van Reenan ascribe the higher incidence of primogeniture in Britain and France to their Norman origins under which the rights of the first-born were enshrined in law. Such rights were abolished in the United States following the War of Independence. German inheritance has generally been based on the Teutonic principle of equal division between all sons (*ibid.*, 1382).

too little or too much involvement in the family firm can be detrimental (Chrisman et al. 2008, 944). The involvement of independent (non-family) directors who successfully perform their governance functions can help to resolve a number of potential weaknesses (DeMott 2008, 861).

This section began by noting that generalised family traits will be seen in the conduct of the following examples. They demonstrate that the responses to these characteristics are varied, and the trust ‘weapon’ they have in common can be a double-edged sword.

5.2 Ochs-Sulzberger family and the New York Times Company

The extended family that descends from Adolph S. Ochs, the *Chattanooga Times* publisher who gained control of the bankrupt *New-York Times*¹⁴⁹ in 1896, exemplifies much of what is good and bad in newspaper-owning family trusts. It represents the finest qualities of stewardship, the dangers presented by the ‘cousins’ generation, and the imbalance of two-tiered stock issues.

The history of the family that has become synonymous with one of the world’s great newspapers has been extensively documented by Tifft and Jones (1999), running from Ochs’ birth to German immigrant parents on the eve of the American Civil War, to the appointment of his great-grandson, Arthur Ochs Sulzberger Jr., as chairman and publisher in 1998. The family history is a curious combination of loyalty and competition overshadowed by the trust established under Ochs’ will that charged his heirs to maintain the *New York Times* “free from ulterior influence and unselfishly devoted to the public welfare”(ibid., 165).

Ochs had secured the financial well-being of the company (by ploughing back most of the profits, he allowed it to ride out the Depression better than many of its contemporaries) and established a strong editorial ethos in the *New York Times*.

On his death in 1935, Ochs bequeathed his controlling interest in the New York Times Company to his only child Iphigene, with the shares held in the newly-created Ochs Trust. On her death, the trust would dissolve and her shareholding in the company was

¹⁴⁹ The hyphen disappeared within four months of Ochs’ takeover (Tifft & Jones 1999, 52)

to be equally divided among the four children of her marriage to Arthur Sulzberger.¹⁵⁰ She lived a long life and before her death in 1990, the family, under the leadership of her only son, Arthur Ochs ‘Punch’ Sulzberger, moved to create a share structure that firmly cemented its control of the company, and a trust structure that guaranteed family ownership of the *New York Times* for many years to come.

The New York Times Company that Adolph Ochs left behind had an unusual ownership structure, and the division of shares among his grandchildren was a potential time bomb when the time came for them to bequeath their holdings. The common stock of the company (largely held by the family) did not pay dividends until 1957 – income for family members was derived from the dividend-paying preferred stock they held. In that year the complex and unwieldy share arrangement was changed, and in a move that we have seen is not uncommon in family firms, two classes of common stock were created: Class A non-voting shares and Class B voting shares. Tax law meant that Adolph Ochs’ four grandchildren would receive their shares tax-free when Iphigene died, but estate duties would be incurred when they themselves died. The purpose of the restructuring was to provide a means by which the family could pay future death duties by selling Class A non-voting shares (*ibid.*, 322).

The structure worked without difficulties until the 1980s, a period in which as we saw in Chapter 2, when family-owned newspapers were being sold to corporate buyers at an increasing rate. In 1980, an insurance company owner began to buy Class A shares and announced he would seek up to 30 percent of the stock (*ibid.*, 586-7). He eventually accumulated 5.2 percent of the stock before being persuaded to sell his holding. Had he been able to persuade dissident family members to sell Class A shares he may have been able to reach his target, although it is highly doubtful that he would have been able to secure any of the controlling Class B shares. The family had however, maintained a united front. Nevertheless, to avoid tempting fate, the family took two steps that created the ownership structure that governs the New York Times Company today.

¹⁵⁰ His estate planning had however been negligent because he would not transfer any shareholding during his lifetime and the resulting death duties left the family facing a bill of almost \$US6 million. Tiff and Jones (*ibid.*, 169-170) describe the “ingenious” plan that Arthur Sulzberger devised to pay the death duties without the family relinquishing voting power or resorting to bank loans that could compromise the independence of the *Times*. The New York Times Company offered to buy non-voting preferred stock from the trust and Ochs relatives (who had received the stock as gifts in the 1920) – providing the finance to pay the estate duties – and retired it.

In 1986, the family arranged the recapitalisation of the company, and created a new Class B voting share that absorbed a proportion of the non-voting stock.¹⁵¹ The trust held 83.7 percent of these new voting shares.

At the same time, ‘Punch’ Sulzberger organised a covenant that would be triggered by the dissolution of the Ochs Trust on Iphigene’s death. ‘Punch’ Sulzberger, his three sisters, and their 13 children each pledged never to sell the Class B voting shares that had been estimated to have a hypothetical value of more than \$US1 billion if they ever found their way on to the market. Any family member who wanted to ‘cash-up’ Class B shares had to offer them to the family or the New York Times Company first, and before any of the stock could be sold to any outsider it would have to be converted to non-voting Class A shares. The agreement would stay in force until 21 years after the death of the longest-living descendant of Iphigene Sulzberger who was alive when the covenant was signed (*ibid.*, 585). Tifft and Jones estimate that this secured control of the company in family hands for another century.

The covenant had the effect of combining family interests that otherwise could have evolved into either a series of trusts (at least four trusts representing the families of the four grandchildren provided for in Adolph Ochs’ will), or a growing number of individual shareholding family members whose needs and intentions were many and varied. As it stood however, the family members were apparently unanimous in their desire to protect their combined control of the *New York Times*.

In 1997, the covenant was converted into a new trust (the 1997 Trust), which preserved its provisions. According to a proxy statement¹⁵² filed on March 10, 2010 with the U.S. Securities and Exchange Commission, the 1997 Trust holds 738,810 Class B voting shares (89.6 percent of the total). Individual trustees also own small additional numbers of voting shares. Through the trust and a number of other instruments, the family owns 5.7 percent of the non-voting Class A shares.

The covenant and subsequent trust instrument has protected the Ochs-Sulzberger family (and the *New York Times*), from the threat of internecine conflict between brothers,

¹⁵¹ The new Class B shares were worth one old Class B share and nine Class A shares, leaving enough non-voting shares for the family to sell to cover future death duties, as intended in 1957 (*ibid.*, 587).

¹⁵² The New York Times Company proxy statement sets out in detail the provisions of the trust and the trustees’ holdings.

sisters, cousins, and second cousins. The ready consensus among the 17 signatories to the covenant was fortuitous in the extreme, and stands in complete contrast to the Bingham family that owned the *Louisville Courier-Journal* as well as printing and broadcasting interests. The increasingly public disintegration of that family firm has been described by Tifft and Jones (*ibid.*, 588) as a catalyst for the Ochs-Sulzberger clan's decision to opt for unity in 1986, only months before Barry and Mary Bingham announced their intention to sell their business after failing to reconcile differences between their children that had been the cause of growing internal conflict since the 1970s.

However, while the 1997 Trust provides a large measure of protection against sale of the crucial Class B shares, it does not protect the company from other pressures from shareholders and potential shareholders. A Harvard Business School case study of the New York Times Company by Villalonga and Hartman in 2008, chronicles a bid in 2006 to have the dual-class share system declassified. The promoter of the move declared: "While it may have at one time been designed to protect the editorial independence and the integrity of the news franchise, the dual-class voting structure now fosters a lack of accountability to all of the company's shareholders". The promoter was a Morgan Stanley investment fund that held approximately 8 percent of the company's Class A non-voting stock. The fund manager, Hassan Elmasry, urged other Class A share holders to join in withholding their votes on the appointment of directors at the company's shareholder meeting.¹⁵³ He had preceded the move by producing a report by a financial consultancy that criticised the company's governance structure, and charged that the dual-share structure put the interests of the controlling family above those of other shareholders and made management accountable to the family rather than to public shareholders (2008, 9). There were also claims that the system led to extravagant executive remuneration. When the time came to vote, the total number of abstentions amounted to 28 percent of the New York Times non-voting stock, which Villalonga and Hartman describe as "a very strong signal of investor discontent" (2008, 1).

¹⁵³ A symbolic gesture, as the 1997 Trust had the right to appoint 70 percent of the directors. The family agreed to the election of a minority of directors by non-family members in order to meet listing requirements when Class A shares were first sold to the public in 1968.

In response, the chairman Arthur Ochs Sulzberger Jr. and his cousin, vice-chairman Michael Golden, agreed to forego \$US2 million in stock-based pay, but the Ochs-Sulzberger family issued an unequivocal refusal to change the dual-share system. Elmasry organised a similar boycott the following year without denting the family's resolve, and then liquidated the Morgan Stanley fund's holding in the New York Times Company.

If the withdrawal of the Morgan Stanley fund from the New York Times Company share register brought some comfort to the Sulzberger family, it was short-lived. Two hedge funds: Harbinger Capital Partners and Firebrand Partners, began building holdings in the company and by January 2008 their holding approached 5 percent. They informed the company that they intended to seek four seats on the board, and accumulated further stock until they owned almost 20 percent of the Class A shares. Faced with a possible proxy battle, Sulzberger did not relinquish any of the existing directorships, but instead, added two more seats to the boardroom table that were offered to the hedge fund group, which reciprocated by declaring that it would not challenge the family's control¹⁵⁴ (McCollam 2008, 26). This form of appeasement does not however, resolve the fundamental problem created by two-tier share systems, which continue to present the danger of a proxy war by major Class A shareholders (or a coalition of shareholders) for a measure of control over the company.

The family's control is also potentially threatened, one might say literally by default. The company's deteriorating financial position, exacerbated by the economic recession, forced it to borrow a substantial amount of money to meet its short-term commitments. The source of what can only be described as emergency funding was the world's richest man,¹⁵⁵ Carlos Slim Helú, who had been compared by the *New York Times* in 2007 to a robber baron, Russian oligarch, or Enron executive.¹⁵⁶ Chapter 2 discussed the problems of rising debt in media companies. The New York Times Company's willingness to accept a \$US250 million loan at 14 percent interest from Carlos Slim less than 18 months after the editorial opinion was published, illustrates the level of pressure that high debt creates. The Times, which had total debt of \$US3.5 billion, was faced with

¹⁵⁴ Harbinger began shedding New York Times stock in September 2009, and by April 2010 its holding had been reduced to 9.4 percent.

¹⁵⁵ According to the Forbes magazine list of the world's billionaires in March 2010.

¹⁵⁶ "Mexico's plutocracy thrives on robber-baron concussions", *New York Times* August 27, 2007 (www.nytimes.com/2007/08/27/opinion/27mon4.html).

servicing of \$US1.1 billion short to medium term debt, and an immediate need to cover a \$US400 million credit line that was to expire in May 2009. Slim held 6.9 percent of the company at the time of the transaction that also issued him with warrants that could, over time, be converted to Class A shares. Accordingly, in its 2010 return to the Securities and Exchange Commission, the company disclosed that Slim had an effective holding to 16.2 percent in shares and exercisable warrants.

The arrangement with Slim, whose vast wealth was based on a Mexican telecommunications monopoly, presents two problems for the *New York Times*. The first is financial. A series of covenants were attached to the loan, including restrictions on further borrowing and business activity without Slim's approval. The loan also carried a number of default mechanisms. The covenants meant that Slim could apply considerable pressure, effectively gaining a large measure of control over the company. In the future, should he exercise his option to convert the loan into shares that would give him almost 17 percent of the company (making him the largest Class A shareholder) he would be in an even stronger position to force business strategies aimed at increasing the share price. To realise such gains in the New York Times Company (whose share price had 'tanked' by 2008) he could force it to cut its spending to improve profitability in the face of weak advertising and circulation (Ricchiardi 2009, 53). His business philosophy is based on austerity. He has lived modestly, and his companies have operated frugally (Wright 2009, 63). His interest in the *New York Times* was said to be "a business deal" (Ricchiardi 53), suggesting that his focus would be on its bottom line. No commentator suggested that his loan to the newspaper company was altruistic.

The second problem presented by his involvement with the *New York Times* was the effect on the newspaper's reputation. Slim is a controversial character – the *Times*' 2007 editorial comment attested to that – whose business operations in Mexico and elsewhere have been subjected to media scrutiny.

Commentators immediately voiced their misgivings over the arrangement with the *New York Times*. The *Seattle Times*, in a widely quoted editorial headed "Newspaper ownership matters in American democracy", stated that the question over Slim's motives would have been better, had it not needed to be asked. It went on to describe the New York newspaper as an institution that "should not fall into the hands of a

capitalist with loyalties to a foreign state”.¹⁵⁷ Such concerns were reinforced in February 2010 by accusations that the newspaper had failed to provide coverage of a major court action involving the JP Morgan Chase bank and a Mexican bank owned by Slim.¹⁵⁸

The *Seattle Times* editorial suggested a measure of xenophobia and that ‘sins of omission’ can have a number of unremarkable causes, but the problem is more fundamental than Carlos Slim’s involvement, even given the effect that it has had on the *Times*’ reputation. The two-tiered ownership structure threatened the ability to remain true to Adolph Ochs’ injunction that the newspaper be “free from ulterior influence and unselfishly devoted to the public welfare”. The Sulzberger family is commendably devoted to their patriarch’s wish, but they have opened the company’s door to investors – people whose equally valid desire is for a reasonable return on their investment. In good times, they may co-exist in reasonable harmony, but in straitened circumstances the differences are magnified. Ultimately, these two aims are conflicted.

The bad times placed strain on the relationship between the Ochs-Sulzberger trustees and ‘ordinary’ shareholders. It amplifies any discord over management performance and criticism of Arthur Sulzberger Junior’s stewardship as chairman and publisher. He bears a doubly weighted cross – heading a company (whose principal assets are newspapers) at a time when news media business models are crumbling, and his selection to head the company had all the hallmarks of primogeniture even if it was not formally acknowledged. The Ochs-Sulzberger leadership of the company has some similarities to English royal history. It is interspersed with reigning monarchs, regents, and would-be usurpers and recounted in detail by Tifft and Jones.

‘Punch’ Sulzberger had no such mis-givings and appointed his son, Arthur Ochs Sulzberger Jr., as his successor as publisher of the *New York Times* in 1992 at the age of 40, and as chairman six years later. Between the two appointments, Arthur Ochs Sulzberger Jr. was challenged (unsuccessfully), for the role of chief executive by Lance Primis, a non-family executive who had been appointed president (the business manager) of the company.¹⁵⁹ ‘Punch’ Sulzberger opted for his son.¹⁶⁰ Tifft and Jones

¹⁵⁷ *Seattle Times* 26 January 2009.

¹⁵⁸ The accusation was made in a posting by James Ledbetter on the Washington Post-owned subscription website, *The Big Money*, and reported by the Huffington Post on 22 February, 2010 (www.huffingtonpost.com/2010/02/22/new-york-times-silent-on_n_471230.html).

¹⁵⁹ Likewise, Primis’ predecessor as president, Walter Mattson, was not a member of the Ochs-Sulzberger clan.

state that Primis' mistake was that he did not appreciate that he was president of "an organisation ruled by a monarchy" (1999, 755).

'Monarchy' in this sense clearly includes primogeniture, which as noted earlier in this chapter, has been identified by researchers as a major source of poor business performance. However, the process does not pre-ordain poor management or stewardship. Under 'Punch' Sulzberger's tenure, the New York Times Company grew from a \$US100 million company in 1963 to a \$US1.7 billion company in 1992, and its editorial stature was enhanced by successfully challenging the government over the Pentagon papers and winning a slew of Pulitzer prizes – almost half the Pulitzers won by the Times up to 1992 were during 'Punch' Sulzberger's term as publisher (*ibid.*, 639) – although the editor for much of the period, A.M. Rosenthal, was controversial.¹⁶¹ 'Punch' Sulzberger also ensured that his son received a 'rounded education' in the newspaper business, both inside and outside the New York Times Company. He was, for example, an advertising representative on the 40,000 circulation *Raleigh Times* in North Carolina, an Associated Press correspondent in London, and a production executive at the *New York Times*.¹⁶²

Nonetheless, the successor to the *New York Times* crown has, over almost two decades directing the editorial then overall destiny of the company, carried the burden of questions over the suitability of a chief executive chosen by DNA profile. This is in spite of the fact that the criticisms made of Arthur Ochs Sulzberger Jr. (McCollam 2008, 29; Auletta 2003, 168-170) could equally be made of many publishers and executive chairmen in the news business. His tenure at the New York Times Company has coincided with arguably the most testing time in the history of that business. Some of his decisions have been questionable – such as investing \$US600 million in a 52-storey Manhattan headquarters building,¹⁶³ depleting cash reserves in share buyback

¹⁶⁰ The New York Times Company board ratified such appointments but the choice was the prerogative of 'Punch' Sulzberger (and his father before him). His son was not appointed CEO but the position was downgraded and the eventual appointee reported to Arthur Ochs Sulzberger Jr. rather than to the board of directors.

¹⁶¹ See Tifft and Jones 1999, Frankel 1999, Chomsky 1999.

¹⁶² Former *New York Times* executive editor, Max Frankel, in his autobiography stated that in 1986 'Punch' Sulzberger had asked him to "help me break in my son Arthur as the next publisher" (1999, 415).

¹⁶³ The company was forced into a partial sale and leaseback agreement in 2009 to raise \$US225 million (reported in the *Wall Street Journal* March 10, 2009).

schemes and high dividend payments¹⁶⁴, plus choosing Carlos Slim Helú as a ‘White Knight’ – but much of the company’s financial decline has been shared with others in the industry. And like other newspaper companies, he has overseen staff cuts (headcount down 18 percent in 2009) and other budget cuts (total costs were reduced by 17 percent in 2009) in an effort to counter the effects of depressed advertising revenue (down 25 percent in 2009, but countered slightly by a three percent growth in circulation revenue).

Shareholders who saw Class A shares drop from a 2002 peak of \$US52 to a February 2009 low of \$US4.13¹⁶⁵, would be entitled to ask whether their investment might have fared better had the company’s succession policy put ability first and birth a distant second. The appointment process for the publisher and chairman roles in the New York Times Company will remain contentious so long as the decisions are made by one member of the Ochs-Sulzberger family (with its leaning toward primogeniture) and ratified by his or her relatives.

To date, the Ochs-Sulzberger family has shown remarkable solidarity and a determination to nurture the quality of the *New York Times*, to the point where they have been prepared to accept lower returns than those in peer companies in order to sustain its journalism.¹⁶⁶ With each generation however, they face the possibility that this cohesion will be tested by the “cousin stage” (Lansberg 1999) that was highlighted earlier in this chapter.

Iphigene Sulzberger was the sole heir when Adolph Ochs died, and at her death her four children inherited her estate. They produced 13 children – the ‘Fourth Generation’ that included Arthur Ochs Sulzberger Jr., and by 2008 there were 27 members of the so-called ‘Fifth Generation’. Many of the ‘Fifth Generation’ were born before Iphigene died, and the 1997 Trust is set to endure until the last of those dies. McCollam sets out the process by which the family ensures it remains bonded, including induction courses for offspring when they ‘come of age’ (and for their spouses when they marry), plus

¹⁶⁴ On April 13, 2004, the company’s board of directors authorised the repurchase of up to \$400 million worth of Class A shares. In 2007 the dividend was increased by 31 percent. In February 2009, dividend payments to both Class A and Class B shareholders were suspended, and in 2009 no shares were repurchased (New York Times Company Annual Report 2009).

¹⁶⁵ By July 2010 the share price had risen to about \$US9.50 (NYSE).

¹⁶⁶ Between 1937 and 1957 the company’s profits had averaged only 4.5 percent, due largely to “the family’s commitment to quality and its remarkable lack of concern for personal enrichment” (Tifft and Jones 1999, 320).

annual reunions and an annual business meeting in which family meet company executives to discuss the business (2008, 29).

Consensus is most easily achieved when small numbers of family members are involved in the decision-making process, but becomes more difficult as the number of stakeholders grows. This situation inevitably will be faced by the extended Ochs-Sulzberger family, which will confront the various difficulties associated with consensus determination. 'Punch' Sulzberger employed skilful diplomacy in his management of the family and its affairs. He remained chairman emeritus of the New York Times Company, and although in poor health in 2010, was still available as a touchstone for family solidarity. His son however, has a personality that critics say lacks maturity, and at times, resolve (Auletta 2005, McCollam 2008). A question therefore hangs over whether he would be able to employ the sort of diplomacy and resolve, necessary to hold together a family in the face of rising pressure from dissident members, disenfranchised investors, and the birds of prey that will gather if the fortunes of the *New York Times* decline further and the high-minded resolve of the Sulzberger family suffers dynastic dilution.

5.3 Bancroft family and Dow Jones & Co.

A family that no longer has an interest in a major newspaper may seem to fall outside a chapter on contemporary media family trusts, but the Bancroft family's divestiture of its interest in the company that published the *Wall Street Journal* is both recent enough and instructive enough to warrant its inclusion. It is particularly useful in illustrating the binary effects of structural weaknesses and family disunity.

The Bancroft family's association with Dow Jones is summed up in a single paragraph by Ken Auletta in *Backstory: Inside the business of news*:

The *Wall Street Journal* was launched in 1882 as a business newsletter by two journalists, Charles Dow and Edward Jones. Fifteen years later, Dow Jones introduced its electronic news ticker, a wire service that today employs more than seven hundred people and has 326,000 subscribers around the world. With the death of Charles Dow, in 1902, the company was sold to its famously fat Boston correspondent, Clarence Walker Barron (who, in 1921, founded *Barron's*). When Barron died, in 1928, ownership passed to his stepdaughters, Jane and Martha. Jane Barron's husband, Hugh Bancroft, a Harvard Law School graduate who had worked alongside his father-in-law, took over the management of the enterprise. But five years later, at the age of fifty-four, Bancroft, who suffered from

depression, killed himself. The company was left in the hands of the *Journal's* editor, and since then the Bancroft family has not had an active management role (2003, 284).

In fact, Barron's stepdaughter Martha did not inherit part of the business. She married a rich shoe manufacturer and the shares passed to Jane Barron, whose husband Hugh Bancroft became company president on Clarence Barron's death. Jane had three children: Jessie Cox, Jane Cook, and Hugh Bancroft Jr. and it is from these siblings that the three branches of the family are descended.

Dow Jones & Co., like the New York Times Company, had a two-tier voting system. Immediately before its sale in 2007 to News Corporation, Dow Jones had on issue 63.7 million shares in single-vote common stock and 20 million Class B shares that were each entitled to exercise 10 votes.¹⁶⁷ The Bancroft family, through a series of interlocking trusts, held 6.4 percent of the single-vote common stock but 82.4 percent of the Class B stock. This gave them overall control of 64.2 percent of the company's shares. If Class B shares were sold, they automatically reverted to common stock with a single vote. There were approximately three dozen family members, in three family branches, who were direct beneficiaries of the 1928 will of William Clarence Barron. Three family members, plus the administrator of a number of the family's trusts (controlling almost half the Class B shares), sat on the 16-member Dow Jones board of directors.

It had something else in common with the New York Times Company: The value of its freely traded single-vote stock had fallen over time – from a peak of \$US75 in 2000 to \$US33 five years later. Unlike the Sulzberger family however, the Bancrofts had not consolidated their holdings into a single trust designed to 'keep it in the family' when potential buyers inevitably began to gather around a poorly performing company. And unlike the Sulzbergers, the Bancroft family was not united by a sense of stewardship.

The Bancroft family supported the good journalism for which the *Wall Street Journal* was renowned, but did so passively – support meant not interfering. It supported the company's executives, but did not play an active role in management – in contrast to the Sulzberger family. It was nonetheless a major beneficiary and ultimate controller of the company, which one proxy statement had described as “a quasi-public trust”.

¹⁶⁷ Dow Jones & Co. Definitive Proxy Statement filed with Securities and Exchange Commission April 2007.

It had been rare for the family to even discuss the business (Nocera 1997, Ellison 2010, 18).¹⁶⁸ However, in 1997 a change occurred within the family that would ultimately lead to the sale of the company to News Corporation. Two Bancroft cousins, Billy Cox III and Elisabeth Goth, had become frustrated at Dow Jones' management, which had faltered badly over a number of business transactions and was delivering significantly reduced profits.¹⁶⁹ Goth had begun what *Fortune* magazine at the time described as "a quest for answers" that "opened the first fissure in what could have been the cosiest partnership between a family and a publicly held company in America" (Nocera 1997). Other family members and Dow Jones management had been unnerved and angry at what was seen as a disruption of the status quo, despite the fact that Elisabeth Goth had been enquiring into the state of her own substantial bequest (left by her mother Bettina Bancroft) in a company that *New York* magazine had described as "standing still for the past decade while the rest of the market was in full gallop".¹⁷⁰ Goth, with the assistance of her cousin, had forced changes that brought new independent directors to the board. More significantly however, their actions had destroyed the benign relationship that had characterised the Bancroft family and put the two cousins at odds with older members of the clan.

Their actions also drew into stark relief the difference between non-interference and neglect. The Bancroft family had taken its non-interventionist approach almost to a statutory level. It was for example, considered unacceptable to voice any criticism of the *Wall Street Journal's* editorial policies (Ellison 109). The family accepted management decisions without demure, even decisions that cost the company dearly.¹⁷¹ Such inaction illustrates that there is a line which family trusts cross at their peril. Stewardship requires an expeditious level of involvement for the good of the business that is not necessarily at odds with the maintenance of editorial independence. By allowing non-intervention to become neglect, the Bancroft family failed the "quasi-public trust" they believed they were serving, and surrounded by the protective power of the two-tiered voting system they were protected against external challenge.

¹⁶⁸ Jessie Bancroft Cox, the family matriarch who died at the Dow Jones 100th anniversary celebrations in 1982, did block the purchase of a New England newspaper by the company – because it had written something uncomplimentary about one of her horses (*Independent*, 9 June 2007).

¹⁶⁹ A large proportion of which was being dispersed as dividends to the Bancroft family.

¹⁷⁰ Chris Mitchell, "Beating the Dow", *New York*, Vol. 30, No. 7, 24 February 1997, pp. 44-46.

¹⁷¹ For example, mishandling of the purchase of a financial data company, Telerate, for \$US1.6 billion led later to a \$US1 billion writedown in its value.

Non-interference was the position held by the second and third generations of the family, but it was not universally embraced by the fourth generation. By the time the Dow Jones share price had hit \$US33 in 2005, some younger members of the family were unhappy at the company's performance and so too was a newly appointed professional trustee (employed by the Bancrofts' long-serving advisors, Hemenway & Barnes) who advised dissident family members (led by board member Leslie Hill) to challenge management and the board. The result was an ultimatum to both management and the directors to institute measures that would allow much-needed change in the way the company was operated.¹⁷² It led to the ousting of the chief executive, Peter Kann, a former journalist and Pulitzer Prize winner, who had been a consummate guardian of the 'old' Dow Jones ways.

Dow Jones continued to perform poorly, and the immediate prospects for the United States economy (and the advertising market) were also poor. The prospect of selling the company had previously been an unspoken subject, but in October 2006 the matter was raised at a family forum to the disbelief of some members. It was raised again however, at a board meeting in February 2007 so that when Rupert Murdoch made a bid for the company the following April, family members had begun to take sides on the issue of a sale. Murdoch's offer of \$US60 a share was a premium of almost 70 percent on the current share price. Where the market valuation of Dow Jones had been about \$US3 billion, Murdoch was offering more than \$US5 billion for the company.

Within the family, the champion for the sale faction was the leader of the 1997 revolt, Elisabeth Goth, while the prime mover in the 2005 assault on the status quo, Leslie Hill, wanted to reject the sale and rebuild the company from within. Ellison notes an interesting difference between the two women. As the sole beneficiary of Bettina Bancroft's interest in the company, Elisabeth Goth stood to receive one-ninth of the family's interest in Dow Jones, while Leslie Hill (one of seven children) would receive only one-forty-second of it (2010, 109-110). This illustrates the difficulties that can arise when dynastic dilution creates disproportionate interests among different family

¹⁷² Company bylaws had stated that if the number of Class B shares held by family members fell below 12 million, they would convert to single-vote common stock and the family would lose control. In a move aimed at providing a source of cash for the Bancrofts, a change to the company articles allowed family members to sell down to 7.5 million Class B shares without triggering the 'sudden death' clause. Dissident family members opposed this change and wanted a moratorium on Class B share sales, a cut in Class B dividends (which had been paid at the expense of cash reserves) and the earmarking of half the company's cashflow to repayment of debt (Ellison, 36).

members – an effect due to what Wolff describes as “the logic of trusts and the math of reproduction” (2008, 90).

The overlapping trusts also presented problems. Leslie Hill was a beneficiary of the largest trust, the Article III Trust, but the sole trustee was her uncle Christopher Bancroft, who initially stated he was opposed to accepting the News Corporation offer but later promoted the sale of the family’s stake. Administration of a number of the trusts was under the control of four lawyers from Hemenway & Barnes. In the midst of the bid for the company, they were charged with not only providing advice but also trying to reconcile the interests of different family members. And within Hemenway & Barnes, there were generational differences of opinion on the best ways – past, present, and future, to serve the interests of the Bancroft family and the *Wall Street Journal*. Three other law firms represented further Bancroft family trusts.

Rupert Murdoch’s campaign for control of Dow Jones has been well documented by Ellison, Wolff, Nordberg, Schejter & Davidson (among others), together with numerous newspaper reports including, with commendable corporate transparency, the *Wall Street Journal*. It is a tale of pursuit and persuasion, division and coercion, but ultimately about the power of money. The detail need not be recounted here, beyond noting that after three months of internal discussion the Bancroft family remained divided and the final vote was a split decision. The family controlled 64.2 percent of the overall votes in the company and the ‘sell’ vote accounted for 37 percent. The single vote common stockholders, many of who not unnaturally favoured a sale given the premium being offered by Murdoch, tipped the balance. By August 1 2007, Dow Jones & Co., and with it the *Wall Street Journal*, were part of News Corporation.

Before the sale was concluded, Leslie Hill had resigned as a director in protest. So too, had Dieter von Holtzbrinck, a German publisher who joined the board after an exchange of shares between his family’s company and Dow Jones (Nordberg 2007, 718). Holtzbrinck and another non-family director James Ottaway, had publicly opposed the News Corporation bid, not on financial grounds but over concerns for the *Wall Street Journal*’s editorial independence after Rupert Murdoch gained control. Neither man had been swayed by Murdoch’s undertakings to the family on editorial independence, which were a much watered-down version of what the family had initially sought, and included a “Special Committee” of “distinguished community or journalistic leaders

who are independent” (Schejter & Davidson 2008, 523-6). That agreement appears remarkably similar to the undertakings given before the purchase by Murdoch of *The Times* and *Sunday Times* and like Harold Evans the incumbent editor, Marcus Brauchli¹⁷³ did not long survive the change of ownership.

There are a number of significant elements in the sale of the Bancroft family’s interests in Dow Jones & Co. that illustrate potential weaknesses in media-owning family trusts. They arise in part because of the makeup of the various branches of the Bancroft family, but all are weaknesses that could be avoided by the use of appropriate mechanisms built into the structure and governance of the family’s trusts and by a more constructive articulation of what should be expected of it in the ‘stewardship’ of the company. There were four principal failings:

1. The family was disorganised. It had no established lines of communication beyond an annual family get-together and members were geographically and socially widespread. There was little guidance on how the family members should act in relation to the company. Dow Jones produced a raft of governance documents for directors, management, and editorial staff¹⁷⁴, but the family’s conduct was governed by unwritten and largely unspoken ‘understandings’ that were often misinterpreted. Family directors had a reputation for ‘rubber-stamping’ board and management decisions, criticism of the *Wall Street Journal* was frowned upon, and there were no memoranda on the maintenance of Clarence Barron’s legacy or examples of decisive action¹⁷⁵ on which they could draw. Discussion over the offer had to be carried out through hastily convened meetings, conference calls, and the use of the legal trustees as educators, intermediaries and canvassers of divided and shifting family feeling.¹⁷⁶
2. The family was unprepared for the offer and had not seriously considered the prospect of relinquishing control of Dow Jones. Many family members felt conflicted by (a) the size of the offer, (b) the fact that the prospective buyer was

¹⁷³ Brauchli went on to become executive editor of the *Washington Post* in September 2008, succeeding Leonard Downie Jr.

¹⁷⁴ Dow Jones board governance is analysed in Arrese, 2005.

¹⁷⁵ Apart from the 1997 ‘revolt’ led by Elizabeth Goth who was one of the principal advocates of the sale to Murdoch – that led to the appointment of several new directors but little change to the company’s course.

¹⁷⁶ Ellison claims that the principal legal trustee, Michael Elefante, was still unsure of the weight of family feeling more than a week after the offer was made (2010, 114-5).

Rupert Murdoch, and (c) the knowledge (contained in a letter to family members from the union representing employees) that staff were universally opposed to the sale because they feared that editorial independence would be lost. As a result, there was a variety of positions held by family members and no consensus on what would be best for Dow Jones & Co. and the *Wall Street Journal*. Some opposed any sale, some opposed a sale to News Corporation, while some felt the family should hold out for an even higher price. Many had been accustomed to simply following the advice of their professional advisors, but that counsel was sometimes conflicting. The advisors were struggling with the dilemma of reconciling what was best for shareholders, with what was in the wider interests of a publication that had become an American institution. Above all, there was no patriarchal or matriarchal figure to which the entire family could look for the sage advice to which they could all subscribe. In other words, there was a lack of leadership.

3. The family's failure over many years to engage in the company's governance meant there was both a lack of knowledge and a certain naïvety. An example was a family-prepared statement, proposing a meeting with News Corporation and the consideration of other options, which they assumed would be taken at face-value. Non-family directors correctly pointed out that such a statement would be interpreted by the market as an intention to sell and opposed its release, only to find that a copy had already been given to the *Wall Street Journal*. As a result of this statement, directors believed they had a fiduciary duty to proceed to a sale to the highest bidder (Ellison 124-9). The naïvety of family members extended to the search for a mechanism to protect the editorial independence of the *Wall Street Journal* under Murdoch. Ultimately, in spite of what had happened after his acquisition of *The Times* in London, the Bancroft family was willing to allow Rupert Murdoch to construct another Trojan horse. As the negotiations played out, family members were dogged by indecision because collectively they had a fundamental weakness – they did not know the business on which they depended each year for the replenishment of their trusts' coffers.
4. The structure of the trusts and the share structure of Dow Jones were inadequate means by which to ensure continued Bancroft control of the company. *Fortune*

magazine described the Bancroft trusts as a “byzantine web”¹⁷⁷, while the *New York Times* routinely referred to them as “interlocking”. Both descriptions point to a level of complexity, which in spite of the trusteeship of Hemenway & Barnes over a number of the trusts, meant the Bancroft family’s holdings could not be construed as a single voting bloc or even a consistent approach. Unlike the Sulzberger siblings who had coalesced their holdings into a single trust that was binding on all eligible family members, the Bancrofts had not only been content to allow the initial four trusts to co-exist, but for them to be joined by further trusts vested in different family groups for a variety of purposes. There was no systemic way in which the family could speak with a single voice. Further, the Bancrofts did not build a ‘poison pill’ into their trust or share structure to protect the family’s assets against future sale through a family rift. The introduction of the two-tiered stock system had been designed to forestall a hostile bid against which the family was united. It was not a defence against a bid in which the principal approach was not a stand in the market, but an attempt to beguile and persuade family members to sell. The Sulzbergers built a mechanism into their trust – the automatic conversion of Class B voting stock into non-voting Class A shares when they were sold that ensures all trustees must be in agreement before the family could sell its control of the New York Times Company. The Bancrofts employed no such mechanism, and as a result the family lost control when half its controlling members were opposed to the sale.

This is not to say that had none of these four factors existed, that the Bancroft family would have retained control of Dow Jones and the *Wall Street Journal* in the long-term. In a 1997 interview with *New York* magazine,¹⁷⁸ William Cox III said the Bancroft family should not be counted on to continue putting the *Journal’s* interests above their own. Did this mean the family might be willing to sell Dow Jones? “Everything has its price”, he said. In this case, it was the consequences of disunity and \$US60 a share.

¹⁷⁷ Nocera 1997.

¹⁷⁸ See Mitchell 1997, 46. *New York* magazine had previously been owned by Rupert Murdoch’s News Corporation but was sold five years before the interview appeared.

5.4 The Graham family and the Washington Post Company

The Graham family has attributes in common with the Sulzberger and Bancroft families. Like the Sulzbergers, the founder of the newspaper company was nominally Jewish. Like the Bancrofts, the business was then entrusted to a son-in-law who subsequently committed suicide. And like both families, the Grahams employed trust mechanisms and a two-tiered share system to protect their control. There are however, several differences that distinguish the Graham family from the other “first families” of American newspaper publishing.

Some of those differences may appear paradoxical. The eldest son had a pre-ordained path to leadership of the company and exercised tight control over voting rights, but the vast majority of directors are independent of the family – the Washington Post Company is renowned as a newspaper publisher, but derives the majority of its revenue from other sources, and it has a large outside shareholder who ‘bought in’ unbeknown to the Grahams but who is the family’s acknowledged *éminence grise*.

Much like the purchase of the *New York Times* by Adolph Ochs, the *Washington Post* was bought in a bankruptcy sale in 1933 by Eugene Meyer. In 1948, he decided to pass control of the newspaper to his daughter Katharine and son-in-law Phil Graham. A cash ‘birthday present’ from Meyer enabled Graham to buy shares. Katharine Graham explained in her autobiography, that with her concurrence, her husband was given a majority of the shares because her father believed that “no man should be in the position of working for his wife” (2001, 195).¹⁷⁹ At the same time, a self-perpetuating committee modelled on English structures and employed by several newspaper-owning families, was set up with “absolute power” to approve or disapprove a buyer, should the Grahams decide in the future to sell the newspaper. The five-member trust was initially comprised of three university leaders, a judge, and the head of a majority charitable foundation.

Phil Graham led the Washington Post Company through a process of expansion into other media and consolidation of the Washington market. Acquisitions included: radio

¹⁷⁹ A total of 3325 Class A shares were transferred to Graham and 1325 to Katharine which, with their existing holding, gave them a combined total of 5000 shares. Other shares classified as Class B, were transferred to a charitable foundation and repurchased by the Grahams in 1957, giving them total ownership of the company. Katharine’s siblings were given sums of money by their father, rather than an interest in newspaper.

and television stations, *Newsweek* magazine, and the *Washington Times-Herald* that was merged with the *Washington Post*. However, Graham's behaviour became erratic, his relationships with executives deteriorated, and his relationship with his wife broke down when he began an affair with a *Newsweek* journalist. Katharine Graham's autobiography details the effects of her husband's mental illness that saw him institutionalised. It was during a respite from institutional care for a bipolar disorder that he took his own life.¹⁸⁰ Graham's death in 1963 complicated matters for Katharine Graham but led, ultimately, to the formation of a series of family trusts. These trusts were the genesis of the Graham family trusts that exist today.

In her first meeting with directors and executives after deciding to assume her late husband's control of the company, Katharine Graham reinforced the dynastic nature of the family's association with the business: "This has been, this is, and this will continue to be a family operation", she said. "There is another generation coming along, and we intend to turn the paper over to them."¹⁸¹ She was true to her word. Her son, Donald, became publisher of the *Washington Post* in 1979 and chief executive in 1991 before becoming chairman two years later on his mother's retirement. Her granddaughter (and Donald Graham's niece), Katharine Weymouth, became publisher of the *Washington Post* in 2008.

In 1971 the company went public. Katharine Graham claims to have had little understanding of the process (*ibid.*, 478), which is almost certainly too self-effacing given her grasp of the business she controlled. A two-tiered share structure was created, with her controlling the majority of the one million Class A shares, and her children the remainder. These shares carried 70 percent of the voting power in the company, in spite of the fact that there were 10 million Class B shares on issue. Class B shareholders were entitled to elect only 30 percent of the board. Mrs Graham later stated that people bought shares knowing the company was family-controlled, suggesting that she did not envisage assaults similar to those enduring (and so far repulsed) by the Sulzberger family at the hand of dissident investors. Mrs Graham (and latterly her son Donald) was astute in her management of investor relations, with significant assistance from their *éminence grise*.

¹⁸⁰ Graham 2001, Chapters 13-17.

¹⁸¹ Quoted in Coleridge 1994, 89.

That individual was the chairman of Berkshire Hathaway Inc., Warren Buffett, who bought 10 percent of the company shortly after it was floated, and stated his intention to buy more. In so doing, he created alarm among the company's advisors, including one who told Mrs Graham bluntly: "He means you no good" (*ibid.*, 555). In fact, Buffett's interest in the company (which in 2010 stood at 18.7 percent of the Class B shares) has been immensely beneficial and, as far as the Graham family is concerned, utterly benign. Renowned as an astute investor,¹⁸² he became a key advisor to Katharine Graham and her son and his presence on the board of the Washington Post Company (where he is described as "lead independent director") has been consistently endorsed by shareholders.

Buffett's relationship with the Washington Post is unusual. Although his company is the financial beneficiary of the 18.7 percent investment in the company, he entered into an agreement in 1977 under which he gave its voting proxy to the Graham family. Under that agreement (which was amended and extended in 1985, 1996, and 2006) Donald Graham has the right to exercise his voting discretion on 1.7 million Berkshire-owned shares until the agreement expires in 2017. The Graham family has control of 94.5 percent of the crucial Class A shares, with Donald Graham exercising shared voting rights over the entire family holding, and his sister and two brothers sharing in smaller proportions. Professional trustees also exercise voting rights on behalf of the family. Class A voting rights, together with Class B holdings and the Berkshire Hathaway proxy, mean Donald Graham has undisputed control of the company.

However, to comply with New York Stock Exchange rules the board must meet regularly without its executive members, namely Donald Graham. These sessions are presided over by Warren Buffett and the company's proxy statement says he "collaborates with Mr Graham in reviewing key operational and other matters...and acts as liaison between Mr Graham and the independent directors".

Buffett has advised the company on a share buyback programme that has enhanced the Graham family's holding (and Berkshire Hathaway's) in the Washington Post Company and endorsed a diversification strategy. It has been a strategy that has set the Washington Post Company apart from the other American family-owned media

¹⁸² In 2008 *Forbes* magazine named him the world's richest man. He was displaced in the rankings by *New York Times* 'saviour' Carlos Slim in 2010.

businesses studied in this thesis. However, the significance of the purchase that created the difference was not initially recognised. In fact, when the acquisition of an educational company – Stanley H. Kaplan Company, was suggested in 1984, Katharine Graham said: “I don’t give a shit about it, but if you think it will be profitable, let’s do it” (Graham, 652). In 2009, the renamed Kaplan Inc. accounted for 58 percent of the Washington Post Company’s revenue, or \$US2.6 billion.

The Sulzbergers are not endowed with such a cash cow, and the Bancroft family found that Dow Jones’ attempts to diversify with the purchase of the financial information provider Telerate were disastrous. The Washington Post Company is an excellent example of a media company that has built a financial buffer outside its core business (we will encounter other examples in this chapter and the next), although Kaplan Inc. has become such a strong contributor that it is now a moot point over what constitutes the core business of the company. The Washington Post Company also benefitted from the purchase of cable television systems that have been consolidated into CableOne, which serves approximately 720,000 customers in 19 states with cable television, telephone, and high-speed Internet service. The cable division contributes 16 percent of the group’s revenue, slightly more than the contribution from newspapers (including the flagship *Washington Post*).

In 1993, the newspaper and magazine divisions of the company accounted for about 68 percent of revenue, but by 2002 the proportion had dropped to 51 percent. Seven years later, the newspaper division (comprising the *Washington Post* and the company’s community newspapers) and its magazine division (which then included *Newsweek*) were being badly hit by the recession. The revenue contribution from the two divisions had shrunk to only 19 percent. Losses in its newspaper division in 2009 amounted to \$US164 million, which led to heavy cost cutting at the newspaper.

The *Washington Post* has been forced into at least four rounds of staff reduction since 2003, the latest being an early retirement scheme announced in April–May 2009 that saw a reduction of 221 staff.¹⁸³ In addition, the newsrooms of the newspaper and the washingtonpost.com website were re-combined after a period operating as separate

¹⁸³ The early retirement scheme reduced the staff of the *Washington Post* to 2058 full-time employees, of which 548 were editorial staff (including 77 who had previously worked in the washingtonpost.com newsroom).

entities. *Newsweek*, which lost \$US16.1 million in 2008 and \$US29.3 million in 2009, was sold for \$US1 in August 2010.

These events may be the fallout from recession, but they have had a negative impact on the company's reputation in some quarters. An article in *The New Republic* in February 2010 painted a picture of staff dissatisfaction, and a newspaper "facing an identity crisis" under current publisher Katharine Weymouth and editor Marcus Brauchli (Sherman 2010, 17). It did however, acknowledge the *Washington Post's* "enduring ability to break important stories – which the paper still does with impressive regularity" (*ibid.*, 21).¹⁸⁴ That article, dismissed in a letter to the magazine by Donald Graham, stands in contrast to a profile in the *Columbia Journalism Review* eight years earlier which offered the following description: "...the *Post*, under Don Graham, has maintained a rock-hard stability and commitment to – and investment in – newsroom excellence (Sherman 2002, 42). The latter-day description may be a product of the times, rather than a reflection on the Graham family's stewardship of the company.

In his annual report commentaries, Donald Graham has reinforced the unsentimental approach to the newspaper and the company. He made no attempt to minimise the issues facing the newspaper and magazine industries, and while committing the company to seek ways of making its publications profitable, he emphatically rejected the notion that investment in the *Washington Post* and *Newsweek* were out of a sense of public service. Investment, he said, was because the company believed the publications could be returned to profitability. Nevertheless, one of the two stated purposes of the company is "To publish any newspaper owned by the company as an independent newspaper dedicated to the welfare of the community and the nation, in keeping with the principles of a free press..."¹⁸⁵ It may be assumed that Donald Graham is committed to his family's journalistic legacy, and he has been assured of the continued support of Warren Buffett (Hass 2009, 95).

However, the Graham family shares a weakness with most other family-controlled public companies. In spite of the long-held assumption that Donald Graham would succeed his mother, there are no formal mechanisms to ensure that a family member

¹⁸⁴ In 2010, the *Washington Post* won four Pulitzer prizes – for international reporting, feature writing, commentary, and criticism. It was the largest number of awards to a single newspaper that year.

¹⁸⁵ Restated Certificate of Incorporation of the Washington Post Company, filed November 13, 2003. The second object is a general intention to carry on a business.

will assume the mantle when he steps down. The company bylaws vest in the directors the power to appoint a chief executive, and beyond the fact that the family elects 70 percent of directors through its holding of Class A shares, there is no requirement that preference be given to a family member

Donald Graham has not made public any intentions regarding the succession, and there have been no family statements or public documents that might secure the future for the Grahams. The family could continue to guide the destiny of company and the journalistic legacy that has been built since Eugene Meyer handed over control, or given the precedent set for the installation of independent directors, the Graham family could become the non-interfering beneficiaries of a profitable company that has a small side interest in publishing the news.

5.5 The Harmsworth family and the Daily Mail & General Trust

Harold Jonathan Esmond Vere Harmsworth assumed his control of the holding company of London's *Daily Mail* by right. He is an example – perhaps the last example – of media baronial primogeniture. The fourth Viscount Rothermere's family is the embodiment of a press baronetcy. The first holder of the title was his great-grandfather, Harold Harmsworth, who formed the company in 1922; followed by his grandfather, Esmond Harmsworth, who did little to enhance its newspapers; succeeded in turn by the third Lord Rothermere, Vere Harmsworth, who resurrected and expanded the media empire until the title passed to Jonathan Harmsworth on his father's death in 1998.

The group's name is misleading. The Daily Mail & General Trust (DMGT) is a public company and is not governed by trust instruments. It is an echo of the original company – Daily Mail Trust Limited, set up in 1922 to consolidate Rothermere's newspaper interests following the death of his brother and business partner, Lord Northcliffe, who had launched *The Daily Mail* in 1896. The company had a capital of £1,600,000 in voting shares, which according to a contemporary report in Melbourne's *Argus* newspaper, were “subscribed by Lord Rothermere and his friends”.¹⁸⁶ Rothermere held a majority. In addition to the share capital, the company offered a similar amount to the public in non-voting debentures. These debentures were covered by a trust deed, and hence the naming of the company. The public's involvement on a non-voting basis

¹⁸⁶ *Argus*, Melbourne, 11 November 1922 p. 5.

would continue to the present day, with the debentures later being transformed to non-voting shares. Under the original articles of association, Lord Rothermere was named a director for life and chairman until his death or resignation. The current company articles contain no such provisions, but the voting power of the Harmsworth family can sustain its hold on the chair if it wishes.

The first viscount was an astute businessman with little interest in journalism. Under his brother Lord Northcliffe, journalists had been treated well and business staff relegated to the 'back room'. Rothermere reversed the status, cutting editorial salaries and elevating managers (Coleridge 282). Like his brother however, he had a propensity for interfering in politics.

Rothermere was anti-Semitic (Curran & Seaton 1997, 53), and his support for Mosley's British Union of Fascists, visits to Nazi-led Germany, and correspondence with Hitler created an enduring slur. Edwards suggests he was driven by intense patriotism and fear of Communism (2003, 76-7) but the effect on the pre-war editorial policies of *The Daily Mail* that he dictated was unedifying even in a climate of appeasement. The present Lord Rothermere told a House of Lords committee in 2008 that the interference by his forebears might have been responsible for the hands-off policy pursued by later generations.¹⁸⁷

The second viscount Esmond Harmsworth, continued his father's promotion of business staff at the expense of the company's journalists. He was responsible for the purchase and closure of the *News Chronicle*. His cousin Cecil Harmsworth King, provided the Press Association with an excoriating comment for his obituary:

He was a shit. Cold, money-grubbing and completely unsuited to the job he held. When he took over *The Daily Mail* it was the best newspaper in Fleet Street. Look at it now. When he took over the *Evening News* it was the best evening newspaper in the world. Now look at it. Dreadful rags, both of them.¹⁸⁸

In 1970, when Vere Harmsworth assumed control on behalf of his ailing father,¹⁸⁹ the company was in danger of going out of business. Its Sunday newspaper had been sold, the evening newspaper was losing money 'hand-over-fist', the *Sketch* was losing

¹⁸⁷ House of Lords Select Committee on Communications, 1st Report of Session 2007-8 "The Ownership of the News" Volume II: Evidence, p. 542 (HL Paper 122-II).

¹⁸⁸ Quoted in Greenslade 2004, 325.

¹⁸⁹ He had begun to exhibit signs of the onset of Alzheimer's.

money, and the circulation of *The Daily Mail* was lagging behind its competitor, the *Daily Express*. The third viscount, as he became in 1978, was responsible for a remarkable turn-around (see Taylor 2002).

He had been described during his lifetime as “the last of the proper English press lords...only Vere Rothermere [as he became known] was brought up here, an Englishman, an Old Etonian, a baron with a hereditary peerage, raised to inherit proper English newspapers” (Coleridge 268). He re-launched the moribund *Daily Mail* as a tabloid after merging it with the *Sketch* in 1971, and launched the *Mail on Sunday* in 1982. The *Mail on Sunday* required years of investment before becoming profitable, but is regarded as one of the most successful Sunday launches in recent British newspaper history. He also invested in the company’s regional newspaper chain and brought strategic direction to the group.

DMGT had owned an astonishingly eclectic array of businesses, some of which had been acquired over the years from family members. During the 1950s and 1960s, when union power in Fleet Street was at its height, the family’s attitude had been to put its money anywhere but in newspaper, and many of these investments eventually found their way into DMGT. By the 1980s, it owned one of the largest independent oil companies in Britain, and was a pioneer of North Sea oil extraction. A forklift firm, one of only two companies in the United Kingdom capable of bending large sheets of glass for shop fronts, five percent of London Taxicabs, and London theatres were among its portfolio of assets.

Associated Newspapers had been only part-owned by DMGT. By borrowing heavily, the company brought Associated Newspapers into the fold as a wholly owned subsidiary and used the sale of the non-publishing assets to pay down debt. The decision to slim down to a publishing group coincided with a move away from Fleet Street, and an end to the power of print unions as computer technology replaced manual typesetting and composition. DMGT, which previously had not even had a bank overdraft, borrowed £500 million to finance the new phase in its development. No sooner had it been completed, than Britain plunged into the 1990s recession. DMGT’s director of finance, Peter Williams, conceded during an interview with me in 2009 that the company’s fortunes were “a bit touch and go” during that period, and he gives much of the credit to Vere Rothermere for the decision to embark on a new strategy that avoided

reliance on the U.K. market, on advertising, on newspapers, and on regulated businesses.¹⁹⁰

Under Vere Rothermere's leadership, the group adopted a range of tactics, some of which were successful and some of which were abandoned. One unsuccessful venture – into consumer magazines, is a useful reflection of the effect that the Harmsworth family's ownership has had on the business. "We went into consumer magazines in a small way but we were not very good at it", Williams explains. "Because we are a family company we take a long view but consumer markets mean you have to move with the latest fad. We're arrogant enough to think that we get things right so, yes, we think twice before we move".

The strategy led by Rothermere took DGMT into a range of international business-to-business (B2B) commercial information activities. His stipulation was that the acquisitions should be in 'media', but one exchange indicates that Vere Rothermere's definition could be somewhat fluid. When Williams and his colleagues went to the chairman with a proposal to invest in Britain's National Lottery, they added that they were not convinced it was a media company. Rothermere enquired: "Is it going to make a lot of money?" Assured that it would, he replied: "I think it's a core business". The definition appears to hinge on 'information' rather than 'media', which allows the strategy to embrace activities as diverse as event management and risk assessment.¹⁹¹

In 2009, with the newspaper market at a recessionary nadir, these businesses provided three-quarters of the group's profits, much of it generated outside the United Kingdom. The 2009 annual report discloses that the £75 million operating profit from DMGT's newspaper publishing matched the group's newspaper profit in 1996.¹⁹²

Vere Rothermere was a complex character. He was credited with the resurrection of the group, but he did so at arm's length. He was a tax exile who could spend no more than

¹⁹⁰ Peter Williams was interviewed in London, 1 April 2009. He retired in March 2011.

¹⁹¹ DMG World Media was the largest event management company in New Zealand until its sale in 2010. Risk Management Solutions (RMS) applies models, analytics, data, and "multi-disciplinary knowledge" to the management of insurance risk associated with perils such as earthquakes, hurricanes, windstorms, and terrorist attacks.

¹⁹² Greenslade (1998, 40-45) notes that some DMGT enterprises were Sir David English's 'pet projects' that Rothermere indulged because of their friendship.

90 days each year in Britain¹⁹³ and relied heavily on his lieutenants – *Daily Mail* editor David English and managing director Michael Shields. Distance has been given as a reason for the extraordinary editorial independence enjoyed by English, who was Vere Rothermere’s friend and associate for more than 25 years. This does Rothermere a disservice. He and English shared a remarkable empathy and mutual understanding of the newspaper, but *The Daily Mail* was a reflection of English’s beliefs and his understanding of its readership. Vere Rothermere did not interfere in what developed into a highly successful formula. When English retired from the editorship to become editor-in-chief and chairman of the DMGT subsidiary that housed its newspaper titles¹⁹⁴, his successor Paul Dacre enjoyed the same editorial independence and Vere Rothermere stated that, although he often disagreed with his editor: “he is entitled to his views in the paper, but if they start to affect the circulation, that will be different”.¹⁹⁵ Max Hastings was editor of the DMGT London evening newspaper – the *Evening Standard* at the time of Lord Rothermere’s death in 1998, and said of him and his son, the fourth viscount: “...I can say that the Lords Rothermere, *père et fils*, are the only newspaper owners I have worked for who have shown themselves sincerely committed to the doctrine of editorial independence” (Hastings 2002, xv).

Vere Rothermere saw himself not as a publisher or journalist, but as a proprietor. In a 1997 interview, he defined his role in DMGT:

The role of proprietor of a newspaper is a profession. You have to understand journalists, you have to understand management and how it operates because, fundamentally, it is a business, and therefore you have to be able to play the same ruthless business games that everyone plays. (Hagerty 1997, 11)

In the same interview, he stated that he loathed the thought of retiring and therefore did not think about it. In little more than a year he was dead at the age of 73. Sir David English predeceased him by less than three months. Jonathan Harmsworth became the fourth Viscount Rothermere at the age of 30.

The relative youth of the present viscount on succeeding to the title was due to the fact that Vere Rothermere was 42 when his son was born and had been in real danger of

¹⁹³ His relationship with Patricia, Viscountess Rothermere, was complicated by a long-term relationship with Korean-born Maiko Lee who he married after Patricia’s death in 1992..

¹⁹⁴ Associated Newspapers.

¹⁹⁵ Quoted in Davies 2008, 20. The inference is that Vere Harmsworth did not breach editorial independence solely for business reasons. However, his record includes periods when the newspapers were unprofitable but enjoyed his full support.

becoming the last Viscount Rothermere. He and his wife Patricia had produced two girls: Geraldine (born in 1957) and Camilla (born in 1964), when his father Esmond decided to marry for the third time in 1966 and his new wife presented the 70-year-old peer with a son. At that point, Vere had no male heir to succeed to the title which in the tradition of primogeniture, could not pass to his elder daughter.¹⁹⁶ Following the birth of a half-brother who was 42 years Vere's junior, the private trusts governing the family's assets were redrafted so that the newspapers eventually would pass to this new male addition. Patricia Harmsworth had been told she could die if she had another child (she had almost died during Camilla's birth) but in 1967 presented a son and heir. The trust documents were again redrafted in favour of Vere's son, Harold Jonathan Esmond Vere Harmsworth (Coleridge 305-6; Greenslade, 224).

Jonathan Harmsworth had been managing director of the *Evening Standard* when his father died. He had not expected to assume the chairmanship of DMGT for some time and nor had the financial markets. In an assessment of the group following Vere Rothermere's death, Greenslade (1998, 40) noted:

The central problem [for the new viscount] will be ensuring that gusts don't dislodge those key elements which have made the company such a formidable performer in the past quarter century, increasing in value from £30 million to £2.5 billion. If that warning sounds far-fetched, given DMGT's track record thus far, it is important to remind oneself of the fragility of media businesses and, even more crucially, of media dynasties. A great deal now rests on the shoulders of 30-year-old Jonathan Harmsworth, the untested, almost unknown, fourth Viscount Rothermere, the new chairman and, given the oddity of the ownership structure, an old-style proprietor.

The ownership structure to which Greenslade refers is seen as a virtue by the family and DMGT executives, but as an unfair anachronism by some investors and analysts. There was no pressure for change in 1998, but in the new millennium there has been periodic criticism of DMGT's two-tiered share system. In 2004, Pensions Investment Research Consultants (Pirc) stated: "It's our view that all equity shareholders bearing the same risks should hold the same voting rights. It should be one share, one vote" (Berens 2004, 7). Pirc and another investment consultancy Manifest, regularly (and unsuccessfully) urge the non-voting shareholders to protest against the dual share

¹⁹⁶ The Letters Patent in 1919 conferred the title on Harold Harmsworth and "the heirs male of his body lawfully begotten".

structure that allowed Lord Rothermere to control the company.¹⁹⁷ Williams told me however, that Rothermere and his family (with 25 percent of the total equity in the company) would be the largest single shareholder even if forced enfranchisement took place. The next-largest holding is approximately 10 percent.

Lord Rothermere, through a Bermuda-registered investment company Rothermere Continuation Limited, controls 63.1 percent of the ordinary (voting shares) while a further 29.3 percent is held by the family through two trust companies, Codan Trust Company Limited and Codan Trustees (BVI) Limited. In addition, he owns almost 20 percent of the non-voting shares (approximately 76 million shares). DMGT has not engaged in equity raising since 1933, although bonus issues of non-voting shares were made in the 1950s – initially one non-voting share for each voting share, and then 10:1 – in order, as Williams put it, “to enable the family to take some of its money off the table without diluting ownership”. Further bonus issues over the years have taken the ratio to about 19:1. The non-voting shares are freely traded on the London Stock Exchange (two to three million a day on average) but, although the voting shares are listed, they are very rarely traded, and apart from Lord Rothermere and the family trust, very few of the remaining voting shareholders have stakes of more than 5000 shares. Almost three-quarters of the 747 voting class shareholders have fewer than 1000. The group is unusual in its aversion to equity raising, but as Williams explains, to do so may require changes to the company’s voting structure (to meet Stock Exchange requirements) and therefore would be a last resort because the present structure “is regarded as a form of protection for the group and there is no way we would be able to retain the family shareholding and control without that structure”.

The peerage is secure. The Hon. Richard Jonathan Harold Vere Harmsworth was born in 1994, and like his grandfather, is known as Vere.¹⁹⁸ Whether the voting structure that secures the legacy remains in place may depend on his willingness to perpetuate that legacy¹⁹⁹ and on the group’s continued financial success. The latter may determine whether non-voting shareholders (who until the recession²⁰⁰ had enjoyed compound

¹⁹⁷ Reported by the *Guardian* 28 January, 2010 <http://www.guardian.co.uk/media/2010/jan/28/daily-mail-general-trust-share>.

¹⁹⁸ However, his three siblings are girls.

¹⁹⁹ In a 2009 interview a DMGT executive said: “Vere’s only 14 and we don’t know what he thinks.”

²⁰⁰ In 2009 the group announced a dividend unchanged from 2008 at 14.7p per share, but its 2010 interim dividend was increased by four percent.

dividend growth of 10 percent per annum for the previous 15 years), will be happy to leave well enough alone.

The fourth Viscount Rothermere and the Harmsworth legacy are highly regarded within DMGT management. His relationship with the editor of *The Daily Mail* Paul Dacre, appears to be a continuation of his father's approach, although it differs in that Rothermere owes Dacre a debt of gratitude for helping him through the early years of his chairmanship. In a rare interview in 2004 he said: "I don't know what I would have done without Paul, frankly."²⁰¹ The executive managing editor Robin Esser, told me Vere Rothermere's relationship with David English had been "very close" and said the proprietor was "happy to be the facilitator of David English's editorial skills", a role that he continued with English's successor, Paul Dacre.

Obviously the relationship now [between Paul Dacre and the present lord Rothermere] is different, because Paul had a whole weight of experience when Vere died unexpectedly and Jonathan came in while in his 30s, but the outcome is the same. Paul is successful and experienced where the chairman is comparatively inexperienced but there is no question of one or the other being utterly dominating in terms of the relationship. I do not know of a single occasion when the chairman has interfered editorially or even made an urgent request for something to be covered that had not been covered, or whatever. It just does not happen. I think this is not only a genuine belief in the principle [of editorial independence] but also in the idea that the principle makes more money than the other way [interference].²⁰²

Dacre is solely responsible for the newspaper's editorial policies, although he is known to canvass these with his senior editorial executives. An illustration of the independence of DMGT editors is provided by Esser, who recalls one general election where *The Daily Mail* supported the Conservative Party, the *Mail on Sunday* gave its support to Northern Ireland's SDLP and the *Evening Standard* endorsed the Labour Party. Britain's national newspapers are known for and perhaps are expected to exhibit, political bias, and DMGT's nationals are no exception. The *Mail* is regarded as having a highly influential role in British politics, prompting one Labour peer to note, somewhat aggrieved, that "policies have been subject to approval by *The Daily Mail* – or the particular views of its editor, Paul Dacre". His comment was made in 2009 while

²⁰¹ Snoddy, Raymond. "Viscount Rothermere: The Lord of Middle England", *The Independent*, London, 27 September 2004.

²⁰² Interview with *Daily Mail* executive managing editor, Robin Esser, London 1 April, 2009.

Labour was still in power. The peer described *The Daily Mail* as “the most influential paper by a long way, setting the tone for all media”.²⁰³

Lord Rothermere was subjected to probing questions on editorial independence during the 2008 House of Lords enquiry on newspaper ownership. He told the enquiry that he did not, and would not, interfere in editorial coverage or political stance. Nor would he intervene on editorial policy “unless it was extreme”. When two examples were put to him – legalisation of marijuana and a complete about-face on *The Daily Mail*’s attitude to the Euro, he said they would not be extreme enough to warrant intervention.²⁰⁴ At no stage during his membership of the board of DMGT (he became a director in 1995), had the issue of the content of its newspapers or editorial policy been placed on the agenda.²⁰⁵

The doctrine of editorial independence is not codified, even though it is embedded and observed throughout DMGT. Dacre’s authority and that of the other editors, is well understood. But so, too, are other aspects of the convention. For example, while national editors are free to determine party endorsement and support, this does not apply to the group’s regional newspapers where editors are expected to be apolitical and local newspapers must not endorse political parties in local elections. The managing director of DMGT’s Northcliffe Media regional subsidiary, Michael Pelosi, explained to me that most of its regional publications are in single-newspaper markets and endorsing one political party over another would compromise overall community trust. On the one occasion he could recall (when readers had been urged to vote for a particular party), a heading on the front page had said: “Vote Green” – the editor was reprimanded and told to limit himself to laying out the environmental issues.²⁰⁶

Lord Rothermere’s reputation within DMGT does not rest on being simply an extension of Vere Rothermere’s reign. Like a crown prince, he was prepared for the role he assumed in 1998. His education was by British standards, unorthodox –first at the spartan Gordonstoun School in Scotland, and then at Duke University in North Carolina. He began his professional training outside the group as a reporter and sub-

²⁰³ Interview London April 2009.

²⁰⁴ During the hearing.

²⁰⁵ House of Lords Select Committee on Communications, 1st Report of Session 2007-8 “The Ownership of the News” Volume II: Evidence, pp. 536-551 (HL Paper 122-II).

²⁰⁶ Interviewed London, 3 April 2009.

editor on Glasgow's *Daily Record* – before joining the family firm as deputy managing director of one of DMGT's regional titles in Essex. He then moved on to manage its weekly newspapers in Kent before joining the Associated Newspapers subsidiary (publisher of *The Daily Mail*) in a variety of roles. Much of his reputation rests on his working knowledge of the publishing business. Pelosi describes his conversations with Rothermere as “healthy debate and healthy challenges”:

The bulk of conversations we have with our chairman revolve around the quality of our editorial, of our publications – making sure we have (a) lots of local news, (b) that we're addressing the issues, (c) that it's not just press releases being re-written, and (d) that we have the right level of resource for the size of communities which we serve. He'll also ask some very good questions such as “Look, you have an edition for this newspaper and yet you're only selling 1000 to 1500 copies of that edition. Surely, it would be better to have resources in areas where you have critical mass?” ... He has a thorough knowledge of our publications and when he looks at them he has an eye for publishing.

His knowledge has been put to the test by the recession, during which he has had to oversee a consolidation that rivals his father's re-engineering of the business. The recession had a particularly heavy impact on Britain's regional newspapers.

Editorial positions in Associated Newspapers were not cut, although there was a redistribution of personnel between print and online activities and a wage freeze was instituted. However, Rothermere's hardest recession-led decision was the sale (for £6.7 million) of a 75.1 percent interest in the *Evening Standard* to Russian oligarch Alexander Lebedev. The *Evening Standard* had been the result of his father's prolonged, but ultimately successful rationalisation of the London evening market into which Vere Rothermere had folded the company's loss-making *Evening News* in 1980.²⁰⁷ Latterly however, the London paid-for evening newspaper had been losing money in the face of a number of free newspapers, two of which had been launched by DMGT under the present chairman's leadership.²⁰⁸ A commentary in *The Times* following the announcement of the sale of the majority stake in the *Evening Standard* stated that Rothermere was “hardly an emotional stranger to the title”, as he had been its

²⁰⁷ Initially a 50–50 partnership with Express Newspapers which Rothermere later bought out.

²⁰⁸ In 1999 Rothermere introduced the successful *Metro* free morning newspaper concept on London transport and followed it in 2006 with the evening, *London Lite*, which was embroiled in a freesheet war with News Corporation's *London Paper*. The freesheets had a negative impact on the *Evening Standard*. After the sale, both *London Lite* and the *London Paper* closed. Lebedev relaunched the *Standard* as a free newspaper and set it on the road to profitability. The 2010 half-yearly report by DMGT referred to *Metro*'s “strong performance” which was responsible for a modest advertising revenue increase in Associated Newspapers.

managing director immediately before his father died but the decision to sell was hardly dismantling the empire: “He is simply recognising reality and moving on.”²⁰⁹

In a further move that indicated he was no slave to sentiment, Lord Rothermere consolidated the group’s radio holdings. Vere Rothermere had initiated a strategy to invest in the radio market in the United Kingdom and offshore. In November 2009 however, the group sold half the shares in its southern hemisphere subsidiary, DMG Radio Australia, to Illyria – the investment vehicle owned by Rupert Murdoch’s son, Lachlan.

Recent changes within DMGT are responses to trying times, rather than a desire by Lord Rothermere to stamp his personal mark and move out of the shadow of his forebears. He has not for example, followed the example of Australian media heir James Packer (who is the same age as Rothermere), in moving away from the family’s media businesses. He exhibits many of the traits of a custodian. His tenure as chairman has been marked by caution, rather than the impetuosity of youth that some had expected. The brass-bound desk in his office, originally owned by the founder of *The Daily Mail*, Lord Northcliffe, is symbolic. He regularly invokes his father’s legacy, and sees it as his responsibility to pass it on, augmented by his own efforts – to the next generation (Snoddy 2004).

Leadership by an hereditary peer could mark the Daily Mail & General Trust as the worst example of family firm primogeniture, one in which the first born son is not simply favoured by the father, but has his rights enshrined in a state-privileged hereditary status founded on feudalism. However, the success of DMGT under Vere and Jonathan Harmsworth has for the most part, dulled the argument. While the two-tiered share system is the subject of continuing attack, the chairmanship of neither father nor son has been publicly challenged. However, the weakness in the Rothermere case is the fact that the Hon. Richard Jonathan Harold Vere Harmsworth is, as yet, a teenaged unknown quantity.

²⁰⁹ Sabbagh, Dan, *The Times*, 16 January 2009
(http://business.timesonline.co.uk/tol/business/industry_sectors/media/article5526467.ece).

5.6 The Murdoch family and News Corporation

The Murdoch family and News Corporation is a game that has yet to be played out. While Sir Keith Murdoch left his son the rudiments, it is Rupert Murdoch who has built the media empire with which he is synonymous. The Murdoch family differs from the other families in this chapter, as it is still in its first generation, and events following its founder's death can be only speculation. Therefore, it will not be dealt with in any detail beyond setting out the trust structure that will determine some of its future.

Rupert Murdoch is chairman and chief executive of News Corporation, the parent company of a diversified global media conglomerate with revenue in excess of \$US30 billion in 2009. The company is registered in Delaware, and has a two tiered share structure: Class A common stock that does not carry voting rights and Class B common voting stock. In mid-2009, there were 1.8 billion non-voting shares on issue and 799 million voting shares. Rupert Murdoch is listed as the beneficial owner of 317,290,709 or 39 percent of the voting shares, and 8,843,174 Class A non-voting shares. The holding gives Murdoch control of the company.

The Murdoch family owns the shares through a series of trusts. The largest is the Murdoch Family Trust, previously known by the obscure title of the A.E. Harris Trust,²¹⁰ which is administered by the family's investment vehicle, Cruden Investments. Other trusts used by the family to hold interests in News Corporation include the K.R. Murdoch 2004 Revocable Trust and the GCM Trust that was set up for the benefit of Rupert Murdoch's daughters by his third wife, Wendi Deng Murdoch. Murdoch's three sisters and his 101-year-old mother also have interests in the group.

Rupert Murdoch's third marriage in 1999 at the age of 68 created new difficulties for a family that was already jockeying for the position of heir-apparent. He had a child Prudence, by his first marriage and three children (Elizabeth, Lachlan and James) by his second marriage before his new wife gave birth to Grace in 2001 and Chloe in 2003. Under the settlement terms of his divorce from his second wife, Murdoch agreed to never change the trust under which his existing four children would inherit the bulk of their father's interests in the investment vehicle, Cruden Investments (Chenoweth,

²¹⁰ The name is derived from another Australian businessman, A.E. (Ted) Harris, who suggested they swap names in their trusts in the interests of anonymity (Chenoweth, 114). Ted Harris is now the deputy chairman of APN News & Media, publisher of New Zealand's largest daily newspaper, the *New Zealand Herald*.

Wolff).²¹¹ However, with the birth of their step-sisters, the adult Murdoch offspring came under pressure to voluntarily admit the new arrivals to the legacy. Following negotiations, the adult children agreed to provide equal economic participation in the family fortune for their two step-sisters, but they will not be entitled to any future voting rights. In other words, they will be entitled to money but not control. Wolff notes that the adult Murdoch offspring were adamant about the retention of voting rights because their father's third wife, who is their contemporary in years, could potentially exercise more votes than each of them through her daughters' proxies (2008, 354).

The new arrangement does not however solve the issue of succession to the Murdoch empire. His eldest daughter Prudence, does not have a direct role in the corporation; his younger adult daughter Elizabeth is an independent spirit who developed the largest independent television production company in Britain before selling it to News Corporation in 2011 and joining the board; his elder son, Lachlan, appeared to be the heir-apparent but abruptly resigned as News Corporation's deputy chief operating officer in 2004 and set up his investment company Illyria; and his youngest son, James, who in 2011 became News Corporation's deputy chief operating officer, is now seen as Rupert Murdoch's successor. Nothing is pre-ordained however, and the future leadership and direction of News Corporation (including the question of whether Rupert Murdoch's unflagging support for his newspapers even when they are loss-making) has yet to be decided.

5.7 Summary

Each of the major media family trusts examined in this chapter have been subject to the effects of accidents of history and human behaviour. The fortunes of each have been determined by the strengths or weaknesses of key family members and by the robustness of the trust structures that attempt to hold together the desires and aspirations of ever-enlarging families.

Family trusts that run news media operations exhibit many of the shortcomings identified in institutional studies of family firms. They do so because they attempt to serve the interests of two groups: the family and the business, when those interests may

²¹¹ Murdoch's mother, Elizabeth held 10 percent of Cruden that would transfer to Rupert Murdoch on her death. He would be free to settle this legacy on his third wife and their daughters (Chenoweth, 315).

not always coincide. In the case of news media companies, the problem is compounded by a third imperative – the public interest.

None of the examples canvassed here can be said to be a perfect model for the preservation of good journalism, although they display many of the positive attributes of family firms noted at the beginning of this chapter. In those cases where good journalism *is* being preserved, structural protections go hand-in-hand with the determination of individuals to nurture the ‘Shared Dream’ of which Lansberg speaks (1999, 75).

Yet even these endeavours may be fragile. When overall company performance in diversified groups is strong (as in the Washington Post Company and Daily Mail & General Trust), the journalistic values of the core publication appears to be relatively “safe”. However, the same cannot be said of secondary publications. The Washington Post divested itself of *Newsweek* while DMGT has made deep cuts to its regional newspapers’ staff. The New York Times Company does not enjoy the same degree of diversity and is therefore more vulnerable. The company is determined to keep faith with editorial quality on the *New York Times*, but the newspaper is under financial pressure and the future of its stable mate the *Boston Globe*, is even more uncertain. The New York Times Company, after battling with labour unions over reducing the *Globe*’s costs, announced that it was looking for buyers but provided a reprieve by taking the title off the market when it failed to attract large enough offers.

In each case, the desire to maintain editorial quality is tempered by commercial considerations. The family firm has obligations not only to the memory of the preceding generation and the destiny of the next, but also to large numbers of non-family shareholders who have foregone voting power in return for healthy dividends. In preserving their power, each has exposed the company to the weaknesses of the two-tiered share system identified by Villalonga and Amit (2009, 3088-9). Both Donald Graham and Lord Rothermere see themselves as the leaders of diversified businesses, and newspapers are part of that business. Neither will allow newsprint to fuel a funeral pyre. We might recall that Bhattacharya and Ravikumar believe that the driving force is to bequeath wealth and not necessarily the business being undertaken (2001, 190). Sulzberger however, may suffer some of the effects of family altruism cited by Shulze et al., who recognise the dangers in putting the family first (2002, 256). Preservation of

the Sulzberger family legacy may impair his ability to operate the company in the most commercially competitive manner.

The Bancroft family insulated itself from such considerations, but was a perfect example of the ultimate destruction that can take place in the ‘cousin phase’ of family firm evolution described by Lansberg (*ibid.*, 142). In fact, the family may be seen as the embodiment of many family firm failings even though it played no part in the management of Dow Jones & Co – from poor governance, through structural weaknesses, to the effects of dynastic change, and the power of wealth over heritage.

The creator of a media family trust may have the high-minded aim to perpetuate good intentions, and may believe that his or her exceptional abilities have been spliced into the genetic code of succeeding generations. Experience suggests this is by no means certain, and the real weakness of the family trust as a mechanism for preserving significant journalism lies in being unable to choose your offspring. In the following chapter, the legacy of Nelson Poynter and the Poynter Institute is examined. He recognised this fundamental flaw in dynastic succession: “I have not met my great-grandchildren”, he was reported as saying, “and I might not like them”.²¹²

²¹² Quoted by Douglas McCollam in the Columbia Journalism Review, March/April 2008, 50.

Chapter 6: The trinity – origins and growth

The goal should be to have media entities controlled by people most interested in using a media entities' income to produce high-quality content.

C. Edwin Baker, *Media Concentration and Democracy*, 2007, 36

There is no set formula to induce a newspaper owner to vest the publication in a trust or foundation bound to administer it in the public interest. As we will see, the small number of dailies that have made the transition has each done so in unique circumstances that have depended (in one case quite literally) on the way the wind blew.

Each has emerged as a distinctive organisation. So the organisations that form this small band are bound by common purpose rather than by the same legal structure. Nonetheless, the obligations placed on their guardians bear the hallmarks of traditional trusteeship. These guardians are not owners in the ordinary sense, but custodians of enterprises that should endure after them. They have no vested interest beyond ensuring that civil society is the ultimate beneficiary.

This chapter and Chapter 7 examine the three largest trust or foundation owned newspapers in the Anglo-American sphere: The *Guardian* in London, the *Irish Times* in Dublin, and the *St Petersburg Times* in Florida. Each of these newspapers enjoys a reputation for high quality principled journalism, and a commitment to use its columns to provide readers with information that contributes to their ability to function as citizens. Each is bound to pursue a form of liberal journalism established by men and women with a driving determination to serve the public interest.

There is a strong but necessary emphasis in these chapters on structure and business practice. While this may at first sight, appear to be an oblique approach in a thesis emanating from a Department of Political Studies, it is both deliberate and justified. Schiller maintains that information is central to contemporary capitalism, and is itself conditioned by the social institutions and relations in which it is embedded (Schiller 1988, 41). It follows therefore, that organisation and business systems are central to the political economy of the news, because they influence and help to shape its form and substance. That is no more so than in the trusts and trust-like bodies that administer these three newspapers.

Commerce has great difficulty in coping with unorthodox structures that do not fit with established concepts of property and markets. The story of these three newspapers is a tale of trying to fit square pegs into round holes, as will shortly become apparent.

I begin by tracing the history of the trinity's transition to their present ownership, because this genesis informs the structure under which each operates, before examining the subsequent history of each publication to reveal any weakness in its structure. This detailed examination of the past will show that in each case, the newspaper's current governance is as much a reflection of events *after* the change to trust ownership (that gave interpretative substance to the instruments of ownership and governance) as it is a function of the decision to adopt that form of ownership. Chapter 7 discusses present operations (studied during site visits) to illustrate the influence that the form of ownership exerts on its journalism. In each case there is a brief look into the future to identify potential challenges that each publication may face.

The three examples face the common challenge to all newspapers, of ensuring that they have a future. They are exposed to the same audience/advertising shift and economic recession as their contemporaries owned by public listed companies. Their responses however, allow us to examine the effects of different types of ownership on newsgathering, and assess the worth of trustee stewardship as an alternative to ownership of newspapers by publicly listed corporations.

The *Guardian* represents trust ownership based on the gift of a newspaper by its owners; the *Irish Times* shows that philanthropy is not a prerequisite and a trust can buy a substantial newspaper; and the *St Petersburg Times* demonstrates that this form of stewardship can exist where there are legal impediments to formal trust ownership. We begin overleaf with the oldest member of this trinity, the *Guardian* and its owner, the Scott Trust. It is dealt with in greater detail than other examples in this thesis because it is the most highly developed example of trust ownership.

6.1 Origins

6.1.1 The Guardian

The *Guardian* has been described as the only newspaper with a ghost for a proprietor (Jenkins 1986, 213). That ghost was C.P. Scott, editor from 1872 to 1929 and owner from 1907 until 1914, when he vested most of the shares in his two sons and his son-in-law. He ruled over the *Manchester Guardian* until his death in 1932 and his influence continues to be felt in the newspaper, which changed its name to the *Guardian* in 1959. He was described as one of the great Victorian editors and as an exception among proprietors – willing

to sacrifice commercial interests when his conscience demanded (Hampton 2004, 135). It was Scott who was responsible for some of journalism's best-known epithets, including "Comment is free, but facts are sacred".²¹³ He established the newspaper as a bastion of liberal journalism, and the principles that he laid down are his ongoing endowment to the newspaper. A single phrase in the articles that govern the *Guardian* ensure that the principles are a doctrinal reality: "...on the same lines and in the same spirit as heretofore."

C.P. Scott was the nephew of the founder of the *Manchester Guardian*, John Edward Taylor, and was appointed editor by the founder's son (both were named John Edward Taylor) who had inherited the newspaper. Taylor senior was a Manchester journalist who wrote one of the first newspaper accounts of the 1819 Peterloo Massacre in which 11 unarmed protestors were killed, and 560 wounded at an open-air speech by a radical politician. This spurred his determination to begin his own weekly newspaper. The prospectus stated that the newspaper would contribute to "fixing upon a broader and more impregnable basis the fabric of our liberties". The *Manchester Guardian* became a daily in 1855 after the abolition of stamp duty.

the guardian

Established: 1821

Founder: John Edward Taylor

Trust established: 1936

Benefactor: John Russell Scott

Current owner: Scott Trust Limited

Corporate body: Guardian Media Group

Circulation: 277,246 (July 2010)

Group revenue: £405.4 million (2009)

[\$US655.8 million]*

* Mid-market rate 31.12.09

²¹³ In a leading article to mark the *Manchester Guardian*'s centennial, 5 May, 1921.

Taylor Junior had apparently wished to leave the publication to Scott in his will, but poor execution and the existence of other claimants (whose only interest lay in realising the value of the inheritance) almost took it from Scott's grasp when the proprietor died in 1905 (Taylor 1993, 4). The ensuing struggle to raise sufficient capital to secure full ownership shaped his attitude to future proprietorship. In 1971, his grandson Richard Scott, wrote that the experience convinced Scott that the independence of the newspaper would be preserved only if it was owned by members of the family who actually worked on it.²¹⁴ In 1914, at the age of 68, he transferred the majority of the shares to his sons, John Russell Scott and Edward Taylor Scott, and his son-in-law C.E. Montague. A formal agreement was made to ensure that shares could not be sold to outsiders and there could be no more than five shareholders. These were not however, normal shareholders. The company paid no dividend and none was expected. Montague died in 1928 and his holding was divided between the two brothers who were given control of the newspaper – Edward (Ted) Scott as editor and John Scott as manager, under their father's elderly but energetic eye (see Crozier 1934, 327-8). On New Year's Day 1932, C.P. Scott died and his sons were presented with a demand for heavy death duties payable on his holding in the company, which they inherited. Negotiations with Inland Revenue established that C.P. Scott was a minor shareholder in the business, from which he and his sons had taken only their modest salaries and that death duties were not payable. The ruling was fortuitous, as the company had been enlarged by the acquisition of the *Manchester Evening News* in 1924.

Within four months, Ted Scott was also dead – the victim of a sudden squall that capsized his boat on Lake Windermere. On the car journey to the lake he had discussed the death duties problem with his son, who later recalled: "I distinctly remember his saying that God knows what would happen to the paper if anything happened to him or his brother" (Ayerst 1971, 491). Ironically, the future of the newspaper was being determined (quite literally) by the way the wind blew.

John Scott became sole proprietor of Manchester Guardian and Evening News Limited, following the triggering of an informal agreement between the brothers that on the death of one, the other would acquire his shares. The agreement was in the process of being formalised when Ted Scott died. The death of three family shareholders in four years

²¹⁴ Scott, Richard "On the same lines and in the same spirit", *Guardian*, 5 May 1971, p. 14.

convinced John Scott that the burden of death duties meant the company could not be kept in family ownership should he too, die prematurely. His solution was an extraordinary one – he decided to give away the newspapers. The advice he was given by his legal advisor, Gavin Simonds, resonates with present-day attitudes to ownership: “You are trying to do something that is very repugnant to the law of England. You are trying to divest yourself of a property right.”²¹⁵ John Scott’s desire to transfer all the shares to a non-commercial entity with no financial interest in the company’s profits was challenging both legally and to the Exchequer. The Scott Trust was not formally established until 1936 and was to run for 20 years. There is no doubt that the threat of overpowering death duties was the prime motivation. His son Laurence wrote in 1969: “Although people talk of the Scott Trust ensuring the principles and independence of the papers, as indeed it does, John Scott in fact created it with little more in mind than escaping death duties and so avoiding any danger of loss of independence through a forced sale” (Ayerst 1971, 492). Taylor (1993, 4-5) describes Laurence Scott’s view as “revisionism”, and believes that John Scott did, in fact, also have higher motives in establishing the trust. This view is reinforced by the fact that John Scott was not prepared simply to take advantage of prevailing market values, and sell the company to facilitate investments that allowed better estate planning. Scott voluntarily divested himself and his heirs of a group valued at more than £1 million, which included the *Manchester Evening News* for which Lord Beaverbrook and others were reportedly prepared to pay at least that sum had Scott been prepared to sell it. Schlesinger in the *Guardian* in 1986 described the establishment of the Scott Trust as “a remarkable act of public benefaction, and in effect the creation of an institution”.

John Scott did however arrange the Trust in such a way that the family maintained close connections. In addition to himself as chairman, the other six trustees included his son Laurence, and nephew Evelyn Aubrey Montague. The editors of the *Manchester Guardian* (W.P. Crozier, who had succeeded the late Ted Scott) and the *Manchester Evening News* (William Haley) and the *Guardian*’s London editor (James Bone) were also trustees. The sole ‘independent’ was a former Lord Mayor of Manchester, Sir Ernest Simon (who later became the 1st Baron Simon of Wythenshawe) but he was also a director of Manchester Guardian and Evening News Limited. The determination to avoid death duties meant the absence of pecuniary interest was absolute. Trustees did

²¹⁵ Quoted in Ayerst 1971, 492 & Taylor 1993, 4.

not even receive fees, although a number (including John Scott) were salaried employees of Manchester Guardian and Evening News Limited. John Scott retained the right to appoint and dismiss trustees, who were responsible for appointing company executives. He was, in all but a financial sense, still proprietor. A board of directors oversaw the operations of the company from the beginning and, although the Trust was nominally the shareholder, the board operated with a degree of freedom that was almost comparable to the *Guardian's* editorial independence.

Although the newly minted trust included in its ranks the editors of the *Guardian* and the *Manchester Evening News*, it did not interfere in any way in the editorial direction of the publications. John Scott passed the editorship of the *Manchester Guardian* to Crozier when Ted Scott drowned. Crozier had been on the newspaper's staff for 28 years when he took the editor's chair, and was described as "a 'working journalist' of something bordering on genius" (Hammond et al.. 1946, 233). He had organised the newspaper's network of foreign correspondents, and as editor, was responsible for modernising the publication and broadening its appeal. However, during his 12 years at the helm, he was a careful protector (without the need for prompting) of C.P.Scott's vision of the *Manchester Guardian* as an independent organ of opinion and liberal journalism.

The Scott Family's gift is unparalleled in British newspaper history. Our next case, the *Irish Times*, found its way into trust ownership not through philanthropy, but as a means of protecting the newspaper from hostile takeover while rewarding its owners for their 'generosity'.

6.1.2 The Irish Times

The *Irish Times* is Ireland's oldest national daily newspaper. Unlike the *Guardian*, it does not owe its ethos or current structure to an enlightened, socially motivated owner/editor. For most of its existence, its owners were businessmen and its editors were employees – although for the most part they enjoyed editorial independence. The founder was a 22-year-old former army officer, Lawrence Knox, who launched the *Irish Times* as a tri-weekly in March 1859. Within 14 weeks its frequency was

increased and it became Ireland's first penny daily. Within two years, Knox had increased the number of columns per page to squeeze in more content, and by 1870 had to buy a new press to double the size of the newspaper to eight pages (Oram 1983, 70-71). Knox, in a long editorial announcing the first issue, described the *Irish Times* as a newspaper for "Irishmen loyal to the British connexion", a label that would for a large part of its existence tie it to Protestantism in the eyes of the community (O'Toole 2009, 7). Under his leadership (although he was never editor), the *Irish Times* established a reputation for moderation and balance.

Knox's premature death at the age of 37 in 1873 led to the purchase of the newspaper (for £35,000) by Sir John Arnott, who was also a supporter of British rule. He announced that he would conduct the opposition to disintegrating forces (i.e. the Nationalists) in a fair and straightforward spirit, without the shadow of offence to any person or party in public life (Oram, 76). In 1898, Arnott died and under the terms of his will, his widow and his son, Sir John Alexander Arnott, held the newspaper in trust for two years while a new entity, Irish Times Limited, was formed to take over the newspaper and two other publications. Under the new company's articles of association, Arnott was entitled to remain chairman and chief executive until his death or retirement. Three other members of the Anglo-Irish family sat on the board of directors and Arnott and his wife acquired the bulk of the voting shares. Although the structure and voting

THE IRISH TIMES

Established: 1859

Founder: Lawrence Knox

Trust established: 1974

Current owner: Irish Times Trust Ltd

Corporate body: Irish Times Ltd

Circulation: 104,742 (July 2010)

Group revenue: €92 million (2009)

[\$US124.5 million]*

* Mid-market rate 31.12.09

rights were amended over the years, Arnott retained control (and both positions) until his death in 1940.

The newspaper's offices in Lower Abbey Street, Dublin, placed the *Irish Times* quite literally in the midst of the 1916 Easter Uprising, which it described as "one of the most deliberate and far reaching crimes in Irish history". Its editor, John Healy, was a staunch unionist but the formation of modern Ireland – from the granting of Home Rule in 1914 to the establishment of the Irish Free State in 1921 – occurred on his watch. His pro-British stance throughout was to colour the *Irish Times*' reputation for decades. He died in 1934 and it was for his successor, Robert Smyllie (who later said the *Irish Times* had been "the organ of the British Government"),²¹⁶ to refashion the newspaper to better reflect the new nation.

Smyllie had an often-brittle relationship with Éamon de Valera and the ruling Fianna Fáil party²¹⁷, and during the Second World War exhibited an openly hostile attitude toward official censors. Arnott died during the war, and his brother Loftus succeeded him as chairman, while his son, Sir Lauriston Arnott, became managing director. A Dublin businessman, Frank Lowe, was co-opted to the board in 1941 and became chairman in 1945 with a brief to modernise the company. Change was necessary. At the end of the 19th century, the newspaper was recording handsome profits in the region of £30,000 (O'Brien, 30) but in the latter part of Smyllie's editorship circulation was falling and profits were low. Lowe introduced a technical modernisation programme²¹⁸ but was unable to make inroads in the editorial department. He regarded the management of the department, on which Smyllie had placed his own eccentric stamp, as incomprehensible.

Shortly after Smyllie's death in 1954 (when circulation was 35,000 and on some days as low as 25,000 (Brady 2005, 24)), Lowe and two other Dublin businessmen bought out the majority of the Arnott family's holding.²¹⁹ His co-owners joined him on the board, and Sir Lauriston Arnott relinquished the managing director's position. In spite of his

²¹⁶ 1941 interview quoted in O'Brien p. 81.

²¹⁷ Smyllie's support for the opposition Fine Gael party ended abruptly when in Government, it withdrew Ireland from the Commonwealth in 1948 and declared a republic.

²¹⁸ Lowe's modernisation included a new press, but a fire in 1951 almost destroyed it and set full production back by many months.

²¹⁹ Lowe also brought his nephew George Hetherington, whom he had raised, into the partnership.

failure to fully understand the editorial side of the business, Lowe and his business partners did not interfere with editorial policy.²²⁰

In 1962, a former British Army major, Thomas Bleakley McDowell, became chief executive of the *Irish Times* after buying an interest in the newspaper, an investment that was described as “hazardous in the extreme” (Brady, 25). Lowe and his business partners had invested at a low point in Ireland’s economy and the newspaper’s revenue and circulation reflected both the parlous state of affairs and the successive appointment as editor of two men who were “next in line” rather than the most able candidates. Major McDowell (as he was universally known) and Douglas Gageby (who was hired as deputy managing director and who bought a 20 percent interest in the company), became the agents of change.

McDowell championed Gageby’s move from management to the editorship of the newspaper, and he was to serve two terms that totalled 20 years. Under his editorship, the *Irish Times* was transformed from being the newspaper of the Protestant minority²²¹ to being a truly national newspaper (O’Brien 165). Circulation had almost doubled to 69,000 by the time Gageby stepped down in 1974 at the end of his first term as editor.

The financial fortunes of the company did not however, follow the same ever-upward trajectory. In 1968, profits reached £IR76,834 only to drop to £IR29,575 the following year, before bouncing back to £IR68,028 then falling to £IR10,898 in 1971. These fluctuations were in all likelihood, a reflection of the fact that the company had no capital reserves and limited liquidity (Brady, 28). By this stage, the last of the Arnott family shareholding had been sold to the five directors, who owned the 70,000 ordinary shares in equal proportions. Under the articles, ordinary shares had to be sold to directors or persons approved by the board. The ordinary shares had five times the voting power of the preferential shares that were traded on the stock exchange. In 1972, the directors decided to inject £IR50,000 of new capital into the company, which was converted to ordinary shares that were distributed equally amongst themselves. This gave the directors unchallengeable voting power over the preference shareholders. In that year, the company returned a record profit of £IR242,134 and in 1973 recorded a phenomenal increase to £IR427,511 (O’Brien, 198-200). The combination of ‘Major

²²⁰ The *Irish Times* was one a handful of newspapers that opposed the Anglo-French invasion of Suez. The owners raised an eyebrow but did not prevent the principled stand (O’Brien, 150).

²²¹ It was described as the house journal of the “stranded gentry” (Brady, 24).

McDowell' (his usual form of address) and Douglas Gageby appeared to have reversed the newspaper's fortunes. Both then played a critical role in changing the structure of the company.

The Irish Times Trust was not born out of family tragedy, nor did it display the generosity that saw the Scott family hand over the assets of Manchester Guardian and Evening News Limited without seeking any form of payment. However, like John Scott's action in forming the Scott Trust, the formation of the Irish Times Trust was a defensive action.

In September 1973, the five directors of the Irish Times Company transferred their ordinary shares into a trust held by a firm of Dublin solicitors. Preferential shares continued to be traded on the Dublin Stock Exchange. Eight months later, they announced that the company itself had become a trust in order to prevent a possible takeover of the *Irish Times* by interests "that might not maintain its high editorial standards" (O'Brien, 200). There was in fact, no pending offer or even expression of interest that might precipitate such a move but three of the five directors (the Walker brothers (Ralph and Philip) and George Hetherington), had indicated that they wished to retire and cash up their all-important ordinary shares (*ibid.*, 201-2). This opened the possibility that McDowell and Gageby would be forced to accept new investors with different views on how the company should operate.

McDowell devised a plan that would both prevent such a takeover and secure his own control of the business. He sought advice from, among others, the chairman of the Observer Trust Arnold (later Lord) Goodman.

The solution was complex but involved four key components:

1. He persuaded the Investment Bank of Ireland to invest £IR1,625,000 to purchase the directors' 120,000 ordinary shares.²²²
2. The directors were offered £IR1 for each preference share (which were in two classes that traded at 45p and 54p, respectively). They received £IR13.50 for each of their ordinary shares or a total of £IR325,000 per director. He persuaded the directors to each leave £IR76,000 in the business to purchase the 380,000 preference shares. These were placed in a new entity, Irish Times Holdings, while the operation of the newspaper remained in a wholly owned subsidiary,

²²² Brady (p. 31) estimates that in 2005 dollars the loan would have been worth €30 million.

Irish Times Limited. This was a necessary distinction to prevent the bank being seen to control the newspaper.

3. The investment by the bank and the directors in Irish Times Holdings was in the form of non-voting redeemable shares and the 100 voting shares would be in the hands of yet another body, the Irish Times Trust Limited – the ultimate controlling entity. The redeemable shares would be progressively bought back from the bank and directors out of profits. In the meantime, the holders were entitled to a 7 percent dividend (O’Brien 203-4).
4. McDowell would remain chairman of the operating company and the Irish Times Trust Limited board of governors until he decided to resign or retire (as a condition of the bank’s involvement).

In a legal sense, the structure that McDowell created was (as we will see later in this chapter) a precursor to the present status of the Scott Trust. Legally, it was not a trust but a private company limited by guarantee. The element of trusteeship lay in the wording of the memoranda and articles of association in both the Irish Times Trust Limited (for convenience it will be referred to as the Trust) and its operational subsidiary, the Irish Times Limited.

The objects of the Trust began with (largely unfulfilled) ambitions²²³, to become an educational and social endowment body before they addressed its relationship with the *Irish Times*. The operating company articles were to be amended to ensure that the object of the Irish Times Limited was “to publish the Irish Times as an independent newspaper primarily concerned with serious issues for the benefit of the community throughout the whole of Ireland free from any form of personal or party political, commercial, religious or other sectional control”. A prohibition on governors being ministers of religion, politicians (and anyone “more than a mere member of a political party or group”), or people with media company connections was designed to protect this position.²²⁴ It then set out five “principal objectives” that the editorial policy would promote, and three principles that should be followed in the presentation of editorial content. The prescriptive nature of the objectives and principles stood in stark contrast to the Scott Trust’s requirement to maintain the *Guardian* “...on the same lines and in the same spirit as heretofore”.

²²³ A Dublin magazine *The Phoenix*, regularly criticised the Trust for failing to meet its charitable objectives, which were to have been discharged through the Irish Times Foundation (Brady, 118).

²²⁴ Staff of the *Irish Times* could become governors only with McDowell’s permission.

The *Irish Times* editorial objectives were to be:

- The support of constitutional democracy expressed through governments freely elected.
- The progressive achievement of social justice between people and the discouragement of discrimination of all kinds.
- The promotion of a society where the quality of life is enriched by the standards of its education, its arts, its culture, and its recreational facilities, and where the quality of spirit is instinct with Christian values but free from all religious bias and discrimination.
- The promotion of peace and tolerance and opposition to all forms of violence and hatred so that each man (sic) may live in harmony with his neighbour considerate for his cultural, material and spiritual needs.
- The promotion of understanding of other nations and peoples and a sympathetic concern for their well-being.

The principles governing publication enshrined in the *Irish Times* many of the institutionalised journalistic values that are identified in Chapter 1. In order to “enable the readers of the Irish Times to reach informed and independent judgements and to contribute more effectively to the life of the community” it required the following:

- News shall be as accurate and as comprehensive as is practicable and be presented fairly.
- Comment and opinion shall be informed and responsible, and shall be identifiable from fact.
- Special consideration shall be given to the reasonable representation of minority interests and divergent views.

Gageby stated later that the editorial policy and journalistic principles were in fact, what had been practiced in the newspaper over the preceding decade (Kearney & Moran 1984, 16). Each governor of the Trust was required to declare annually his or her adherence to the objectives and principles (and confirm he or she had not become a minister of religion or active political party member), but it is noteworthy that neither the memorandum nor the articles included a guarantee of the editor’s independence or freedom from interference by the governors. However, the articles of the operating company, the Irish Times Limited, incorporated a section that stated that the directors

set editorial policy consistent with the Trust's objectives, but that the editor was solely responsible to the board for the content of the newspaper.

The articles embedded high-minded journalistic principles but they also embedded Major McDowell. Article 52 guaranteed not only his membership of the Trust for as long as he wished it, but also stated that so long as he was there, he would be chairman. And it was to be thus for a very long time indeed.

McDowell's shadow was akin to the influence exerted by the creator of the organisation that assumed ownership of the *St Petersburg Times*, but Nelson Poynter did so from the grave. How he did so is outlined in the following section.

6.1.3 The St Petersburg Times

The *St Petersburg Times* is an American newspaper in every sense, but in one sense it bears a striking resemblance to the *Guardian* – it too, has a ghost as its proprietor. The spirit of Nelson Poynter is as pervasive in the modern-day Florida newspaper as C.P. Scott is in the *London daily*. It was Poynter who transformed the *St Petersburg Times* from an inconsequential local newspaper, into an award-winning bastion of liberal journalism that has been described as “perhaps the finest daily newspaper south of the *Washington Post* and east of the *Dallas Morning News*”.²²⁵ And like the Scott family, Poynter gave his newspaper away.

St. Petersburg Times

Established: 1884 (as *West Hillsborough Times*)

Founders: James Montgomery Baggett, Jason L. Edgar & M. Joel McMullen

Trust-like ownership: 1978

Benefactor: Nelson Poynter

Current owner: Poynter Institute

Corporate body: Times Publishing Company

Circulation: 239,684 (September 2010)

Group revenue: Undisclosed (private company).

In 1912, the marginally profitable newspaper was purchased by a partnership that included Poynter's father Paul. He expanded it into a seven-days-a-week newspaper in the boom years of the 1920s, but almost lost it in the Florida land bust. Paul Poynter had

²²⁵ Hau, Louis, *Why Newsrooms Pray to St Petersburg*, Forbes.com 4 December 2006.

also speculated in real estate and incurred heavy debts when the market collapsed. Nelson Poynter joined the company in 1927, after the newspaper's revenue fell 50 percent in a month, on the understanding that he would eventually buy out his father's stock (Pierce 1993, 64-5). He became general manager in 1938, and editor in 1939.

In 1945, with the newspaper on a more solid financial footing, his parents signed an option allowing him to buy all of their shares at \$US100 each (the market price). His sister Eleanor objected to the arrangement, in what was to become a pattern of sibling rivalry over ownership of the company. In August 1947, agreement was finally reached whereby Nelson Poynter would be allowed to buy all 500 of the ordinary (voting) shares while other members of the family would gain larger numbers of preference (non-voting) shares. Eleanor became the owner of more than \$US200,000 in preferred stock, but had no voting power. In a move that would "plague him for the rest of his life and his heirs afterward", Nelson agreed to sell 200 voting shares for \$US20,000 to his sister, to help clear the \$US50,000 he had borrowed to pay his parents for the voting stock (*ibid.*, 177-8).

Nelson Poynter was deeply concerned about ownership of the paper, particularly in the event of his death. Although only 44 years old in 1947, he sat down and in an hour, produced what have since become known as the Poynter Principles, a 15-point document that was to be the yardstick against which prospective owners should be judged. It also could stand alongside the recommendations of the Hutchins Commission, which reported in the same year, as a gold standard for responsible newspaper ownership. The principles were to be used in choosing a purchaser for the *St Petersburg Times*, and absolved his executors from simply selling to the highest bidder. They were later reduced to 10 points by his successor Eugene Patterson, without losing any of their impact and began with the admonition: "Operating a newspaper must be the honouring of a sacred trust". The principles are set out in Appendix 3.

Poynter became an outspoken opponent of chain ownership of newspapers, which he believed could not do justice to local publications, and developed an unbending belief that ownership and control of a newspaper should be in the hands of one person. This belief was to become a central pillar of governance of the organisation after his death, but while he was alive it drove his desire to resolve the unsatisfactory disposition of shares within his family.

He bought his mother's preference shares (in spite of Eleanor's objections), and in December 1955 indicated a desire to exercise an option to buy back the voting shares from his sister. He offered \$US100,000 for the shares he had sold for \$US20,000 and then raised it to \$US200,000. He took the dispute to court after she refused the second offer and repudiated the option agreement, but he dropped the action because his mother regarded litigation between family members as unseemly. Nevertheless, he believed Eleanor had "shown herself to be incompatible with his standards of ownership" (*ibid.*, 204).

Under Poynter's editorship, the *St Petersburg Times* began to establish a reputation for quality liberal journalism. It was one of the first major newspapers in the south to come out against segregation, and in 1954 supported the Supreme Court's landmark Brown decision against school segregation.²²⁶ He supported Democrat presidential candidates to a state that was largely Republican, and often took editorial stands that were unpopular with conservative elements. His liberal stance, and the ownership of the *Congressional Quarterly* that he and his second wife Henrietta had established in Washington in 1945 as an information service on government affairs for regional newspapers, led to accusations that he was a member of a communist front. The FBI maintained a file on him until his death, and there is speculation that the slurs led to his failure to secure television licences in spite of concerted efforts (Pierce, 255-6). His 'leftist' reputation would have been enhanced by his decision in 1956 to give a portion of the profits of the newspaper to staff in an enduring profit sharing scheme.

The *St Petersburg Times* shared in the developing fortunes of Florida and of the city, which became such a mecca for retirees that it was nicknamed "God's Waiting Room". In the 10 years ending in 1971, the circulation of the newspaper increased by 46 percent, which was more than nine times the national average. In that year, the *St Petersburg Times* also surpassed the circulation of the *Tampa Tribune* across Tampa Bay and became the second largest newspaper in Florida after the *Miami Herald*. In a period when advertising revenue rose by a national average of 20 percent, the revenue of the *Times* rose 80 percent (*ibid.*, 264). Editorially, the newspaper achieved growing national recognition and won its first Pulitzer Prize in 1964 for an investigation of the

²²⁶ Poynter Timeline 1903-2005 compiled by the library director of the Poynter Institute, David Shedden. A number of date references in this chapter are derived from the timeline.

Florida Turnpike Authority that led to the reorganisation of state auditing and bonding practices.

Poynter had begun to nurture lieutenants in both editorial and management, and the death of his wife in 1968 may have precipitated his decision the following year to retire as editor and chief executive to become chairman of the board. He appointed Donald Baldwin as editor and president of the *St Petersburg Times* and the Times Publishing Company. It is evident however, that Poynter continued to assert considerable control over the newspaper and the two men fell out. Baldwin left abruptly in 1971 and Eugene Patterson, who was to articulate Poynter's legacy after his death, assumed the twin roles in 1972.

In the following year, the good times stopped. Florida and the rest of the United States were hit by the oil shock and recession. The *St Petersburg Times* was forced to lay off 150 staff, reduce benefits, and publish smaller newspapers (*ibid.*, 298-300). Perhaps as a reaction to the cutbacks, there was a move by a national trade union to unionise the workforce in 1974. A previous attempt in 1945-1946 had been protracted, and exacted a heavy toll on both the staff and on Poynter, who previously had good union relations. Although the company successfully resisted attempts to impose court-determined directives, the newspaper lamented the effect on the workforce (*ibid.*, 168-173). The 1974 attempt by the Newspaper Guild (again unsuccessful), was to have a more significant effect on Poynter and the future of the *St Petersburg Times*.

Poynter had been keeping open the possibility that on his death the newspaper would be left to the staff because, as he told his lawyer: "I've never met my great-children, and I might not like them".²²⁷ By that, he meant that he would not bequeath the *St Petersburg Times* to people he did not know, and therefore could not trust to follow the standards he had set out in 1947. He regarded the Newspaper Guild's campaign as an immature reaction to the recession, and fearful of its future influence on the newspaper, scrapped any notion of bequeathing the company to employees (*ibid.*, 304). He was also determined that the newspaper would not be consumed by one of the chains, that by 1974, owned close to 60 percent of the nation's newspapers. He set about shoring up his legacy.

²²⁷ Quoted by Eugene Patterson in a supplement by Robert Hooker to mark the newspaper's centennial in 1984.

The Poynter Fund (named for Nelson Poynter's parents), had been set up in 1953 to offer college scholarships. Poynter's original intention was to turn over the company to this foundation, but the plan ran into a problems created by the Tax Reform Act of 1969, which set limits on foundation holdings in profit-making enterprises made after the law was promulgated (Simon 1995, 243-254). Educational institutions (which included America's richly endowed colleges) were however, to be treated as a special case. Poynter's lawyers determined that he could found an educational institution and give the company to it. In 1975, he established the Modern Media Institute (it changed its name to the Poynter Institute in 1984), to provide programmes in journalism education and appointed the former *St Petersburg Times* editor Donald Baldwin, as its first director. It was governed by a board of trustees (a majority of them employees of the *St Petersburg Times*) and Poynter was its chairman. It was initially financed by the Poynter Fund, which had been bequeathed the company stock held by Poynter's late wife Henrietta, and later took over the shares. Two years later, Poynter announced that he had willed his controlling interest in the company to the institute.

His will bequeathed 74 percent of the stock to the Modern Media Institute, 11 percent to his third wife (Marion), and 9 percent to his children. The children later sold their shares to MMI, and Marion Poynter's shares went to the institute as a bequest. The remaining shares were held by Poynter's sister, and included the 200 voting shares he had failed to buy back. Control of the *St Petersburg Times* and the Times Publishing Company would not however, pass to the institute. The proxy to vote the common stock would pass from Nelson Poynter to the man he had chosen as his successor (Eugene Patterson), and thereafter to whomsoever Patterson chose as *his* successor. Poynter had enshrined the last of the standards he had conceived in 1947: "A publication is so individualistic in nature that complete control should be concentrated in an individual. Voting stock should never be permitted to scatter." It was an unusual arrangement – a not-for-profit non-taxable educational body owned a for-profit organisation (that paid corporate taxes), over which it could not exert any control. Nevertheless, the Inland Revenue Service raised no objections.

On 15 June 1978, Nelson Poynter died from a massive cerebral haemorrhage at the age of 74. Like C.P. Scott, he had championed the cause of highly professional, liberal journalism. Unlike the Scott family, he did not feel driven to an act of generosity by the threat of effective foreclosure through inheritance taxes. Like Major McDowell and the

other directors of the Irish Times Limited, he was afraid of the consequences of take-over. However unlike them, he ensured that his trust-like creation did not begin life burdened by debt. In 1999, he was named as one of the 25 most influential American newspaper people of the 20th century.²²⁸

In 1975, Poynter had drafted instructions for the reporting of his own death. In a memorandum to his successor Eugene Patterson, he said: “Important in the story is to emphasise there’ll be no change whatsoever in the Times Publishing Company as a result of my death. I’ll haunt you like the devil if the above is not carried out. Just live up to the Standards of Ownership thereafter” (Hooker 1984, 73).

Poynter was to assume a ghostly presence, but his administrators were not haunted by a failure to carry out his wishes. They did so to the letter, but as was the case with all three organisations examined in this chapter, circumstance and personality created a mixture that tested and changed the makeup of the organisation. The next section examines the process of change that led to more robust governance, and prepared each newspaper to face the current media climate, as Chapter 7 will demonstrate. At the risk of belabouring a metaphor: It was the process that put flesh on the bones of a trustee structure.

6.2 Trusteeship over time

6.2.1 The Scott Trust

There are two histories of the Scott Trust. One is the story of its unusual legal (and for that read taxation) status, while the other is a chronicle of its relationship with the newspaper it is bound to protect. The histories are like sets of railway tracks – they usually run in parallel but at junctions cross over each other in ways that spell danger for unwary train drivers.

Tax officials, already reluctant to accept the Scott family’s policy of reinvestment rather than profit taking,²²⁹ were suspicious of the Trust from the moment it was mooted. Was it merely tax evasion wrapped in the cloak of C.P. Scott’s undoubted respectability? Was it the forerunner of a form of estate management that would gain popularity and

²²⁸ *Editor & Publisher* 30 October 1999, p. 57.

²²⁹ Inland Revenue imposed surtax on undistributed profits but the company successfully challenged the impost (Hammond et al., 245).

potentially deny the Exchequer the windfall of death duties? Was it an assault on the very definition of property rights, because in effect, it created something that might (in spite of its apparent contradiction) be described as proprietary non-ownership? In fact, it was designed to be none of these things. It was a solution to what John Scott considered an over-riding obligation to continue publication of the *Guardian* “as heretofore”, while removing the threat of tax demands that would have forced its closure.

At the time the Trust was being considered, the *Manchester Guardian* was running at a loss but, the *Manchester Evening News* was operating at a corresponding profit and one subsidised the other. ‘Profits’ were reinvested and, as heretofore, the company paid no dividend. Inland Revenue found such cross-subsidy difficult to reconcile, and regarded the continued operation of a loss-maker as a whim. It was minded to value the business (for the purpose of duties on the estate of Edward Scott) on the basis of handsome offers for the *Manchester Evening News* from London newspaper magnates. Contemporary newspaper historians admitted that the rejection of such offers and the practice of cross-subsidy were un-businesslike, and the country’s fiscal system was not adapted to accommodate it (Hammond et al., 245). It was only after protracted and skilful negotiation, led by future Lord Chancellor Gavin Simonds, that the trust could be formed. Central to its creation was not only the removal of profit taking, but also the vesting of operational power in the editors and managing directors of the respective titles.

It was however, a somewhat uneasy truce with the tax authorities. Under the arrangement, the trust was allowed to accumulate income from *Manchester Guardian* and Evening News Limited but following a law change, its counsel believed that this accumulation meant the remaining trustees could be liable for estate duties on the death of John Scott. In 1948, the Trust was reconstituted – a new deed in “the spirit of the original agreement” was drawn up to treat accumulated income in a manner that did not risk incurring estate duties.²³⁰ It was to run until the death of the last survivor of a number of C.P. Scott’s great-grandsons, which would take the newspaper well into its second century. The new deed also made another change that was one of those junctions that spell hazards for the unwary. The chairman would no longer have the power to

²³⁰ For a brief moment, the newspapers reverted to ownership by Scott family members. When the 1936 trust was wound up, the assets of the company were divided among five Scott beneficiaries who immediately settled the shares on a new Scott Trust.

appoint or dismiss trustees – the principle of collective authority was established but its full significance would not become apparent for some years. John Scott did not challenge the change, and within months of the new deed being signed he was dead.

The introduction of capital gains tax by the Labour government in 1965 created further potential tax problems, because under British law, trusts could not exist in perpetuity (see Chapter 4) and the Scott Trust would be liable on winding up or if the 1948 reconstitution were repeated. When it returned to power in 1974, the Labour government foreshadowed an even more imminent threat to the future of the Trust. In the following year, it introduced a capital transfer tax that included a provision for taxing trusts that did not distribute their income. According to the then editor of the *Guardian* Alastair Hetherington, the formula for calculating the payment implied demands at 7, 10, or 15 year intervals, starting in 1976 – of £2 million or more from the Scott Trust which “...would have crippled the *Guardian*, killing it within a few years”. Inland Revenue and Treasury officials proved intractable. Hetherington’s account of his meeting with one of HM Commissioners of Inland Revenue is redolent of Arthur Clennam’s experiences in a Dickensian Circumlocution Office. The government agreed to a formula to exempt ‘newspaper trusts where no benefit could accrue to individuals in any way connected with the settlor’ only after direct appeals to the Prime Minister Harold Wilson and the Chancellor of the Exchequer Denis Healey, and a threat to draw the parliamentary Opposition into the fray (Hetherington 1981, 356-362).

Among the suggestions by tax officials was the restructuring of the Trust, a process that Hetherington describes as “fraught with legal and financial hazards”. The Trust had in fact, examined options for restructuring, one of which was a scheme devised by its lawyers to transform the trust into ‘a company limited by guarantee’. More than 30 years later, when they felt that they needed to confront the inevitable termination of the Scott Trust, the trustees revisited that option. In 2008, the trust became The Scott Trust Limited, a company limited by shares, in order to forestall future problems with inheritance tax that might arise when the trust was wound up, as it would have to be

under English law that prevented trusts being established in perpetuity. There is no time limit on the continued existence of a registered company.²³¹

The trustees transferred to the company's memorandum and articles of association, all of the obligations they had assumed under the trust structure. The new structure vested shares in each director (trustee) which could only be transferred to other directors, all of whom were required to sign a Deed of Adherence under which they agreed to uphold the objectives that had been based on those that had bound the Trust. By stating that no shareholder could stay on the register for more than 10 years without the approval of 75 percent of the trustees, the articles signalled that most trustees should not serve for more than a decade. Current exceptions are the *Guardian* editor Alan Rusbridger (joined 1997), and a member of the Scott family who has been a trustee since 1988.

The Trust's tax issues have been illustrations of the difficulties noted earlier, of fitting unorthodox structures within a commercial system that does not envisage or embrace non-pecuniary ownership and the reinvestment of all profits. Equally, they demonstrate that the passage of time has not entirely eroded the view, expressed by Inland Revenue in the 1930s, that the *Guardian* was a 'quixotic luxury'.

John Scott had acted like a proprietor. When W.T. Crozier died in 1944, it was he who appointed A.P. Wadsworth as the new editor of the *Guardian*. His fellow trustees had merely endorsed the appointment. There is little in Ayerst's 'biography' of the *Guardian*, to suggest that the first Scott Trust played anything other than a custodial role in the newspaper. Decision-making involving trustees drew its authority from their other positions within the organisation. Under the 1948 deed (again for tax reasons) only one of the five beneficiaries who established the new trust could serve as a trustee *and* as a director of the company. The chosen exception was John Scott's son Laurence, who was managing director.

Laurence Scott exercised considerable influence over the development of the newspaper, but he did so in his executive capacity and not as a trustee. He was for example, instrumental in the move to front-page news, the dropping of *Manchester* from the masthead, and the shift of the *Guardian* to London. He was able to exercise his

²³¹ In spite of the change in legal status, it is appropriate to continue reference to 'the Trust' rather than 'the company' to avoid confusion with the operating entities in GMG. The Scott Trust continues to style itself as such.

authority as managing director without recourse to the Scott Trust because it was bound not to interfere in operational matters. A parallel convention prevented him from interfering in editorial policy – his promotion of front-page news had been a delicate *pas de deux* with A.P. Wadsworth, and when the newspaper's opposition to military intervention in Suez in 1956 cost circulation, he simply advised the newly appointed editor Alastair Hetherington, not to let the financial figures influence his editorial judgement (Taylor, 25).²³²

Laurence Scott was able to dominate the business activities of the company because the Scott Trust was remarkably quiescent even after the 1948 changes. It had been treated, and had therefore acted “more like the nominated Legco [legislative council] of a nineteenth-century dependency than as a proprietor” (*ibid.*, 90). In other words, it had simply rubber-stamped what was put before it. For instance, it had not been consulted over investment in a weekly newspaper publishing operation that cost the company a large amount of money (and which ultimately failed) but was simply “informed” of the deal and agreed to Laurence Scott's plan. It was briefed on the *Guardian's* editorial policy on the Common Market (that developed into the European Union) but heard the editor's briefing in silence and asked no questions. It served little purpose beyond that of legal custodian of the shares.

The situation may have emboldened Laurence Scott in 1965 when he began the first of three attempts to merge the company with *The Times* in the face of recurring losses by the *Guardian*. Scott held detailed talks with *The Times* (Taylor Ch. 6, Hetherington Ch. 7) and although he informed the Scott Trust chairman (his cousin Richard Scott) of the idea of a merger, did not formally consult the trustees. Alastair Hetherington, who was not then a member of the Scott Trust (unlike his two immediate predecessors) took it upon himself to brief the trust chairman who was also Washington correspondent of the *Guardian*. However, Laurence Scott broke off the talks and the Scott Trust was not called upon to consider a merger, as was its right under the trust deed.

However, a year later Laurence Scott resurrected merger plans – as a counter proposal to Thomson's acquisition of *The Times* and *Sunday Times* from the Astor family, and secured a free hand from the Trust to do as he wished after presenting it with a dismal

²³² A short-term problem: circulation in June 1956 was 163,000, dipping to 155,000 in August but rising to 180,000 in November (Greenslade 2004, 137).

financial report (Taylor, 87). Amid a series of proposals by Laurence Scott, the most serious was a proposed consortium to make a counter offer for *The Times* that would be more acceptable to the Monopolies Commission than the Thomson offer. If successful, the consortium would then merge the *Guardian* and *The Times*.

Hetherington, who had been in Israel interviewing its foreign minister, returned to Britain to find the Scott Trust in session to consider Laurence Scott's proposal. The *Guardian* editor was firmly opposed to the proposal, although the trustees had been given to believe he supported it. Hetherington effectively secured a postponement of the trust's deliberations, and in the interregnum presented each trustee with a five-foolscap-page memorandum that predicted that the *Guardian* would be completely subsumed in a merged publication and concluded by saying: "To abandon hope of saving the *Guardian* now would be a shameful decision, for which we should not be forgiven" (Hetherington, 165). As Taylor observes, the Trust: "was called upon to do something it had never done before: to make a choice" (Taylor, 90).

Trustees were able to do so without fearing for their positions. The 1948 deed meant that trustees did not owe their presence to Laurence Scott's largesse because the chairman had lost the right to appoint them. It was a trust that was heavily weighted in favour of the *Guardian's* traditions.

The trust imposed strict conditions on any consortium, and Richard Scott asserted his position as trust chairman by attending a board meeting for the first time, and informing directors that the editorial staff of the *Guardian* opposed a merged *Times-Guardian*, which they felt would be *The Times* by another name (Hetherington, 166). It was an adroit move that signalled the trust's attitude to the plan, without directly imposing its will on the board. The board withdrew the proposals.

For the first time, the Trust had asserted itself over the company's senior executive who was the dominant member of the Scott family. At the next board meeting, Hetherington brought an effective end to the Scott family's executive leadership of the company, by moving a no-confidence motion against Laurence Scott, who became a strictly non-executive board chairman.

A number of ill advised financial decisions had been revealed in the course of the crisis, and one outcome was the future attendance of the Trust chairman at all board

meetings.²³³ Another was the creation of Manchester Guardian and Evening News Ltd as a parent company with separate operating divisions for the *Guardian*, the *Manchester Evening News*, and several other operations. This parent company²³⁴ became the present Guardian Media Group in 1993. It was during this reorganisation that Peter (later Sir Peter) Gibbings joined as managing director of the *Guardian* subsidiary. He was to become group chief executive, and then chairman, and was responsible for significant diversification in the company's holdings.

Alastair Hetherington believed the trust had been transformed from “feeble protector” to a body, that along with management in the period 1967-70, not only kept the newspaper alive but returned it to health (Hetherington, 362).

Laurence Scott was not quite done. In 1970, amid poor financial results for the *Guardian* group and rumours that Lord Thomson wished to rid himself of *The Times*, he once again raised the possibility of a merger. This time it was Peter Gibbings who saw off the threat, by setting out the options and concluding: “They are all much inferior to what we are doing at present” (Taylor, 187). Laurence Scott announced his retirement in 1973 and Gibbings became chairman.

Another retirement reinforced the distancing of the Trust from domination by a member of the Scott family. In 1975, Alastair Hetherington announced his retirement as *Guardian* editor in order to take up a position as Controller of BBC Scotland. Laurence Scott had effectively appointed him editor of the *Guardian* (the Trust simply rubber-stamped the appointment), but a new system was devised in 1973 when Hetherington was offered another external position that he ultimately declined. A form of Electoral College was mooted to consider a replacement, and it was activated when Hetherington finally vacated the editor's chair two years later. The ‘college’ included trustees, directors, executives, staff, and union representatives.²³⁵ The 10-member committee recommended Peter Preston as the new editor (from a list of two dozen candidates) and

²³³ However, the Trust chairman was not entitled to vote at company board meetings.

²³⁴ In 1972 the company became The Guardian and Manchester Evening News plc, to reflect the change of masthead and domicile.

²³⁵ Hetherington (352-356) records the various proposals for union representation. The Trust had a well-established policy that it would not concede to the union the right to mandate any of its members for executive positions. However, it took “a friendly view” to the initial proposal for union representation on the Trust and engaged in protracted talks. By the time Hetherington retired “(T)he exploration, unfortunately, became stuck in soft sand”. There has been a long-standing tradition that at least one *Guardian* staff member should sit on the trust although he or she should not to be seen as a *representative* of the staff because of potential conflict of interest.

the Trust confirmed his appointment. The process had taken a week, and was conducted behind closed doors with no public declaration of the names of candidates. When the system was used again in 1984 to find a successor to the editor of the *Manchester Evening News*, the guarantee of confidentiality given to each candidate was breached when local union chapel members were asked for their views on one of the hopefuls. The Trust decided to tread cautiously on union representation in future (Taylor 202).

By the time Preston retired as editor in 1995 to become editor-in-chief of the *Guardian* and the recently purchased *Observer*, Margaret Thatcher and Rupert Murdoch had broken the power of the newspaper unions in Britain, but the choice of Preston's successor was a demonstration of industrial democracy that in all likelihood was duplicated only by the staff-owned *Le Monde* in Paris. The *Guardian's* journalists were given the right to offer to the Trust their own choice of editor. There were four candidates – each of whom produced a manifesto and who staked their claims on hustings (organised by the NUJ chapel), that allowed staff to quiz them not only on their aspirations for the newspaper, but also their personal politics (Greenslade, 586). Editorial staff voted in a ballot supervised by the Electoral Reform Society²³⁶ and gave Alan Rusbridger 55 percent of the vote (138 votes out of a possible 251). His appointment was confirmed by the Trust, which had also favoured him as Preston's replacement.

Laurence Scott had played a crucial role in the transformation of the *Guardian* into a London-based national newspaper, and is credited with inspiring a ten-fold circulation increase as a result (Beavan 1986, 172). However, his attempts to diversify the company had also led to some investments that generously, can only be described as unfortunate (Taylor, 89-92; Hetherington, 166-7). Changes to structure and senior executives following the 1966 crisis led however, to both growing prosperity and strategic development that saw increasing diversity in the group's activities. In 1968, it took a 20 percent stake in Anglia Television, and five years later invested in radio. In 1974, with Peter Gibbins now chairing the board of directors, it began a systematic move into regional newspaper markets, first in the Greater Manchester towns of Rochdale and Stockport, but later in Surrey. In 1982, Gibbins negotiated the purchase of a controlling stake in the first of a series of automotive classified advertising publications

²³⁶ Founded in 1884 and still fighting for reform of Britain's first-past-the-post electoral system.

that became the group's highly profitable Autotrader division. These strategic moves changed the nature of the group, but also began to have an impact on the Scott Trust.

Alastair Hetherington became chairman of the Trust in 1984, and partly as a result of the changes to the company and partly through personal characteristics, began to increase both the profile of the Trust and his own role as chairman. Taylor, in his obituary of Hetherington (1999) says he "brought a new style to that office as a hands-on and interventionist chairman". The new enterprises allowed Hetherington to become involved without impinging upon the sacred ground of the *Guardian*, although Taylor notes that he gave "critical support" to his successor as editor, Peter Preston.

Hetherington's replacement as chairman, Hugo Young, brought a different style to the role but he too, demonstrated that the day had passed when the Scott Trust acted as little more than a rubber stamp on decisions made by a member of the Scott family. A former trustee, Victor Keegan, reflecting on Young's tenure after the latter's untimely death at the age of 64 in 2003, described the trust's role under his chairmanship as "active monitoring". Young presided over a review of the relationship between the Trust and the board of directors, that led to trustees gaining access to more management information and moved the Trust toward more long-term strategic thinking (Keegan 2003).

In 1992, under Young's chairmanship, the Trust set out its core purpose – essentially an explanation of its understanding of the phrase "as heretofore", for the first time. In two supplementary clauses, it also articulated its broader understanding of how the group would be run:

- To secure the financial and editorial independence of the *Guardian* in perpetuity: as a quality national newspaper without party affiliation; remaining faithful to its liberal tradition; as a profit-seeking enterprise managed in an efficient and cost-effective manner.
- All other activities should be consistent with the central objective. The company that the Trust owns should be managed to ensure profits are available to further the central objective; not invest in activities which conflict with the values and principles of the Trust.



- The values and principles of the Trust should be upheld throughout the Group. The Trust declares a subsidiary interest in promoting the causes of freedom in the press and liberal journalism, both in Britain and elsewhere.

At the same time it laid out the trustees' formal responsibilities, which were:

- To secure the Trust's own continuity by renewing its membership and by dealing with threats to its existence.
- To monitor the organisation, financial management and overall strategy of the Group, holding the Board accountable for its performance.
- To appoint and 'in extreme circumstances' to dismiss the editors of the *Guardian*, the *Manchester Evening News* (and the *Observer* after its acquisition in 1993).
- To act as a 'court of appeal' in the event of any dispute between the editorial and managerial sides of the operation.

This articulation of the Trust's role confirmed its intention to fulfil an active watchdog role over a group that it expected would sustain the *Guardian* above all else.

Young's watch also showed that the Trust was capable of making poor decisions. The purchase of the *Observer* may be seen as a decision fraught with risk (its reputation had been severely damaged by the scandal in which its previous owner 'Tiny' Rowland had attempted to use the newspaper to advance his other business interests) – but the handling of the editorship of the *Observer* (and consequential effects on the *Guardian*) was manifestly unfortunate. The Sunday newspaper had a rapid turnover in editors, and the dismissal of Andrew Jaspán led to public acrimony. The Trust's handling of the *Observer* editorship continued to stutter, and Jaspán's replacement, Will Hutton, held the editorship for little more than two years, a period in which there were numerous staff changes, before he too, was replaced.

The Sunday newspaper had had four editors in five years, and its circulation had dropped toward 400,000. It took concerted effort by the new editor Roger Alton, and Alan Rusbridger (who also became executive editor of the *Observer*) to restore circulation. The *Observer's* convulsions were also taking place against the backdrop of the *Guardian's* controversial exposing of members of Parliament in the 'cash for questions' scandal, ensuing libel actions, and accusations of conspiracy against the

Guardian and Rusbridger. The newspaper was vindicated, but not before its critics took an opportunity to question the Trust's stewardship.

The level of public exposure and criticism was unprecedented for trustees who had done little more than acknowledge the Trust's ownership in the Guardian Media Group annual report each year. There was no record of the trustees' names in the annual report, and the Trust was criticised for its lack of transparency. From 2001 however, it began to include both a statement of its activities (albeit in a circumspect manner) and a list of its members (and their other associations) in the GMG annual report. In the 2001 report, Young stated:

The Trust does not manage the business. A trustee from an earlier period once said: "It is largely passive, as long as everything is going right". But when the business is as big as this one has become, the sole shareholder has an important strategic responsibility. It is less than a Prime Minister, overseeing every decision, but more than a monarch, confined to listening and warning.

The Trust clearly agreed with the investment initiatives taken by the GMG board, which marked a significant change in strategy. As the new century began, GMG had divested itself of most of its holdings in regional television and began increasing its investment in regional radio stations. It also moved in 2003 to take full control of the high-earning Auto Trader operation. It bought the Greater Manchester television station Channel M, a move that the present chair of the Trust, Dame Liz Forgan, described in 2009 as "a tremendously bold and interesting endeavour". Over time, it proved less than successful, and after failing to find a buyer after selling the *Manchester Evening News*, GMG announced it would re-launch Channel M in May 2011.

In 2003 Hugo Young died, but before doing so he chose his own replacement. The present chair, Dame Liz Forgan (who is a former *Guardian* journalist, BBC and Channel 4 executive, and a Scott trustee from 1988 to 1993) admitted when I spoke to her that she was appointed by "an undemocratic method."²³⁷ Young was very ill and eventually it was clear he was dying. He telephoned her and asked her to chair the Trust. Forgan hesitated, unsure that she was qualified to take the role, but Young replied: "I don't have to tell you. I know you know." He had assumed, rightly as it transpired, that the Scott principles were deeply ingrained.

²³⁷ Interviewed in London April 2, 2009.

In the same year, Rusbridger and the chief executive of GMG, Carolyn McCall, embarked on an audit to ensure that the Guardian Newspapers business “operates in the spirit of the Scott Trust”. In an introduction to their report, which was independently audited, they noted that they “perform a fine balancing act between ensuring we are true to our editorial values while also recognizing the absolute need to be commercially competitive”.²³⁸

The report was a groundbreaking piece of self-analysis and self-criticism. A decision to publish the findings was made in advance, and the independent auditor, Richard Evans, was given unrestricted access to information and staff to check the conclusions, which he described as “remarkably thorough and honest”.

The audit became an annual exercise covering the *Guardian* and the *Observer* (and their websites) and examining environmental as well as ethical ‘fitness’. In 2010, GMG produced a sustainability strategy that extended to other companies in the group and to its joint ventures. While it does not specifically refer to the legacy of C.P. Scott, it states that the strategy is “(D)riven by our unique ownership structure and values – honesty, integrity, courage, fairness and duty to our readers and communities” – the qualities that he promoted.

Rusbridger clearly became a driving force in the final years of the old century and the first decade of the new millennium, but he enjoyed strong backing from the Scott Trust in so doing. It supported him during expensive litigation brought by MPs during the illicit payments scandal, approved the innovative development of the newspaper’s website, and backed his plan to fly in the face of the trend by serious national broadsheet dailies to adopt a tabloid (or what *Independent* editor Simon Kelner insisted on calling ‘compact’) format. Rusbridger and McCall championed a more expensive option (it required an £80 million investment in new printing presses two to three years earlier than would otherwise have been the case) called the Berliner which was popular in Europe.²³⁹ “The business case was so well made and the arguments so overwhelming, the trust was absolutely all on side”, said Forgan at the time of the launch of the new format *Guardian* in September 2005. The format change saw the

²³⁸ Living our values: Social, ethical and environmental audit, GMG, November 2003.

²³⁹ The Berliner format is 470mm x 315 mm while a tabloid format is 430mm x 280mm. The broadsheet format previously used by the *Guardian* in 749mm x 597mm. The *Observer* adopted the new format in 2006.

newspaper's circulation rise from 376,816 in 2005 to 394,913 a year later, before declining to 358,00 in 2009 when market changes and the recession caused significant circulation losses across all British daily newspapers, with the exception of the tabloid *Daily Star*.²⁴⁰ The *Guardian* was judged the world's best-designed newspaper in the Society of News Design's 2005 awards.²⁴¹

Beyond the newspaper, the Trust was overseeing significant changes in the Guardian Media Group's businesses. They are worth detailing because they illustrate the benefits of diversified assets and the ability to pay down debt (both of which are issues that have daunted some newspaper groups) and novel capital raising by an organisation that cannot issue shares to the public.

Considerable value had built up in the Trader Media Group, which by 2006 was worth £1 billion. In 2007 a 49.9 percent stake was sold to a private equity company, Apax, in the first of two leveraged buy-out joint ventures. There were a number of benefits for GMG and the Trust. It enabled the group to realise some of the value in TMG, and also reduced the debt it carried on its balance sheet. GMG received £700 million in cash from the part-sale, during which Trader Media Group assumed additional debt through a finance restructuring exercise. A similar debt restructuring was followed when GMG and Apax jointly purchased the business-to-business operations of Emap.²⁴²

GMG's director of communications, Chris Wade, told me that finance restructuring means "GMG is not exposed to this debt as it is ring-fenced within these businesses – which makes the situation very different to that in which other media companies have found themselves, that is, with direct exposure to large amounts of debt". A critic of private equity companies, Peter Morris, has described the joint ventures with Apax as "risky", although he concedes that the recessionary fall in the value of GMG's portfolio is only 6 percent – modest compared to many British companies (Morris 2010). In response to Morris' criticism, Wade states that GMG's strategy over the years has created "a robust financial position for the group, with immediately realisable resources (in cash and via our investment fund) alongside a valuable portfolio of assets". Inarguably, GMG's balance sheet showed an immediate improvement as a result of the

²⁴⁰ Audit Bureau of Circulations.

²⁴¹ Society of News Design, *The Best of Newspaper Design* 27, 2006, Gloucester, Mass. The award was shared with the Polish daily, *Rzeczpospolita*.

²⁴² GMG/Apax did not acquire Emap's magazine and radio divisions.

partial sale of Trader Media Group, and the Trust was provided with a substantial sum for the investment fund that is discussed in the next section.

The most recent history of the Trust has been a dramatic demonstration of its single-minded purpose – the preservation of the *Guardian* in perpetuity, and a signal that GMG management and the trustees have been prepared to sacrifice other parts of the group to achieve it. For many years, the *Manchester Evening News* was the guarantor of the *Guardian*'s survival. The loss-making flagship newspaper would have floundered without the profits that accrued each year from the *Manchester Evening News*. Over time, other elements of the group (such as Trader Media) eclipsed the profits that were delivered by the *Manchester Evening News* and other titles that had been added to GMG Regional Media but nonetheless, in 2005, the regional newspaper division delivered a record £32.6 million profit against the national newspaper division's operating loss of £18.6 million. It was, however, a pinnacle from which the only direction was down. GMG Regional Media began posting lower turnover and lower profit each year.

Table 6-1: GMG Regional Newspapers' annual profit

Year	Turnover (£ million)	Operating profit (£ million)*
2004	127.2	30.7
2005	138.3	32.6
2006	126.8	21.6
2007	122.2	19.4
2008	120.5	14.3
2009	94.5	0.5

*Before amortisation and exceptional items

The regional newspaper market was on a downturn before the credit-crunch recession took hold (victim largely of the migration of classified advertising to the Internet) but the rapid decline in Britain's economic fortunes accelerated the process. GMG began cost cutting that prompted an angry reaction from GMG Regional Media journalists. In an open letter, published as a full-page advertisement in the *Guardian* on 31 March 2009, they were highly critical of GMG senior management and of the Scott Trust.

In an editorial published the same day, the *Guardian* stated that its over-riding response to the plight of its regional associates was one of sympathy but noted that the 245 jobs

being cut were less than the reductions in other regional groups.²⁴³ The editorial noted that the issue was “of far wider significance than one newspaper group and one unhappy group of beleaguered journalists”.

Within GMG management however, there was a general acceptance that cost reductions in the regional papers were both obvious and inevitable. GMG could not afford to subsidise two potentially loss-making divisions. The *Manchester Evening News* had by this stage become a newspaper that was given away free on the city streets of Manchester several days a week. When we spoke in 2009, Forgan summed up the attitude of the Scott Trustees:

The problem with regional newspapers is that we are not just looking at the effects of recession. We're looking at systemic change. There would have been a much more difficult decision for the Trust [which endorsed the cost-cutting measures] if anybody could be found to say 'if you hang on here for a couple of years you can rebuild a regional journalistic enterprise that has the values that the Manchester enterprise currently has and go on delivering profits – not, perhaps, as high as it did traditionally but it can wash its face'. That would have been more difficult but nobody is saying that. The model is broken. They [papers like the *Manchester Evening News*] are hugely important. We have done what we can as a trust in talking to government, raising the public debate about what is happening to regional journalism and the importance of it within democratic structures.... There is no viable plan that we can see that can keep the *Manchester Evening News* in any recognizable form – on paper, distributed as it is – going.

GMG and the Scott Trust did not find a way of resuscitating the newspaper that had provided it with annual blood transfusions. In February 2010, GMG Regional Media was sold to the Trinity Mirror Group for £44.8 million – £7.4 million in cash and £37.4 million in consideration of the cancelling of a long-term printing contract with Trinity Mirror. GMG and the Trust released a statement saying the decision to sell was in light of the strategic objective to secure the future of the *Guardian* in perpetuity. An Early Day Motion, signed by 15 Members of Parliament, was tabled on 23 February viewing the sale with regret.²⁴⁴

At the same time as it struggled with its regional newspapers, GMG and the Trust were also confronting losses in the two national newspapers. In August 2009, GMG reported annual losses of £89.8 million in Guardian News & Media (the national newspaper

²⁴³ More than 1000 each by Johnston Press and Northcliffe Media and 800 by Trinity Mirror.

²⁴⁴ Few EDMs are debated but are a means by which MPs can show their support for a cause or point of view.

division). The *Observer* does not enjoy the protection afforded to the *Guardian* and, although both endured budget cuts, the 218-year-old *Sunday* faced the possibility of closure or redevelopment as a mid-week magazine. The National Union of Journalists and the industry publication, the *Press Gazette*, campaigned strongly against closure of the world's oldest Sunday newspaper, and under pressure from both the public and its own journalists, GMG affirmed its commitment to the *Observer* and announced a re-launch of the *Sunday* (still as a newspaper), that took place the following February. Forgan issued a statement saying the Trust: "fully supports the company's thorough and clear-eyed review of its operations". Those operations will be examined in the Chapter 7.

6.2.2 The Irish Times Trust

The Irish Times Trust was born in buoyant times, and its bankers, employees, and the readers of its newspaper had high expectations. Its 'governors' as they were styled, were drawn from academia, the business community, and (with some foresight) the trade union movement in both the south and the north. An experiment with the appointment of an *Irish Times* journalist to the Trust was short-lived, and subsequently (unlike the Scott Trust), none of the newspaper's journalists were appointed. Also in contrast to the Scott Trust, the editor of the *Irish Times* was not to be a Trust member, but instead, would sit by right on the operating company's board of directors. There was little doubt that Major McDowell was more than first among equals.

Fortunes changed rapidly in the 1970s as the twin effects of the oil shock and the Yom Kippur War sent the Irish economy into recession, and took the newspaper into losses. The company also lost the experienced leadership of Douglas Gageby, who according to O'Brien (pp. 206-7), resigned as editor amid misgivings among staff about the directors' financial reward and his own apparent embarrassment about the windfall sum he received for his shares in the company. His replacement Fergus Pyle, was a good journalist, but was unable to maintain the pace of development and innovation that had characterised Gageby's editorship. Newsprint budgets were cut, which resulted in newspapers with fewer pages and a reduced type size to accommodate more content per page (this action, then as now, is fraught with risk as the audience is sensitive to the "readability" of the newspaper), the total staff was cut by approximately 100, and there were three price rises in 18 months. Circulation that had stood at 69,000 when the trust

was created in 1974, fell to 61,800 three years later (Brady, 44; Oram 323). Pyle agreed to stand down, and Gageby, in what was described by staff as ‘the second coming’ (O’Brien, 220), returned as editor in 1977. He said he would take the role for only two years, but stayed for a decade. The company’s bankers, who had become extremely worried about the state of their significant investment, wholeheartedly supported his return.²⁴⁵ Losses incurred in the first years of the Trust had seen the loan rise from £1.6 million to £2.5 million (Oram, 325).

Editorially, Gageby was determined that the newspaper would lose its reputation as a Protestant newspaper, and become known as a liberal newspaper serving all of Ireland. A strong supporter of a unified Ireland, he argued for a more secular state. His political views were often at odds with those held by the Trust chair, Major McDowell, who confided to the British Ambassador, Sir Andrew Gilchrist, that he could not persuade Gageby to take a more pro-British line (O’Brien, 188). David McConnell, who retired as chair of the Irish Times Trust in 2010,²⁴⁶ told me the political climate of the time was “unhappy”. He recalls the newspaper in the 1970s as appealing to the Protestant community in Ireland and Ulster, as well as “the intellectual community and people, broadly speaking, who looked outward rather than inward”. The dominant Sinn Féin (‘ourselves alone’) political philosophy of the time was introspective.

McDowell and Gageby, during the latter’s first term as editor, had developed a relationship that reflected what Brady described as the ‘Dawson Formula’, under which the editor of *The Times* (London), Geoffrey Dawson, and the proprietor, Lord Northcliffe, had agreed that manager and editor would be separate authorities with their own responsibilities and reporting separately to the board. When the Irish Times Trust was established, the formula was embedded in company articles and it is evident that McDowell, in spite of his pervasive presence in the company, fully honoured it throughout Gageby’s second term and that of his successor, Conor Brady (Brady, 204-5).

The company’s financial position improved, and after the losses incurred in the first three years of the Trust, it returned a modest profit. In the early 1980s, the Trust ceased

²⁴⁵ Gageby’s obituary in *The Times* (London) 7 July 2004.

²⁴⁶ McConnell, Professor of Genetics at Trinity College Dublin, was replaced as chair by Ruth Barrington, chief executive of Molecular Medicine Ireland. He was interviewed in Dublin on 26 March 2009.

to publish accounts, but it is evident that some years were not profitable. Certainly, there was not enough to allow the Trust to redeem the preference shares held by the bank, until the company received a £IR2.7 million windfall with the flotation of Reuters in 1984. The Trust was presented with a quandary – it wanted to remove the bank from company ownership, but it also needed to replace the *Irish Times*' antiquated press. It put £IR1 million toward the £IR3 million purchase of a new Man-Roland offset press and borrowed a further £IR1 million from the bank and £IR500,000 from the Industrial Credit Corporation. The remainder came from a grant from Ireland's Industrial Development Authority. It then spent the remaining £IR1.7 million from the Reuters float to redeem the preference shares held by the Bank of Ireland. Without the Reuters payout, it is doubtful that the company would have been able to buy back the shares (O'Brien, 227). It could not borrow to fund the repurchase, and until the advent of editorial and advertising improvements made possible by the new press, was not generating sufficient profit to allow it to do so.

Gageby had the critical support of the bank and a level of access to the company budget that Pyle had never enjoyed. He had undisputed control of the editorial department, and with McDowell and the deputy chief executive, formed a triumvirate that ran the company.

By the time Gageby retired in 1986, the *Irish Times* was well on the way to financial health and had earned itself a reputation for the quality of its journalism, which included revelations that two Irish political journalists had their telephones bugged by the Garda Síochána (the Irish Police Service) on orders from the government of Charles Haughey,²⁴⁷ and for its liberal stance on constitutional prohibitions on abortion and divorce.

The Trust had been stung by its error in appointing Fergus Pyle as editor, and had agreed a process with the NUJ chapel at the *Irish Times* for the appointment of Gageby's successor. Candidates from inside and outside the newspaper were invited to apply for the position, and a short list was drawn up by the board of directors of the Irish Times Limited – which was dominated by McDowell. The short list was then shown to the chapel's representatives who had a right of veto or what Brady calls "a

²⁴⁷ The bugging was to determine the sources of stories about challenges to Haughey's leadership and one of the journalists, Geraldine Kennedy of the *Sunday Tribune*, would later become editor of the *Irish Times*.

negative sieve” (p. 58). There were only two names on the list, and both were acceptable to the staff. Conor Brady was appointed and would hold the position for 16 years. He was the first Catholic editor of the *Irish Times*.

Under his editorship, the *Irish Times* published a number of stories that continue to resonate through Irish society. It launched an investigation that exposed the Bishop of Galway, Dr Eamonn Casey, as the father of a child he continued to support, led a campaign against the refusal to allow a 14-year-old victim of sexual abuse to leave Ireland to obtain an abortion, and exposed corruption among local councillors. However, the newspaper’s attempts to expose corruption in national politics would not reach its peak until after Brady’s retirement.

Brady’s autobiography provides a valuable insight (Chapter 11: *Working with the Trust*) into the operations during his editorial ‘watch’ of the otherwise ‘closed’ Irish Times Trust and its relationship with the operating company’s board. He reveals that his editorial policies (particularly those relating to Northern Ireland) and editorial treatment of issues such as sexual abuse cases and foreign coverage were the subject of vigorous debate among the Governors in the portion of proceedings that he would be asked to attend. There were “vigorous arguments”, but at the end he was always told to “carry on” as he thought best. He maintains that McDowell was “unfailingly protective” of the editor’s independence, refusing to allow discussion of editorial policies at the Irish Times Limited board meetings because he did not believe the editor should be put in a position of defending himself in the presence of subordinates (fellow executive directors). However, he is critical of what he saw as McDowell’s increasing domination of the Trust and the company, saying “his Achilles heel was his absolutism” (*ibid.*, 115-7).

Throughout this period, in accordance with McDowell’s wishes, the Trust operated entirely out of the public eye. It issued no documentation or statements, and did not even have a mechanism whereby it could meet with staff that were becoming increasingly disturbed by its obscure practices.



A tipping point was reached in 1994, when McDowell appointed his daughter Karen Erwin, as deputy managing director.²⁴⁸ Although she was a distinguished lawyer and able executive, her father's unilateral action was seen as nepotistic (O'Brien, 253). The appointment was opposed by at least one Governor and by Brady. It strained the relationship between McDowell and the managing director, Louis O'Neill. *Irish Times* staff objected to the appointment as "a blatant exercise in nepotism". In the same year, the articles of the operating company were amended to ensure that no board resolution could pass without the approval of the chairman (McDowell) and another Trust Governor or two Governors. (O'Brien, 260).

A system for placing future senior appointments under scrutiny was adopted in 1995, but McDowell was determined that his daughter's appointment would stand. To many it seems that McDowell, having secured his own hold on the paper through the Trust, was creating a dynasty. In 1948, the Scott Trust had moved against familial succession when it rewrote its deed, but there had been no premonition that such a provision would be required in the Irish Times Trust. However, events were set in train that determined it would not be necessary.

In March 1997, amid increasingly vocal criticism, McDowell stepped down as chief executive (although he remained chairman of the operating company) and was succeeded by O'Neill. Two years later, he stood down as chairman of the Irish Times Limited but remained chairman of the Trust. Karen Erwin was given responsibility for corporate governance and all legal matters. In the wake of that move, O'Neill retired as chief executive and precipitated what could have developed into a crisis over the major's daughter. However, Karen Erwin did not apply for the chief executive's position and avoided both crisis and the need to subject herself to the vetting process instituted in 1995.

A modernisation programme costing £100 million (which included the cost of a new press and computer systems) had been started under O'Neill, and was continued by his successor, Nick Chapman. The company had entered into undertakings to 'buy out' industrial agreements to facilitate 'new technology' as part of the programme. At the

²⁴⁸ In the same year the articles of the operating company were amended to ensure that no board resolution could pass without the approval of the chairman (McDowell) and another Trust Governor or two Governors. In 1997, Governors on the board of directors were given five votes for each executive director's vote (O'Brien, 260).

time the *Celtic Tiger* was rampant, and a consultant's report predicted that Ireland's burgeoning economy would continue unabated (O'Brien, 258-9). The board and the Trust had no hesitation in financing the modernisation by depleting the cash reserves that had been built up throughout the 1990s. In the economic aftermath of the terrorist attacks of 9/11, in which advertising revenue throughout the Western world plummeted, the *Irish Times* had no reserves to sustain it. The commissioning of the new press had been delayed, and the severance agreements had proven costly. Combined with an annual loss of £IR2.35 million in 2001 (after a profit of more than £IR7 million the previous year), the development costs left the company with a deficit of £IR21.7 million (*ibid.*, 264). A total of 250 staff (112 from the editorial department) left the company.

McDowell, an eccentric figure who was almost Edwardian in appearance, became the focus of blame for the reversal of fortunes, and on 1 December 2001 resigned from the board of the *Irish Times* and from the Irish Times Trust. David McConnell became chairman. It was an appointment that "came out of the blue", and McConnell does not know by what process the decision was made. He does however, have a more benign view of 'the major' than some critics. When I spoke to McConnell in Dublin he said too much blame was placed on McDowell:

He ended up being the man who fell on his sword. In 2001 the *Irish Times* was going bust. We had 730 employees and we lost a third of them by voluntary severance schemes. [At that point] I am absolutely certain that the *Irish Times* would have been bought by somebody else if it hadn't been protected by the Trust. We had to borrow £IR20 million from the bank to pay for those severance schemes. Can you imagine it? Here is a quality newspaper with a per capita circulation that exceeded the combined broadsheets of the U.K. – 120,000 copies.²⁴⁹ This great newspaper was going bust and, had it been an ordinary institution, the shareholders would have wanted something out of it and there would undoubtedly been people wanting to buy and the board would have sold. However, under the terms of the Trust it could not be done...Both inside and outside the paper everyone focused on Tom McDowell. The Trust was blamed and Tom McDowell was personally blamed...Yet, up to this crisis, the *Irish Times* had been phenomenally successful.

McConnell points out that there had been no dissenters among trustees, directors, or executives over the modernisation programme, and no one had been able to anticipate the financial downturn that followed 9/11. He does however, describe a governance structure that was cumbersome and in need of rejuvenation. When he joined in 2000 he

²⁴⁹ Ireland's population at the time was 3.84 million. The three quality dailies in the U.K. had a combined circulation of 2.1 million for a population of 58.8 million.

was the only trustee under the age of 60 and some were nearly 90, although a number were eminent members of Irish society. All members of the Trust were members of the board, and over the years, more and more senior executives became directors. It was therefore, a very large board. Apart from the Governors, there were no outside non-executive directors on the board of the operating company. “Essentially,” McConnell says, “the Trust met the senior management.” The Trust retained its voting supremacy, but business was conducted by consensus.

A working party composed entirely of commercial executives (from which Brady was excluded), painted a damning picture of the company’s financial position and its governance, and McConnell had to preside over a fundamental reorganisation that he describes as “a terrific challenge”. The change that followed altered the balance of power.

The Trust’s domination of the operating company’s board ended, and the *Irish Times* Limited articles were altered to provide that:

- The number of Governors eligible to sit on the board would be reduced to three (a minority).
- Non-executive outside directors could be elected.
- The Governors’ previous 5:1 voting power was withdrawn, and all directors would have a single vote.
- The three Governor directors would have an effective veto (50 percent plus one vote) in the following circumstances:
 - The board was contemplating a “significant policy” that was inconsistent with the objectives, principles and standards that had been laid down for the *Irish Times* when the Trust was established, and
 - Two senior legal counsel (one representing the board and one representing the Trust) agreed the matter was a “significant policy”. In the event of the lawyers disagreeing, counsel for the Trust would prevail.

There were also significant changes in personnel. The managing director Nick Chapman resigned in November 2001, and settled High Court proceedings he had taken to block the company from removing him.²⁵⁰ Brady retired as editor a year later.

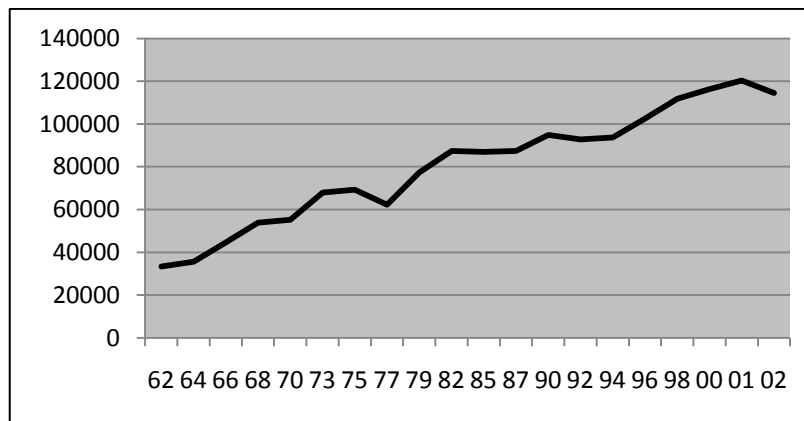
In many ways, the changes brought the *Irish Times* into line with the disposition of power that had been determined between the Scott Trust and the Guardian Media Group. And like the Scott Trust, it had taken a crisis to wrest control from ‘the founders’. Under the new arrangement, each Trust had oversight as owner and custodian, but the operations of the company were left in the hands of professionals and people with corporate board expertise. There were however, some differences between the Scott Trust and the Irish Times Trust. The Guardian’s staff have long been represented on the Scott Trust, but when the staff of the *Irish Times* attempted to gain representation on the Irish Times Trust during the restructuring, McConnell would not agree to have members of the staff sitting over the editor and managing director. However, there continues to be representation from national union organisations.

McConnell (a slight, bespectacled university professor) did not try to emulate the major’s style, instead applying a more reserved and collegial approach to preserving the newspaper’s independence, and ensuring it could endure the financial crisis while “epitomising the values of the newspaper”.

Brady describes the changes to the company, which had an inordinately large cost base (due in part to a failure to engage with wage issues) and overstaffing across all departments, as “overdue”. Nevertheless, he says the events of 2001-2002 were a shock to a newspaper that had experienced plain sailing for 25 years, and circulation that had been rising for 40 years (Brady, 262-5).

²⁵⁰ Murphy, David, “Irish Times court battle over as paper’s boss quits”, *Irish Independent*, 17 November 2001.

Figure 6-1: Audited circulation of Irish Times 1962-2002



The restructuring, together with a return to economic growth in the republic, led to a return to profit for the group. The downturn had however, exposed a fundamental weakness in the company's activities. Although it had invested in other businesses (notably a chain of community newspapers, a Metro Dublin freesheet (2005), and the largest real estate website called MyHome.ie (2006))²⁵¹, all of the enterprises were susceptible to catching the same cold in an advertising downturn. These investments stood in contrast to those of the Guardian Media Group, which moved to diversify away from a reliance on U.K. advertising, and in time would have a detrimental effect on the company's performance. In turn, this would have an adverse impact on the resources that the *Irish Times* was able to employ.

6.2.3 The Poynter Institute and the *St Petersburg Times*

Nelson Poynter's intended the Modern Media Institute to become the owner of the *St Petersburg Times*, and at his death its nine-member board of trustees was composed largely of present or former executives of the newspaper. Poynter's wife, Marion,²⁵² was also a member, and the only 'outsiders' were academics from Indiana and Yale universities. All trustees were well aware of Poynter's wishes.

Poynter had already secured control of the newspaper in the hands of one person, a move that was not (and has never been) challenged by the institute's trustees after his death. As the nominated successor, Eugene Patterson became chief executive of the Times Publishing Company as well as editor and president of the *St Petersburg Times*.

²⁵¹ The purchase of MyHome.ie involved an upfront payment of €40 million and a further €10 million once performance targets were met. The site had over 300,000 users a month.

²⁵² Marion Poynter retired from the Times Publishing Company Board of Directors and the Poynter Institute's Board of Trustees in 1991.

Under the terms of Poynter's will, the institute became the owner of shares in the Times Publishing Company, but the voting rights were vested in Patterson and in his successors as company president. Hence, the trustees could advise Patterson but they could not force his hand on the operations of the company or the editorial policies of the newspaper. In any event, as an educational institution it had to maintain its distance in order to sustain its non-taxable status, while benefiting significantly from annual 'dividends' from the tax-paying company.

Patterson later acknowledged the responsibility that accompanied the placing of so much power in his hands. In an article in the *St Petersburg Times* in 1998, he recounted a conversation between Poynter and his lawyer on the issue:

'What you lawyers can never understand...is that you can't close every circle. If you're going to accomplish anything in this life, at some point you're going to have to trust somebody. I trust Gene Patterson'.²⁵³

Patterson added "You don't betray that kind of trust, as Nelson knew." He went on to say that no chief executive of the company would be able to withstand the opposition of the newspaper's staff if he attempted to sell Poynter's legacy.

The Modern Media Institute received annual sums that allowed it to grow exponentially, and to begin to build an investment fund of its own that would augment the amount it received each year from the company's profits. By 1984, when the name was changed to the Poynter Institute, the number of students who attended the institute's courses rose from 333 to 504, and the board of trustees had been joined by an advisory board which comprised academics and senior journalists from across the United States, that would meet annually to assess and comment on the institute's performance and long-term strategies. It has gone from strength to strength, and is recognised internationally.

Under Patterson's command, the company augmented its Washington-based current affairs magazine by buying a business magazine, *Florida Trend*, which was to become the first of a series of related titles. The *St Petersburg Times* also won a further Pulitzer Prize for a series on the Church of Scientology, an organisation with which the newspaper would have an acrimonious relationship that would persist into the 21st century.

²⁵³ Patterson, Eugene, "Nelson Poynter Still Lives Through the Newspaper He Gave Away", *St Petersburg Times* 15 June 1998.

It fell to Patterson and his successor Andrew Barnes, to deal with a flaw in Poynter's legacy, and the weakness that we have already seen in other family-owned companies – family rivalry. Two hundred voting shares had been left in the hands of Eleanor Poynter, and more significantly, the daughters to whom she bequeathed them. Patterson had made at least one attempt (in 1979) to buy the shares on the terms offered in 1972 but had been rebuffed (Pierce, 370). The offer would have avoided estate duty, but when Eleanor died in 1987 her two daughters were taxed on the legacy. They instructed a New York media broker to sell the shares, which were first offered to the company for \$US120 million. Patterson refused to meet the price. He mistakenly believed a further approach would be made, and took no action, which the broker interpreted as lack of interest. The broker found a willing buyer in a man “with one foot in the Texas oil fields and another in cutthroat finance” (*ibid.*, 371).

Robert Muse Bass paid \$US28 million for the shares, and entered into a partnership with the daughters that guaranteed them 40 percent of any gains made on the venture. Bass had a reputation for takeovers and company break-ups, and could not be considered a passive investor. The arrangement was signed in 1988, a month before Patterson retired as chairman and was replaced by Barnes, and started a two-year battle for control of the company. Patterson had nominated Barnes as his successor, after suffering a heart attack in 1984, and appointed him editor and president of the newspaper.

In January 1990, Bass made a bid for all the outstanding stock, through an entity called Poynter-Jamison Ventures Limited Partnership (Jamison was the married name of Nelson Poynter's sister), after failing with a ploy that would have provided him with a much larger share of dividends than Eleanor had received. He offered \$US270 million for the stock, \$US234 million of which would go to the Poynter Institute. The offer presented the Barnes and the trustees with a problem. On the one hand, such a sum could be invested at a much higher return than the *St Petersburg Times* was generating and suggested that the trustees would best serve their fiduciary duties toward the Institute by supporting the sale. On the other hand, selling the company would almost certainly jeopardise the future of the *St Petersburg Times* and the values that had underpinned its publication. Barnes, supported by the trustees, rejected the offer and stated that he was not prepared to “dismantle Nelson Poynter's legacy” (*ibid.*, 373).

Bass had anticipated the rejection, and a week later filed a legal suit based on his initial gambit, which through a restructuring of the share capital would increase his ownership from 5.7 percent to 40 percent. The plan involved effective cancellation of preference shares, leaving only the voting shares, of which Bass held 200 (40 percent). Bass claimed that the primary purpose of the Poynter Institute was not as an educational institution, but to perpetuate absolute control of the Times Publishing Company by management with no oversight. He had however, singularly under-estimated the reaction from the staff, the community, and the political establishment. Liberal lawyers offered their services to the newspaper, and the Florida attorney-general, Bob Butterworth, sponsored a bill in the state legislature to protect owners of closely held companies from hostile takeovers. The staff paid for full-page advertisements opposing Bass's move, and a campaign waged through the newspaper's editorial columns gained widespread community support.

In response, Bass's partner David Bonderman told the rival *Tampa Tribune* that "the only newspapers that are run by a self-selected group of people that think they have no economic responsibility to anyone are *Pravda* and the *St Petersburg Times*" (Stern, 1990, 8-13).

In August 1990, after months of legal arguments, both parties abruptly announced an out-of-court settlement. The *New York Times* reported that the newspaper had agreed to buy the shares held by the "unwelcome investors", but that details of the complex agreement were not disclosed. It quoted analysts as estimating the price paid would be between \$US100 million and \$US150 million. The agreement allowed for the shares to be acquired in two tranches over three years, with the bulk, according to the *New York Times*, being acquired immediately. The arrangement required the company to incur substantial debt, and to issue a long-term subordinated debenture to the Poynter Institute for preferred shares in order to remove that class from its register. In spite of the cost, Barnes told the *New York Times*: "I just feel wonderful today". He said the debt would not interfere with the newspaper's operations, staff, or growth.²⁵⁴ In a story published on 19 August 1993 (after the confidentiality agreement had expired) the *St Petersburg Times* revealed \$US56 million had been paid to buy out the Bass group's interests.

²⁵⁴ Jones, Alex S., "St Petersburg Times Agrees to Buy Out Bass Investors", *New York Times*, 18 August 1990.

However, the *St Petersburg Times* had yet to finally remove impediments to securing in perpetuity the Poynter legacy.

Poynter's will contained a contingency clause that would be activated if the Inland Revenue Service declined to approve the plan to place ownership in the hands of the Poynter Institute. In this event, the proceeds from the inevitable sale of the Times Publishing Company (aside from the bequests to family members) would pass to Yale University. The IRS approved the Poynter scheme, and Yale received no more than the \$US1.5 million Nelson Poynter had given while alive. During the Bass case, it had been estimated that the Times Publishing Company was valued in the region of \$US500 million. In January 1991, Yale University asked for the company's financial records because, it stated, it "had an obligation" to determine whether it should challenge the Poynter Institute's tax-exempt status. A successful challenge would yield a handsome windfall for the Ivy League university. Barnes vowed to fight any attempt by Yale to gain ownership, and once again, the *St Petersburg Times* expressed its opposition with indignant invective. Four months later, the Associated Press reported a statement by Yale's general counsel, Dorothy Robinson: "After careful consideration of this very complex matter, we are persuaded that Nelson Poynter's primary intent in structuring his affairs as he did should not be challenged by the university".²⁵⁵ Robinson later disclosed that she had been alerted to the possibility of a challenge by Robert Bass's lawyer (Pierce, 377).

The cost of securing ownership and the potential challenge to the Poynter Institute's tax status were instructive, and in the following two decades both the institute and the Times Publishing Company have been scrupulous, perhaps to the point of paranoia, in ensuring that such threats will not recur. The manner in which this manifests itself is discussed in the following section on current governance.

The newspaper flourished editorially under Patterson and Barnes, securing further national recognition with Pulitzer Prizes in 1980, 1985, 1991, 1995, and 1998. *Time* magazine named the *St Petersburg Times* among the top 10 newspapers in the United States in 1984 and repeated the exercise in 1997.

²⁵⁵ Associated Press, "Yale Drops Challenge to Paper's Ownership", *New York Times*, 30 April 1991.

The newspaper developed a reputation for its innovative newsroom. In 1977, it took the then-unusual step of appointing a young academic, Roy Peter Clark (currently the Poynter Institute's senior scholar, vice president, and a member of its board of trustees), as the newspaper's writing coach. It was also an innovator in the use of computer-assisted reporting and an early adopter of digital technology (it was a pioneer in electronic archiving). It offered its first Internet service in 1995.

The *St Petersburg Times* also progressively expanded its circulation area, a strategy that Barnes said would have been impossible: "if an owner had been demanding immediate profits". However, an attempt to establish a regional edition under a separate masthead, the *Manatee Times*, was abandoned in 1977 after battling unsuccessfully to attract local advertising for four years. Barnes also credited the ownership structure with enabling the editorial department to hire sufficient staff and maintain the level of pagination that it needed to discharge its obligations to the community.²⁵⁶

The *St Petersburg Times* was to be nurtured under the terms of Poynter's bequest, but the same protection did not extend to the *Evening Independent*, the city's afternoon newspaper that had been bought by Poynter in 1962. Like most evening titles in America, the *Independent* struggled as television began to dominate the market. It survived the transfer of ownership to the Institute and the removal by Patterson and Barnes of its long-serving editor, but was closed by Barnes in 1986. The demise of the *Independent* was a signal that the Poynter Institute, like the Scott and Irish Times Trusts, was bound to protect only one title — in this case the *St Petersburg Times*, and business decisions made by the Times Publishing Company during the recent recession (discussed in Chapter 8) have reinforced that reality. Its financial responsibilities have of course, been to both the company and the Institute but the separation of entities has always been clear in order to preserve the Institute's 501(c)3 tax exempt status.

Control of the commercial assets owned by the Poynter Institute has been equally clear and stable. Unlike the Scott and Irish Times Trusts, there has been neither dispute over the powers of trustees, nor structural change to overcome unequal distribution or inadequate exercise of power. Poynter's desire to cede control to a single individual has never been challenged, by either the Poynter board of trustees or the directors of the

²⁵⁶ Barnes, Andrew "Who owns the St. Petersburg times? Why it matters to readers", *St Petersburg Times*, 26 December 1999.

Times Publishing Company. All three successors to Nelson Poynter – Patterson, Barnes, and the present incumbent Paul Tash (who assumed the CEO role in 2004 after four years as Barnes’ deputy) have had undisputed control of the company and a pivotal role in the affairs of the institute itself, each serving as chairman of the board of trustees. Each has been at pains to publicly assert his anointed role and his right to choose his own successor. Each has reiterated a key phrase in the third of Poynter’s Principles: “...a newspaper is so individualistic in nature that complete control, and thereby responsibility, should be concentrated in an individual” and periodically reminded readers of the newspaper’s ownership and control.²⁵⁷

6.2.4 Stable platforms

Each of the three newspapers experienced change for different reasons, and each had different solutions to the problems they confronted. It was an evolutionary process that left each of them better prepared to meet the challenges of an industry in crisis, than when they started their journeys as newspapers in unorthodox ownership.

²⁵⁷ Patterson, Eugene, “Nelson Poynter Still Lives Through the Newspaper He Gave Away”, *St Petersburg Times*, 15 June 1998; Barnes, Andrew, “Who owns the St. Petersburg times? Why it matters to readers”, *St Petersburg Times*, 26 December 1999; and Tash, Paul, “Who Owns the *Times*, and Why It Matters”, *St Petersburg Times*, 7 August 2005).

Chapter 7: Current governance in the trinity

An all living things there must be a certain unity, a principle of vitality and growth. It is so with a newspaper, and the more complete and clear this unity the more vigorous and fruitful the growth.

C.P. Scott, *A Hundred Years*, 1921

The three newspaper trusts studied in the previous chapter now have mature and stable governance structures. Each has faced challenges, and made changes to achieve either stability or commercial competitiveness. All have nonetheless, remained remarkably true to the vision of the men who saw these three publications as bastions of liberal journalism. By ‘keeping the faith’, the *Guardian*, *Irish Times*, and *St Petersburg Times* continue to enjoy journalistic reputations that set them apart from many of the other newspapers in their respective countries.

However, there has been a significant break from the past, in as much as trust chairmen no longer exercise autocratic power because the vague notions of governance expressed in founding documents can no longer be exploited. They have been replaced by much more explicit obligations and limitations. This chapter explains how those changes have been put into effect, and how in some cases, it has led to a welcome increase in the level of company transparency – an aspect of governance in which the Scott Trust and the Guardian Media Group provide an exemplary lead.

In particular, it will show how the custodians of these newspapers have faced up to the same considerable challenges – survival against the twin assaults of recession and fundamental media market change, as their conventionally owned contemporaries. Their responses to these challenges illustrate the effectiveness of their current structures to fulfil their obligation to protect the journalism for which their publications stand. It will show, for example, a determination by trustees to ensure that editors have a strong voice in how the organisation is run. This stands in contrast to attitudes in many media groups, but as the chapter reveals, there are both differences and similarities in the operation trustee and profit-driven listed enterprises.

7.1 The Scott Trust

7.1.1 Structure

The Scott Trust has been operating as a private company for two years at the time of writing, with no discernable change in either the way it perceives its role or in its activities. It remains a trust in every sense – except a strict legal definition. It continues to adopt a long-term approach to group strategy, and importantly, has not been panicked by poor trading conditions that have beset GMG (and its contemporaries) since the recession began.

The primary purpose in converting the trust to a private company, was the elimination of potential inheritance tax liability on the trustees when the Trust reached the end of its ‘life’ in 15-20 years. While the present tax regime does not impose inheritance tax on the Trust, trustees and their legal advisors were mindful of the tenuous nature of tax status, and of the ability of a future Chancellor of the Exchequer to promote a law change that could result in tax bills of millions of pounds. The legal advice given to the Trust was that the most stable, most clearly protected, and most robust framework, was not a trust deed but registration as a limited company.²⁵⁸ It also meant that the trustees who were legally directors of the company, could be indemnified against financial liability. However, a by-product of the change has been the clear articulation of duties and responsibilities that were only implied in the trust deed, and the enshrining of four provisions in the Articles of Association that cannot be altered (even by a unanimous vote). These provisions are:

- Article 58 (Powers of directors): Requires directors (the trustees) to act in a manner that is consistent with securing and preserving the financial position and editorial independence of the *Guardian* in perpetuity, having regard to how that has been pursued “heretofore”; and to promote the causes of freedom of the press and liberal journalism.
- Article 90 (Reserved Board matters): Requires the written approval of at least 75 percent of directors for, among other things, the appointment or removal of the editor-in-chief of the *Guardian*; decisions relating to the disposal of the whole or significant parts of the *Guardian*; altering the memorandum or articles of association; and winding up the company or merging with another firm.

²⁵⁸ The company was initially registered on 24 September 2008 as Scott Place 1001 Limited, but changed by special board resolution a week later to the Scott Trust Limited, a move Forgan describes as “a great joy”.

- Article 97 (Dividends and distributions): Prevents the payment of any dividends or distributions that provide a financial benefit to shareholders (the trustees).
- Article 111 (winding up): Requires any surplus remaining after winding up the company to be passed to another company, trust or charity with similar objects to the Scott Trust; and prevents any distribution of funds to shareholders (the trustees).

We have seen how past chairmen of the Scott Trust exercised considerable power because governance was under-stated or even unstated. The chair, Dame Liz Forgan, told me the new legal entity will prevent anyone from “picking up the Trust and running away with it”.

The 10-member board comprises five members who have direct associations with GMG: Observer economics editor Heather Stewart, columnist Will Hutton, legal counsel Geraldine Proudler, editor-in-chief Alan Rusbridger, and GMG chief executive Andrew Miller. As mentioned previously, Forgan is a former *Guardian* journalist. The remaining trustees are the master of Balliol College, economist Andrew Graham; a Reader in Law at King’s College London, Maleiha Malik; Rothschild executive vice-chairman, Anthony Salz; and a member of the Scott family, Jonathan Scott. The trust secretary, Phil Boardman, is also GMG company secretary.

Two trust board members (the editor-in-chief and the chief executive) also sit on the GMG board of directors. Traditionally, the editor of the *Guardian* did not sit on the group board, but Forgan campaigned for Rusbridger’s appointment when she was a non-executive director of GMG. Rusbridger became a director in 1999, and plays an active part in the management of the organisation. When I interviewed her in 2009 Forgan told me:

The editor of the *Guardian* never used to be on the group board and I fought very hard for that to happen. I don’t know whether he curses me for having to go to all the meetings but I still think it was absolutely the right thing to do because, to the extent that there is a kind of tension between the endless appetite and needs of the *Guardian* for resources (and strategic appetite for development) and the ability of the commercial board to service that – in other words, the competition for resources – I thought that so long as the editor did not hear the discussions at the group board about the getting and spending of the total resources of the company, he would always be a sort of remittance child: Outside – given his subvention and told to get on with it, and with no part to play. The board would not understand the editorial ambitions and I just think it’s good for journalists to be in the middle

of commercial realities to prevent them from being infantile. Otherwise people waste effort fighting for things that can't be delivered.²⁵⁹

In the past, the chairman of the group board was a member of the trust and the chairman of the Trust had tended to be a non-executive director of the company. Forgan and a previous GMG chairman, Paul Myners (who resigned in 2008 to become Financial Services Secretary in the Labour Government) altered that arrangement, and the respective chairs now have the right to attend and speak at any meeting of the other board but do not have voting rights. The purpose of the change was to put some distance between the two boards without diminishing the level of knowledge to which each was privy. However, Forgan acknowledges that should she voice “a principled objection” to a planned course of action by the commercial board, it would be unlikely to proceed, and the GMG chair would in all likelihood forestall a Trust action that was not in the interests of the financial well-being of the group.

The Trust's relationship with the editor of the *Guardian* has changed. His editorial independence is undiminished, and also unchanged is the Trust's right to appoint (and theoretically dismiss, although Forgan describes this as “a nuclear weapon” or option of last resort) the editors of both the *Guardian* and the *Observer*. However, the Trust has introduced what Forgan describes as “a framework of accountability” to ensure that the editor continues to reflect the values that the Trust is required to uphold. Once a year, the editor presents to the Trust a list of objectives he set for himself in the previous year and reports on progress in each case. He then presents a set of objectives he plans to pursue in the following year. Forgan told me she had been worried that there was no formal system of accountability:

What this [framework] actually does is make a moment where we can look each other in the eye. It makes a safe framework because it is set by the editor and not by the Trust. I think that if the Trust said ‘These are your objectives for the year’ or ‘This is how we think you’ve done against them’ we would impinge on the independence of the editor. We are getting the editor to set his own objectives and give his own assessment of them. Giving the Trust the ability to discuss them with him is as near as we can get.

The Trust does not issue any appraisals of the editorial performance of the *Guardian*. Forgan does not believe it is the place of the Scott Trust chair to comment on the performance of the editor, and regards a formal public review of the newspaper as “a

²⁵⁹ Interview London 2 April 2009.

step too far”. In practice, there is some discussion when Rusbridger presents his annual update before the trustees simply say “Thank you”. Rusbridger is said to be open in his relationship with other trustees and with Forgan, demonstrating a willingness to discuss editorial matters while not ceding his authority. He is nonetheless, required to seek the Trust’s approval for each year’s editorial budget, which must also be approved by the boards of Guardian News & Media (the national newspaper division whose board includes Rusbridger and seven other executives) and the group.

The relationship with the *Observer* is more at arms length. The editor, John Mulholland does not sit on the Trust or either of the commercial boards, and Forgan concedes that within the organisation the status of the *Observer* “was always a bit ambiguous” and so too were the Trust’s obligations toward it. Did it have the Trust’s protection or didn’t it? This has been clarified by a statement from the trustees that the *Sunday* does not enjoy the formal protection that the Trust is required to provide to the *Guardian*. However, Forgan says that although there is no formal obligation, the trustees are “absolutely mindful of the fact that they have something precious and important in their charge”. It is a responsibility that she believes weighs heavier on a trust than it would on a public listed company, and this sense almost certainly swayed the Trust (and the commercial boards) toward redevelopment of the Sunday newspaper rather than accepting the alternatives of closure or transmutation.

There was also a lack of clarity in the relationship between the *Guardian* and the *Observer*, which the Trust has resolved by creating the position of editor-in-chief over both publications – the position currently held by Rusbridger, who represents their interests in the various forums. However, the relationship between the two newspapers is best described as evolutionary. While the *Observer* is not a Sunday edition of the *Guardian*, there has been progressive integration of resources, and more than a third of the *Observer*’s operations are overlapped with the *Guardian* – and the redesign accelerated this process. Forgan acknowledges that “with every day that passes it is harder and harder to draw a line between the corporate entities that are the *Guardian*, the *Observer*, and the website”.

Progressive integration affords a measure of protection for the Sunday newspaper in a commercial sense, but it does not alter the *Observer*’s formal status with the Trust. If push came to shove, the interests of the *Guardian* would be paramount, and the

Observer could be disentangled from its stablemate. This is a position supported by both Rusbridger and the Trust. Forgan puts it succinctly: “The brutal clarity is that we would relinquish anything except the *Guardian*. We regard the *Observer* as precious, but if the world was coming to an end we wouldn’t sit there and say ‘Save everyone’. We would throw the *Observer* off.”

The Trust’s legal (and emotional) attachment remains with the *Guardian* alone. While Forgan is sincere in articulating the Trust’s championing of good journalism wherever it is found, the recession has highlighted an unsentimental belief that the Trust will do whatever is necessary to protect its national daily. The group’s non-journalistic assets are treated as essentially commercial investments to which the Trust does not owe the same level of responsibility, and the *Manchester Evening News* was sold when the company and the Trust determined that it was heading toward the point where it would constitute another (unsustainable) loss-maker in the group. However, Forgan concedes that the Trust held off making “really regrettable but unavoidable” decisions about GMG Regional Media, and with hindsight, it would have been wiser to acknowledge that the regional newspaper business model was broken by 2007.

The Trust in the 21st century has attempted to correct the anonymity and apparent inactivity that characterised much of its past. It has a strong presence on the Guardian Media Group website and in the GMG annual report, and is explained in GMG staff induction programmes. It is also more assertive in ensuring it is kept abreast of group operations. However, the Trust is far from being an interventionist owner and remains a reserve authority in most respects. Forgan says her most important message to potential trustees is: “You hardly do anything. When the sky falls in you are very important, but otherwise you don’t have to do anything, and you certainly don’t have anything to do with the content of the paper.”

While the trustees have no say in the content of the *Guardian* or its sister publications, they are bound to uphold editorial independence. The editor-in-chief is described by Forgan as “a very powerful person”, adding that C.P. Scott was an editor, and the Scott Trust was established to protect that power. Scott himself recognised that newspapers were both a business and more than a business, and laid down that: “an editor and business manager should march hand in hand, the first, be it well understood, just an inch or two in advance” (Taylor 1993, 38).

7.1.2 The editor

Alan Rusbridger's power within Guardian News & Media is considerable, and his authority on editorial matters is, theoretically, absolute. However, he exercises it in a peculiarly *Guardian* way which is different to that normally associated with large newspapers. "My perception of [conventionally structured newspapers] is that they tend to be edited in quite a pyramidal structure," he told me. "The *Guardian* is edited under a very flat structure, and the most symbolic way of describing that is that in most [other] places the editorial conference is chaired by an editor with a small group of senior colleagues. In the *Guardian*, certainly as long as I have been here (he joined the newspaper in 1979), the day begins with an open conference at which anybody can come along and challenge or critique the paper. We sometimes get 60-70 people at morning conference. People speak up if they feel we have overstepped on ethical or journalistic or policy issues and that is a fairly significant constraint on my power."

He seeks views at such open conferences on major editorial policy decisions. Before every General Election, there is a discussion amongst the staff over which party the *Guardian* should support. A similar discussion took place over Britain's adoption of the Euro. Rusbridger does not feel bound by the outcome of these deliberations, but although he does not think 'consensus' describes the process, he is conscious of the need to take his colleagues' collective views into account. "If I had set this newspaper in favour of war with Iraq, I don't think the staff would have allowed that. Every morning people would have come in and challenged me".

Two years after he assumed the editorship, the *Guardian* became the first British national newspaper to appoint an internal ombudsman (known as the readers' editor) who is responsible for a daily 'corrections & clarifications' column that carries approximately 1500 items a year. The fulltime readers' editor has complete editorial autonomy, and can be dismissed only by the Scott Trust which is also responsible for the appointment. The 12-paragraph terms of reference for the readers' editor are published on the *Guardian's* website, along with the newspaper's editorial code (see Appendices 4 and 5.) The first appointee Ian Mayes, admitted that some initially regarded the role as "eccentric", a form of flagellation or exhibitionism, but he described the principle as a simple one: "News organisations that, almost by definition, constantly call others to account should be more readily accountable and open

themselves, and should be seen to be so.”²⁶⁰ Rusbridger, in a further display of ‘outreach’, wrote to 50 people in high profile public service and private sector executive roles, asking them to evaluate the coverage of their work by both the *Guardian* and its competitors. The responses were published over two weeks in the *Guardian*’s media sections on 10 and 17 January 2005. The preface – the late Anthony Sampson’s last essay stated: “There can be no doubt about the genuine anguish of many distinguished people who feel aggrieved or simply resigned to the misrepresentations of the press.” Rusbridger noted two months later that there had been almost no reaction to the survey among other media.²⁶¹ The *Guardian*, like the *St Petersburg Times*, has a well-deserved reputation for keeping its contemporaries under scrutiny as well.

Rusbridger practices a rare (perhaps unique) form of check and balance that owes much of its existence to the newspaper’s ownership by the Scott Trust and its objectives. He explained his attitude during testimony to the House of Lords enquiry into ownership of the news in 2007, during which he acknowledged both the power of his position and the need for a process to assay his decisions.²⁶²

He went on to explain to the committee that the *Guardian*’s staff produced better journalism because of the presence of the readers’ editor: “...they think twice before they write any sentence now because everything they write will be contestable [by readers] and, if they get it wrong, it will be corrected the next day and they don’t like that. Having this independent mechanism within the paper absolutely affects the standard of journalism which I think is getting better.” He noted however, that none of the other nationals (with the exception of the *Guardian*’s companion Sunday title), had opted to follow his newspaper’s example.

Rusbridger was also the moving force behind the development of the *Guardian*’s presence on the Internet, and the increasing integration between online and print areas of the newsroom. His ambition for a fully integrated editorial department with staff able to move freely between digital and paper environments was enhanced by the £8 million move in 2008 from cramped and threadbare quarters in Farringdon Road, to a new headquarters in Kings Cross that consolidated far-flung sections of the editorial

²⁶⁰ “Trust me – I’m an ombudsman”, *British Journalism Review*, Vol. 15, No. 2, 2004, pp. 65-70.

²⁶¹ During the Hugo Young Lecture at Sheffield University 9 March 2005

www.guardian.co.uk/media/2005/mar/14/pressandpublishing.

²⁶² House of Lords HL122-II, 40.

department. The website guardian.co.uk has grown in popularity since its launch (as Guardian Unlimited) in 1999. Within two years, it had 2.7 million unique users and was the most popular newspaper website in the United Kingdom. By December 2009, this had grown to 37 million unique users and the site was named best online newspaper for the fourth time in five years in the International Academy of Digital Arts and Sciences' Webby Awards. Rusbridger has become a champion of free access to news websites, a direct challenge to the paywall strategy started by Rupert Murdoch on *The Times* and *Sunday Times* websites in June 2010. He recognises an economic argument against paywalls (sacrificing online growth for relatively modest sums in subscriptions) but has a more fundamental objection based on a belief that the newspaper and its website must work in tandem and must be widely accessible to achieve journalistic objectives.²⁶³

He recognised that the dynamics of journalism were changing, and led the *Guardian* into a new era of digital journalism that involves cooperation with members of the public to produce what he describes as a "mutualised newspaper".²⁶⁴ It is a natural extension to the trust concept of responsibility to the community. In this case, it is a responsibility to enhance the empowering attributes of digital technology.

The *Guardian* has used the approach to considerable effect. A major investigation into tax avoidance by large corporations incorporated documents and analysis supplied by readers; a reporter used Twitter to gather eye-witness accounts and evidence of the London G20 demonstrations that led to the death of a protestor; Rusbridger used Twitter to mobilise public outrage at attempts by an oil trader, Trafigura, to suppress coverage of a parliamentary debate on its affairs; and the posting of hundreds of thousands of documents on MPs' expenses and the U.S. military in Afghanistan led to analysis by readers on a scale that could not be attempted within a newsroom.

The same principle lies behind the creation of *Data Blog* on the guardian.co.uk website. It is a repository of raw statistics that lie behind the news, which can be downloaded by readers in a number of formats. The data can be used to test or assess the local impact of government policy, to judge the validity of statements or actions by officials, or to track

²⁶³ The Hugh Cudlipp Lecture "Does Journalism Exist?" London College of Communication 25 January 2010. www.guardian.co.uk/media/2010/jan/25/cudlipp-lecture-alan-rusbridger

²⁶⁴ Rusbridger, Alan, "I've seen the future and it's mutual", *British Journalism Review* Vol. 20 No. 3 September 2009, 19-26.

social change.²⁶⁵ A ‘pledge tracker’ has also been started by the *Guardian*. It is similar to a monitoring tool, described later in this chapter, introduced by the *St Petersburg Times* in Florida after the election of President Obama, and tracks more than 400 pledges made by the coalition government in Britain since it came to office. It may be searched by policy area, party manifesto, winning party (Conservative/Liberal), difficulty level, or status.

The *Guardian* has become a champion of open source development (a move that runs counter to the desire of other newspaper groups to raise pay wall barriers), but which nonetheless offers commercial opportunities for Guardian News & Media (GNM). In March 2009, it launched Open Platform, which allowed software development partners to access its content databases and data stores to integrate *Guardian* material into their own websites.

Philosophically, the *Guardian* favours free access to information but it has made it clear that its current opposition to pay walls is “not an entrenched position”, and the emergence of new business models and new technologies may alter its stance.²⁶⁶

The enthusiastic embracing of both the Internet and collaborative information enterprise has not however, insulated the *Guardian* and the *Observer* from the cold realities of recession-gripped Britain. Both newspapers, in common with most of their contemporaries, suffered declining advertising and circulation revenue and were required to cut their costs. GNM was no stranger to redundancies. In 2002, there was a round of voluntary severances. However, by 2009 the effects of recession forced the company to implement widespread staff cuts. Voluntary lay-offs saw 68 editorial staff leave the *Guardian* early in the year²⁶⁷, and in November 2009 the company announced the need for a further 100 job cuts across all departments. Forty editorial staff took voluntary redundancy in January 2010.

The voluntary nature of GNM’s redundancy initiatives blunted some of the potential criticism of the cuts, and Rusbridger has been careful to insulate certain parts of the editorial operation. In the lead-up to the introduction of the 2009 cuts he said: “I’m

²⁶⁵ www.guardian.co.uk/news/datablog. An interview with the *Data Blog* editor, Simon Rogers, was published on the Nieman Foundation’s *Nieman Journalism Lab* website on 10 August 2010: www.niemanlab.org/2010/08/how-the-guardian-is-pioneering-data-journalism-with-free-tools/.

²⁶⁶ Chief Executive’s statement Guardian Media Group annual report 2010.

²⁶⁷ A further 82 staff from commercial operations also lost their jobs.

completely clear that I'm not going to cut news, I'm not going to cut foreign news, and I'm not going to cut comment." He told me in 2009 that he is determined to protect the *Guardian's* network of foreign bureaux. It is an attitude shared by other trustee-run news media, although government funding cuts to the BBC World Service has weakened the British public service broadcaster's ability to maintain its commitment:

American titles began by closing down foreign bureaux. That's the last thing I would want to do and I can take that decision on entirely anti-commercial grounds. Yet, weirdly, it might turn out in three years time to have been the commercial thing to do because no one else will have foreign correspondents and we might be able to syndicate our foreign coverage because we are beginning to look like a very unusual news organisation. Such decisions that are taken on non-commercial grounds can have oddly commercial outcomes.

Rusbridger does not enjoy budgetary carte blanche. He must argue year by year for the sum he believes necessary for the national newspaper division to discharge its editorial functions. His annual budget and capital expenditure proposals require the approval of the Guardian News & Media and Guardian Media Group boards as well as that of the Scott Trust. Each year he produces business plans, and admits that projects have been rejected when acceptable business cases have not been made. However, he is able to make decisions on non-commercial grounds because his newspaper has been exhorted by GMG to be "profit-seeking, not profit-making". In other words, it must operate efficiently, but does not face dire consequences when it operates at a loss – which in recent times has been the norm.

Table 7-1: Guardian News & Media (Nationals) annual loss

Year ended March	Turnover £m	Loss before exceptionals
2004	£227.5	£6.2 million
2005	£233.8 (+3%)	£18.6 million
2006	£237.4 (+1.5%)	£19.3 million
2007	£245.7 (+3.5%)	£15.9 million
2008	£261.9 (+6.6%)	£26.4 million
2009	£253.6 (-3.3%)	£33.7 million
2010	£221.0 (-12.8%)	£37.8 million

Source: Guardian Media Group Annual Reports

Rising annual losses were manageable when GMG's overall profits returned year-on-year growth for the group. However, the recession resulted in operating losses by the group in 2009 and 2010. While GMG's overall financial health was not in question (its combined cash balance and investment fund remained reasonably robust), the seemingly short-term shortfall led to not only staff reductions but operating budget cuts, as well as

moves to outsource production of some non-core elements of the newspaper such as Guardian Guides and to reduce rates for freelancers and casual employees. In total, in the year ended 28 March 2010, the national newspaper division registered savings of £26.2 million through cuts and restructuring.²⁶⁸

Losses are not uncommon in Britain's quality national newspapers. For example, pre-tax losses for the Times and the Sunday Times were £87.7m for the year to 28 June 2009, up from £50.2m in the previous 12 months.²⁶⁹ The *Financial Times* had been operating at a loss, but produced profits as the recession increased demand for business information by readers who were prepared to pay subscriptions for online content. The national press in Britain has also faced across-the-board staff and budget cuts. Early in 2009 for example, the Financial Times Group announced plans to cut 80 jobs and News International said it was planning to cut 65 editorial jobs across its four national newspapers, which included *The Times*. However, Rusbridger told me that he believes the *Guardian* is set apart from its contemporaries, and may in fact be the most stable because of the group business structure in which the newspaper operates.

7.1.3 The Guardian Media Group

In her final annual review of operations before becoming chief executive of easyJet in June 2010, the chief executive of the Guardian Media Group, Carolyn McCall, began thus: "GMG's constant aim is to provide long-term security for the Guardian and its journalism. Our strategy has been to surround our core publishing business, GNM [Guardian News & Media], with a strong portfolio of companies and investments to support its finances, provide funding for its journalistic development, and deliver long-term financial stability." That was the stability to which Rusbridger referred.

The core purpose of the vast majority of companies is to return dividends to investors, and organic growth is seen as a means of increasing that return. In 1977, the Manchester Guardian and Evening News had a turnover of £25 million. Twenty years later, the group's turnover was £348 million from the four divisions that represented national and regional newspapers, trade publications, and broadcasting. By 2007, the group turnover

²⁶⁸ Rusbridger's remuneration in 2009/10 (£411,000) was £33,000 less than in the previous year. The reduction was to his base salary and he receives no annual bonuses.

²⁶⁹ *Guardian*, 23 March 2010: www.guardian.co.uk/media/2010/mar/23/news-international-times-sun/print.

had peaked at £593.9 million, and ushered in the era of joint-venture operations that realised value in the enterprises and allowed the down-paying of debt.

Table 7-2: Current structure of Guardian Media Group

Division	Activities	Turnover (March 2010)
Guardian News & Media	<i>Guardian, Observer</i> guardian.co.uk	£221 million
GMG Radio	Regional radio stations under three brands	£50.1 million
GMG Property Services	Software companies and business-to-business websites	£8.9 million
Trader Media Group (j/v)	Classified publications and websites	£125.7 million (GMG share)
Emap (j/v)	Broad range of business-to-business media products	£70.5 million (GMG share)
Seven Publishing (j/v)	Contract magazines	£11.2 million (GMG share)
Total (including j/v share)		£487.4million
Investment Fund	Externally managed fund	£223.8 million invested capital

* The sale of GMG Regional Media to the Trinity Mirror Group was completed by March 2010.

Recession-led pre-tax losses by the group reached £171 million in the year to March 2010 (£96.7 million loss in 2009), but its operating loss was less than a third of this sum, the remainder being made up largely by non-cash impairment charges in its radio and Emap divisions. However, its financial position remains reasonably robust, with a £39.3 million increase in the value of its investment funds offsetting its cash outflow. The range of assets and the spread of economic risk (the group is not entirely hostage to the instabilities of the British advertising market) mean GMG is likely to recover from recession faster than many of its contemporaries. Hence, the *Guardian* remains protected by a portfolio that is unmatched by any other newspaper outside the more conventional forms of corporate ownership.

The director of strategy, Steve Folwell, explained to me in 2009 that there have been four levels of investment in GMG.²⁷⁰ The first is the core elements of *Guardian/Observer/guardian.co.uk* and “brand extensions from the *Guardian*”.²⁷¹ The second (which brings to mind the Wellcome Trust), is an investment fund (derived largely from unlocking some of the value of the businesses through joint ventures) that is diversified away from media “and the things that the *Guardian* depends upon”. The

²⁷⁰ Interview London 2 April 2009.

²⁷¹ GMG purchased an Internet-based company, Content Next, for \$US30 million as part of the *Guardian*’s strategic development in North America. It is considered to be part of this core investment.

third is in what Folwell describes as “safe-haven assets” that ought to deliver consistent returns over time. These investments are in media but are deliberately chosen because they do not have a high dependency on advertising – if the *Guardian*’s advertising volumes drop, these companies will not be subject to the same downturn. Until their sale to Trinity Mirror in a declining market, the regional newspapers formed part of the safe-haven portfolio, and had in the past produced what he calls “fantastic returns”. The fourth is in “riskier ventures” that have future potential and attributes that match the Scott ethos of community service.

If GMG is able to return about 10 percent on capital funds per year, it is able to fund what Folwell calls the “likely desires” of the *Guardian*. In prosperous times, the surpluses have been invested in a mix of “safe” and “riskier” assets. An example of the latter was GMG’s investment in a small local television station in Manchester called Channel M that had originally been university-based. It was an investment that could not be made purely on commercial grounds, and is indicative of the unusual basis of the GMG operations. Folwell explains:

We are probably less restrictive than any other corporate I have known in terms of investment criteria. There is not a strict investment scorecard where, unless it hits a hurdle rate, we’re not going to do it... We would assume a 10 percent return, which is consistent with most broadly based media assets (or would have until recently). That is used to inform investment decisions but it is not used as a hard-and-fast end point. We might invest in something that has an upside long-term and Channel M would have filled that description. What have we done in that area recently? Not a huge amount. The last big acquisition was Emap, which would fall into the safe haven category.

The investment fund is a result of realising some of the value that had built up in the Trader division of the group. Part of the sum raised from the sale of 49.9 percent of the division funded the joint venture acquisition of Emap, but the remainder was used to boost the group’s investment fund and cash reserves from a modest £35.3 million in 2007 to £260.8 million in 2010. Specialist external fund managers operate the investments in a diversified range of assets that reduce the group’s reliance on the U.K. market. It represents a significant financial shock absorber for the group in general, and the *Guardian* in particular.

However, the single-minded purpose of the group in protecting the Scott legacy creates issues outside the Guardian News & Media division. When market downturns lead to

staff reductions (in regional radio for example), there is a natural tendency for a redundant worker to see his or her sacrifice as a consequence of ‘protecting the *Guardian*’. The attitude was manifested in the 2009 full-page advertisement by *Manchester Evening News* staff, who alleged they were forced to endure cuts “to service the ongoing expansion of the *Guardian* – which is losing many millions but still paying executive bonuses”.²⁷² The symbiosis that needs to exist between the national newspaper and its sister divisions is one that must be carefully managed, and the *Guardian* must be seen to be pulling its weight (and sharing the pain), to prevent seeds of resentment germinating in other parts of the group.

7.2 The Irish Times Trust

7.2.1 Structure

The separation of the Irish Times Trust from the operation of the entities that it owns is even more pronounced than the buffer between the Scott Trust and the Guardian Media Group. The crisis of 2001 and resultant changes to its articles have reduced the Irish Times Trust to two roles: as the holder of the company’s shares, and a court of appeal to which deeply divided groups of directors may resort after jumping a legal hurdle. The first role is unchallenged, and the second has been avoided.

No longer subservient to a dominating managing director, the current company board membership is based on business and administrative experience. The Trust is represented on the company board by three of its members with strong administrative background including the Trust chair, Ruth Barrington, who is a former chief executive of the Health Research Board (the chief funding agency for competitive, peer reviewed health research in Ireland). There are four independent non-executive directors including the board chairman, David Went. Each independent director also has a strong business background. Went is the former group chief executive of Irish Life & Permanent, the third largest financial institution in Ireland, and was previously chief executive of Coutts Bank, the international private banking arm of the NatWest Group. The remaining members of the board are the managing director, Liam Kavanagh, the editor, Geraldine Kennedy, and her deputy, Paul O’Neill. Kavanagh was an existing

²⁷² Advertisement, *Guardian* 31 March 2009 p. 22.

executive director when he replaced Maeve Donovan as chief executive. Kavanagh and Kennedy report independently to the board and receive identical remuneration.²⁷³

The Trust itself, in addition to the three trustee-directors, is comprised of a trade union representative, sports administrator, retired diplomat, solicitor, and arts administrators. Both the republic and Northern Ireland are represented on a board that reflects a tendency to enlist trustees from among the ‘great and the good’.

If any criticism could be levelled at the make-up of the board and the Trust, it would be that for all the social and commercial attributes, there is a significant gap – a conspicuous absence of news media expertise apart from the three executive directors. If those executives need advice or independent perspectives on the conduct of the newspaper, they cannot look to the Trust or the board for guidance based on experience. When they seek to justify decisions or policies to the board, they do so to an essentially lay membership. The Irish Times Limited is not of course, alone among media companies in failing to co-opt independent industry expertise on to its board, but the 2001 restructuring was a missed opportunity to balance industry knowledge and commercial prowess by veering entirely toward the latter. The desire to increase the independent commercial input on the board is understandable given the financial crisis in which the company found itself in 2001, but in the absence of any journalistic or newspaper executive experience on the Trust (in contrast to the Scott Trust and Poynter Institute), exposes a potential weakness.

The Trust meets regularly following monthly board meetings, and is briefed on board matters by its nominees under a policy that trustees should be kept fully informed on business activities. The chairs of the Trust and the board meet frequently between board meetings (on which both sit) in what David McConnell described to me as “a continuous working relationship that I don’t think is onerous and which absolutely is not meant to be directive but supportive”. The editor and managing director also formally report twice yearly to the Trust, and brief trustees “by way of information” on any major issues that arise in the interim.

The board meets its statutory obligations in the public reporting of its annual accounts, but has not been moved to emulate the fulsome annual reports and social audits

²⁷³ The editor and managing director each received €319,000 in 2009 after taking a 20 percent cut in a round of pay reductions.

published by the Guardian Media Group. The Trust continues to maintain a dignified silence. Media historian Mark O'Brien, who I interviewed in Dublin in 2009, remains highly critical of the Trust's lack of public exposure:²⁷⁴

The Trust is a secretive body in many ways...If you stopped the ordinary Joe or Jane Citizen on the street and asked them who's on the Irish Times Trust or what they do I don't think even the regular readers of the newspaper would appreciate that it's run by a trust, what it means to be run by a trust, and what that means for the journalism of the newspaper.²⁷⁵ If only the Trust came out into the limelight – not in a dictatorial way – and said 'we have oversight, we're not interfering but we will give an assessment every year of what we think of the journalism'.

O'Brien's desire for an annual assessment by the Trust is unlikely to be realised. Even the Scott Trust stops short of making such a judgement on the editorial performance of the *Guardian*. The Irish Times Trust will not venture into an area where it may be accused of attempting to exert control over the editorial content of the *Irish Times* – which McConnell describes as “forbidden territory”. While the board is responsible for editorial policy and the appointment of the editor, McConnell cannot recall any instance in recent memory when either the trustees or directors have called the editor to account for editorial content.

Nor does McConnell believe it is the role of the Trust to set future business strategy, a task that he believes is best left to company executives. “The Trust is not set up to second guess management,” he told me. “It's not a body of experts on newspapers.” Rather, the Trust is a body whose role is essentially as the custodian of reserve powers. If for example, an editor was consistently failing to observe the editorial requirements set out in the company's articles, the Trust would be forced to act, and short of some other solution, remove the editor. Similarly, with responsibility for the appointment of directors, the Trust would be capable of changing the make-up of the board if it felt members were failing to meet the company's objectives.

McConnell is however, strongly of the view that such powers should never be held over management or directors. They should he says, never have to be used, or even threatened to be used. He sees a free flow of information between the three elements of the governance structure as the key to a good working relationship. In his view, the

²⁷⁴ Interviewed Dublin 27 March 2009.

²⁷⁵ The Trust's membership, along with the names of the company directors, is displayed on the irishtimes.com website through a footer link marked 'Company information'.

governance structure has a cohesion that has avoided tension or conflict: “In a funny sort of way, I’d like to think that if, as a group (the senior management, directors, and trustees), were in a room discussing something – we might do that to discuss something but we haven’t – you might find it difficult to determine who was from what.”

The contemporary Irish Times Trust may appear to be a shadow of its former incarnation, but in fact prior to 2001 the Trust represented little more than a rubber stamp to ratify the wishes of the assertive Major McDowell. Its present form is a more legitimate use of the trust structure, and one with which McConnell feels comfortable. It may be seen to have handed power to the commercial board but the realities of modern news media business required no less.

7.2.2 The editor

The explicit nature of the editorial objectives set out in the company articles requires the editor, Geraldine Kennedy, and her staff to provide forms and levels of editorial content to which other Irish publications are not bound. The objectives also act as a guarantee against attempts to curtail such coverage. They represent the most detailed formal mandatory prescription for the editorial policy in any of the newspapers examined in this study, and exceed even those of the *Toronto Star* that were laid down in the Atkinson Principles (see 4.3.2). Kennedy sees the objectives as a mandate that allows her to field foreign correspondents (Objective 2e: The promotion of understanding of other nations and peoples and a sympathetic concern for their well being); provide more coverage of arts and culture than other Irish newspapers (Objective 2c: The promotion of a society where the quality of life is enriched by the standard of its education, its arts, its culture and its recreational facilities...); and carry more political coverage than many newspapers (Objective 2a: The support of constitutional democracy expressed through governments freely elected).

The objectives are deeply inculcated in the editorial department and strongly reflected in the content of the newspaper. When I asked her to sum up the newspaper, the memorandum of association’s definition of the *Irish Times* rolled effortlessly off Kennedy’s tongue:

The purpose of the *Irish Times* is to publish an independent newspaper – primarily concerned with serious issues – for the benefit of the community throughout the

whole of Ireland free from any sort of personal, party political, commercial, religious or other sectional control.²⁷⁶

She sees the objectives (including those relating to accuracy, fairness, informed opinion and minority interests) as “making us what we are” – a set of “positives” that are used to guide the operation of the newspaper in practice. They also provide a ‘unique point of difference’. The objectives apply only to the *Irish Times* and its website, and not to the other publications in the company’s stable. Kennedy acknowledges that an attempt to apply the objectives (and their content requirements) to the company’s local newspapers or to the Metro free newspaper that circulate in Dublin (see 9.2.3) would adversely affect their ability to compete in their markets.

Political coverage is a strong example of the way in which the objectives manifest themselves in the *Irish Times*, which maintains a staff of four political correspondents plus a ‘colour’ writer on politics. It is one of a small number of newspapers in the English-speaking world (and unique in Ireland) that continues to carry pages dedicated to parliamentary coverage (the *Dáil Report*). Kennedy admits that this level of coverage is reinforced by her own background as a political reporter and former Progressive Democrat Teachta Dála.²⁷⁷ She concedes that it may not be the best-read page in the newspaper, but this does not detract from its importance:

Our coverage of Parliament is a very conscious effort to inform the public about politics so that they can cast their vote in the proper (informed) way – whichever way they want. What we’re basically saying [to readers] is that what happens in politics is important to you and your future and you should engage in it.

Kennedy strongly believes that the newspaper should uphold the institutions of politics and Parliament “where we can”, but the *Irish Times* has a proud record of uncovering political misdeeds, sometimes at significant risk. The most recent example led to a four-year legal battle. In August 2009, the Irish Supreme Court²⁷⁸ upheld an appeal by Kennedy and one of the newspaper’s journalists against an order requiring them to answer questions about the source of an article published in 2006, that revealed payments made to the former Taoiseach (prime minister) Bertie Ahern when he was minister of finance. Ahern later resigned. Kennedy had controversially destroyed

²⁷⁶ Interview Dublin 26 March 2009.

²⁷⁷ A member of the lower house in Parliament – Kennedy sat from 1987 to 1989.

²⁷⁸ In spite of finding for the newspaper, the Supreme Court ordered costs of almost €600,000 against the *Irish Times*, citing the destruction of evidence. The company in May 2010 took the matter to the European Court of Human Rights.

evidence (that could lead to identification of the informant) rather than risk seizure. She later said the appeal decision had finally enshrined in Irish law the right of journalists to protect sources. O'Brien has described the drawn out saga as an example of the *Irish Times* fulfilling its main function of "exposing the underbelly of Irish political life to public scrutiny" (2008, 271).

Within the boundaries of the editorial objectives, Kennedy enjoys a similar level of editorial independence to Rusbridger at the *Guardian*. They are nonetheless, very different personalities, and this is reflected in the different approaches to their role. Where Rusbridger is a product of the *Guardian* collegiate style, Kennedy practices a more traditional form of editorship based on a clearly defined hierarchy. "One of the very strange things about this place – and maybe newspapers generally – is how autocratic the structure is," she says. "They're not democracies, and even though a lot of my reporters may be very left-wing and may disagree with me, they do respect that the editor has the final word."

Kennedy's comments, taken together with those of Rusbridger and the staff of the *St Petersburg Times* later in this chapter, demonstrate a further key finding in relation to trustee-run newspapers. Although there are prescriptions for the journalistic values to be followed, the governance structures allow considerable freedom to accommodate both the personality of the editor and the culture of the newsroom.

Kennedy's relationship with the commercial side of the business is also clearly defined. She has no direct contact with advertisers, although she reserves the right to reject advertisements that fail to meet standards of taste or guidelines set by the company. She is however, a commercial realist: "There is a recession and you'd like to have more advertising than you have at the moment so you're not going to go out of your way to turn down advertisements...but our advertising people understand that (standards have to be maintained). If an advertising agency is on to them [following the rejection of an advertisement], our people will say 'no, we don't do that', because our advertising department know it all works toward the authority and integrity of the paper."

The size of the newspaper each day is decided by Kennedy, which continues a tradition on the *Irish Times* that predates the establishment of the Trust. Again, commercial realities prevent her from profligate use of editorial space, and she judges pagination on

the value of the day's editorial coverage, the capacity of her staff to fill the editorial columns, and the maintenance of editorial/advertising ratios.

Her relationship with the managing director is determined by established lines of authority: "The way I look at it, her expertise is in her area and mine is in mine"²⁷⁹, although at the time of Donovan's retirement there were rumours in the Irish press of a rift between the editor and the managing director, which Donovan dismissed as "a natural and healthy tension", that was "part of any media organisation".²⁸⁰

Kennedy does not feel a conflict of interest over being a director as well as editor:

I don't see any difficulty. My primary responsibility, and I think the board regard it as well, is to protect the authority of the newspaper and the independence of the newspaper and at any stage I can say 'no, you can't do that'.

In theory the editorial policy is set by the board, but it is apparent that directors have been willing to leave such matters to the editor (although she may brief directors on her decisions). Her editorial independence (like that of Gageby and Brady), has not been challenged, although her status did come under attack in 2004 when there was an attempt to make the editor subordinate to the managing director. The move was opposed by Kennedy, and eventually rejected by the Trust (O'Brien, 270-1). In the event of a serious challenge to her editorial independence by the board, she could again seek the support of the Trust. However, there is no provision under the company articles for a direct formal appeal by the editor to trustees. To do so formally, she may have to approach the matter as a director and invoke the "significant policy" clause under which the Trust's representatives on the board could have an effective right of veto. There have been no signs however, that such a threat to her authority is likely.

Kennedy readily acknowledges the role of the Trust in underpinning the newspaper's objectives, and believes that it functioned as "a great protection" against a takeover that would almost certainly have occurred during the financial crisis of 2000-2001, if not before.

However, neither the trust nor the board have been able to shield the editorial department from the impact of the crisis in the Irish economy that began to unfold late

²⁷⁹ The interview with Kennedy preceded the resignation of Maeve Donovan and her replacement by Liam Kavanagh.

²⁸⁰ Noonan, Laura, "Donovan steps down from 'Irish Times'", *Irish Independent*, 6 February 2010.

in 2007. Like Rusbridger, Kennedy has had to contend with both staff cuts and reduced budgets. Sixty staff from the newspaper were made redundant in 2008 under what was termed a “voluntary parting scheme”, and in 2009, pay cuts of 5-10 percent for staff were introduced, with reductions of 15-20 percent for senior executives.²⁸¹

Like all editorial departments, the *Irish Times* has high fixed costs, related largely to staffing. Budget cuts have reduced the amount of discretionary spending available to Kennedy. For example, she says that while coverage of local government has not been abandoned, rather than attend every county council meeting, the news desk now applies a “news yardstick” to determine coverage.

Kennedy has guarded her network of foreign correspondents, which is unusually large for a newspaper with a circulation of approximately 106,000. It maintains correspondents in London, Belfast (2), Washington, Paris, Brussels, Berlin, and a freelance writer on a retainer in China. Two staff correspondents were withdrawn in 2002 but the newspaper has permanent stringers (contract freelancers) in the Middle East, South America, and Sydney. Her views on foreign coverage run parallel to those of her counterpart on the *Guardian*: “This is a core part of what we are. Why do we have correspondents? We are a neutral country and we want to give a uniquely Irish perspective on world events.” The newspaper’s foreign coverage is influential. Conor O’Clery, who established the newspaper’s Beijing bureau in 1996, credits the *Irish Times*’ coverage of China’s economic potential, with bringing about a change in Irish foreign policy.²⁸²

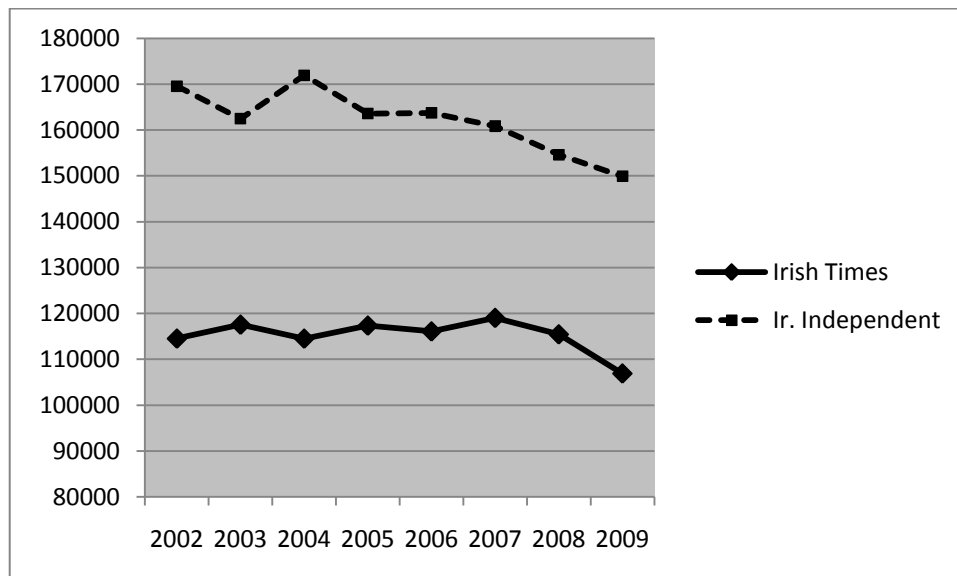
The *Irish Times* was an early entrant into the Internet, beginning in 1994 with simple text-based online pages. In 2008, the online news staff that worked for the company’s website Ireland.com were integrated into the *Irish Times* newsroom, and the site was rebranded as irishtimes.com. In October 2010, while attracting 2.3 million unique visitors a month, it was judged the country’s best website. The online presence has experienced significant growth. The number of unique users rose from a daily average of 48,218 in March 2005, to 149,212 in November 2009. The number of page impressions a month rose from 13 million to 23 million over the period. The Internet

²⁸¹ A voluntary redundancy scheme aimed at reducing the staff by 40 workers, had also been offered in 2005.

²⁸² O’Clery, Conor, “Keeping an eye on the world”, *Irish Times* 150th anniversary supplement, 27 March 2009.

statistics are in contrast to the circulation of the newspaper itself, which was relatively static throughout 2004-2007, before going into decline during the recession. Its main rival the *Irish Independent*, had a higher circulation but its decline began earlier.

Figure 7-3: Rival Irish newspaper circulations 2004-2009



Source: National Newspapers of Ireland

Given the relative stability of circulation of the *Irish Times* 2002-2006, it is reasonable to assume that the recent decline is recession-based. The economic conditions have had serious consequences for the company.

7.2.3 The Irish Times Limited

The Irish Times company is small by comparison with both the Guardian Media Group and Poynter's Times Publishing Company. It had a turnover in 2009 of \$US132 million, compared to GMG's turnover of \$US453 million and the Times Publishing Company last published total income (2007) of \$US307 million.²⁸³ Its commercial activity in the first decade of the new millennium is a story of growth bookended by losses. The company recovered quickly from the crisis that led to losses of £IR2.35 million (€2.98 million) in 2001 and £IR2.8 million (€3.55 million) in 2002, and posted a profit in 2003.

²⁸⁴ This signalled a five-year run of steadily rising turnover and operating profit that was

²⁸³ \$US used for comparative purposes. Irish Times Limited and GMG turnover converted at prevailing exchange rates on 31 December 2009.

²⁸⁴ Euro conversion, for the purpose of comparison, is at the rate (0.787564) prevailing when the new currency was introduced in 2002. Restructuring costs took the total 2001 loss to £IR21.7 million (€27.55 million).

brought to an abrupt end in 2008, and was followed by even harder times as the decade drew to a close.

Table7-3: Irish Times Limited profit and loss 2003-2009 (€ millions)

Year	Turnover	Operating profit	After-tax profit
2003	95.18	6.97	8.39
2004	104.35	15.27	14.98
2005	113.25	18.08	12.98
2006	129.42	22.66	37.29
2007	137.19	21.92	18.76
2008	124.26	6.41	(37.85)
2009	92.12	(4.62)	(27.88)

Source: Irish Times Limited Directors' Report & Annual Accounts 2004-2009

Ireland's Gross Domestic Product declined by 3.04 percent in 2008 and 7.096 percent in 2009. The company's newspaper advertising revenue mirrored this contraction and declined by 23 percent and 42.5 percent in these years. Advertising is a winner in a boom economy but the recession has highlighted structural vulnerabilities in the reliance on advertising-based revenue across the various businesses in the group.

The Guardian Media Group embarked on a strategy to reduce its reliance on the United Kingdom advertising market. The Irish Times Limited investment strategy has been tied to both the Irish market and to businesses that are closely allied to the company's core media competencies and markets.

In 2004, there was a robust debate over the future of the company, with one group of directors wishing to see a diversification programme to safeguard future earnings and another group warning that diversification could compromise the primary task of the company which was to publish the *Irish Times* (O'Brien, 271). The outcome was a series of acquisitions and start-ups that appear to be an attempt to meet both objectives, but which have failed to provide a buffer against a severe downturn in the Irish economy.

In addition to the *Irish Times*, the company owns or has shareholding in the following:

- Ironics – electronic publishing and training services (100 percent).
- MyHome – real estate website (100 percent).
- Gazette Group Newspapers – community newspapers (51.98 percent).
- Gloss Publications – magazine publishing (50 percent).

- Sortridge – advertising sales representation (50 percent).
- Fortunegreen – Free metro newspaper joint venture (33.3 percent).
- Entertainment Media Networks – online entertainment (31.7 percent).

Itronics was established in the 1990s to manage the company's Internet developments. The subsidiary has generally been loss-making or only marginally profitable. Myhome.ie, a leading online property portal which operates through a group subsidiary called DigitalworX, was bought by the Irish Times in 2006 at the height of the property boom for €50 million. With hindsight, Kennedy has admitted that the company paid "way over the odds" for the online service. She told an interviewer on RTÉ in 2010 that she now regretted the purchase, which she described as "madness" despite the fact that the *Irish Times* needed an online real estate presence.²⁸⁵ The qualification indicates her regret related to the amount paid for the business as the long-term strategy, which shores up the company against migration of classified advertising to the Internet, is sound. Although profitable, the website has faced both stiff competition and a severe decline in the housing market. The Irish Times was forced to write down the value of goodwill in the subsidiary in 2008 and 2009.

In 2007, the company took a 47 percent holding in the Gazette Group, which publishes eight free community newspapers in the outer suburbs of Dublin, and later raised this to a majority stake and took management control. The group had accumulated losses of €3.3 million up to June 2010, after which the Irish Times Limited installed a new managing director. The group then announced the redevelopment of its newspapers, which had increased their combined circulation by 10.13 percent in the first half of 2010 but operated at a loss.²⁸⁶ The company's half share in the women's magazine *The Gloss*, has also failed to produce dividends. After sustaining losses it ceased to be a stand-alone magazine in 2009 when it began to be inserted into the *Irish Times* on the first Thursday of every month. Kennedy was said to have opposed investment in the magazine.²⁸⁷

²⁸⁵ Interviewed 28 August 2010 by Charlie Bird on RTÉ radio "Marian Finucane Show".

²⁸⁶ "Irish Times increases investment in gazette Group", www.adworld.ie (online portal of *Irish Marketing Journal*) 3 September 2010.

²⁸⁷ "Owners vow to stick with troubled magazine", *Irish Independent*, 26 April 2009.

The FortuneGreen joint venture with Associated Newspapers introduced the *Metro Ireland* free newspaper to Dublin in 2005. In 2010 it merged with the rival *Herald AM* after the free newspapers lost an estimated €11 million.²⁸⁸

The Irish Times Limited had the great misfortune to begin its expansion programme shortly before the Irish economy went into free-fall, and much of the criticism of its investments have been with the benefit of hindsight. Nonetheless, the lacklustre performance of the subsidiaries and joint ventures prompted the *Irish Times* chapel of the National Union of Journalists (NUJ) to pass a motion in June 2009, saying that “on-going investment in loss-making projects poses a serious threat to employment” at the newspaper.²⁸⁹

Some aspects of its approach have helped the business. It is debt averse, and its acquisitions and the construction of a modern printing plant at CityWest (together with a €20 million expansion in 2004 that increased its value to €70 million) were funded from revenue. This has prevented the company from being faced with the debt servicing burdens that have beset groups (such as the rival Independent News & Media) that borrowed heavily to expand. However, timing has sometimes been unfortunate. The printing plant was opened amid the 2001 crisis, and the expansion used up reserves that as the future unfolded, would have been useful to say the least. The company did however sell its home of 124 years in D’Olier Street²⁹⁰ for €22.2 million at the height of the property boom in 2006, which was the year it paid a boom-time price for Myhome.ie.

Trust ownership, as we have seen with the *Guardian*, is no guarantee against staff cuts and the Irish Times is no exception. It announced 40 redundancies in 2005, 60 in 2008, and 90 in 2009. The latest round of voluntary severance had a major effect on the total payroll, a cost centre that had been rising in spite of efforts to contain staff numbers in the group.

Significant staff reductions imposed heavy restructuring costs on the company. Exceptional charges relating to write-downs and restructuring costs amounted to €45.8 million in 2008 and €19.3 million in 2009. The company has also suffered exceptional

²⁸⁸ “Rival Dublin freesheets Herald AM and Metro Ireland to merge”, *Guardian*, 2 July 2009.

²⁸⁹ “*Irish Times* Chapel calls for change in investment policy”, *Irish Journalist*, Summer 2009, p. 2.

²⁹⁰ It moved to leased premises in Tara Street, its current location.

paper losses in its pension fund through the declining value of its investment portfolio in the recession.

The short-term picture of the Irish Times Limited appears negative, but it retains inherent strengths. Many of its losses are attributable to one-off extraordinary costs, others are balance sheet items that do not affect operating performance. And the company has sufficient cash (a €13.3 million bank balance) to cover its operating losses. The managing director Liam Kavanagh, expects the company to break even in cash terms in the 2010 financial year, although depreciation charges are likely to lead to a further loss. Kavanagh replaced Maeve Donovan in March 2010. She has been characterised in the Irish press as the architect of the company's "investment and diversification" strategy.

7.3 St Petersburg Times

7.3.1 Structure

The role of trustees in the running of the *St Petersburg Times* differs fundamentally from its two counterparts. Indeed, apart from holding the shares in the holding company in a manner that prevents their sale, the trustees of the Poynter Institute effectively have no other part to play in the commercial enterprise. The functioning of the Times Publishing Company and its titles is an enduring recognition of Nelson Poynter's third principle that states in part, that "a newspaper is so individualistic in nature, that complete control, and thereby responsibility, should be concentrated in an individual". Control of the company is firmly in the hands of Paul Tash, who is chairman, chief executive, and until he relinquished the title in May 2010 to concentrate on business operations, was editor of the *St Petersburg Times*. It is a position that, as one observer put it, gives Tash "the kind of operational clout that Donald Graham or Arthur Sulzberger might envy".²⁹¹

Tash's hold extends to chairmanship of the Poynter Institute's board of trustees, but that board is no longer is dominated by company executives. Apart from Tash, only the president of the group's Florida magazine company and the chief financial officer of the *St Petersburg Times* sit on the 11-person board, which also includes the institute's

²⁹¹ McCollam, Douglas, "Somewhere East of Eden: Why the St Pete Times model can't save newspapers", *Columbia Journalism Review*, March/April 2008, pp. 50-51.

president Dr Karen Dunlap and dean of faculty Stephen Buckley (seconded from the *St Petersburg Times*). No company executives sit on the institute's national advisory board that was recently reduced from 18 to 13 members drawn from prominent academic and media institutions.

The board of the Times Holding Company consists only of Tash and three company executives, and Tash exercises all voting rights to the shares held by the institute. With the exception of Dunlap's presence, the board of directors of the Times Publishing Company – the principal operating entity, which publishes the *St Petersburg Times*, bears a closer resemblance to a group executive management team than a conventional board. Below the Times Publishing Company board are three subsidiary boards, each chaired by Tash.

The vast majority of the company's operations are in publishing. In 2009, the company sold the Washington-based publishing interests that had been nurtured by Nelson Poynter and his first wife. In July, *Congressional Quarterly* and its weekly record of congressional activity, *CQ Weekly*, were sold to the Economist Group, reportedly for more than \$US100 million, and in November *Governing* (established after Poynter's death) was sold to the California-based media company, e.Republic.²⁹² As a result of these sales, the activities of the company are not only largely restricted to publishing but also are now firmly based in Florida.

Table 7-4: Operations

<i>St Petersburg Times</i>	Seven-days-a-week morning newspaper
<i>*tbt (*Tampa Bay Times)</i>	Free weekday daily newspaper
<i>tb-two</i>	Free weekly newspaper distributed to students
<i>Florida Trend</i>	Monthly business magazine
Tampa Bay Newspapers	Publisher of six weekly community newspapers plus community monthly
Senior Living Guide	Services directory for senior citizens
Tampa Bay Expos	Events marketing

There is a focus on marketing within the group, which delineates its structure by brands rather than divisions. The traditional circulation department found in most newspapers was reorganised in 2006 to become an audience development department, with a strong

²⁹² "Times Publishing Selling *Governing* Magazine to e.Republic", paidcontent.org, 20 November 2009.

sales and market development emphasis. Brand managers were appointed for each publication, with control over budgets to increase audiences.

There is a strong sense that there is room for initiative but it is equally clear that major decisions must have the approval of Paul Tash and that much of the development of the group is driven by him. This suggests that Tash has extraordinary power, and in a strictly structural sense that is the case. However, it is power exercised through a process of agreement and delegation. Executive control of the Poynter Institute is in the hands of Karen Dunlap, but while the breadth of commercial activities require Tash to delegate responsibilities, Tash is in firm control of the business. As he put it when I interviewed him in April 2010: “She has her day job, and I have mine”.²⁹³ Tash’s recent relinquishing of the role of editor and the structure of subsidiary enterprises are examples of his willingness to delegate responsibility within the company’s publications. The delegation extends to a high degree of autonomy within the editorial board of the *St Petersburg Times*, although as editor, Tash has regular oversight of the paper’s editorial opinion columns.

Dunlap told me the relationship between the institute and the company is clear: “we own it, but we don’t manage it”, and that there is a clear distinction between her role as operational chief executive of the institute, and Tash’s “fiduciary responsibility of bringing together the trustees to help in the strategies and the big operations” which she then carries out. While acknowledging potential conflict of interest through also sitting on the Times Publishing Company board, Dunlap states that in reality, no conflict has arisen because of the climate of trust that exists between Tash and herself, and the fact that “it is in the best interests of the institute to have a strong newspaper.”²⁹⁴ It appears to be a relationship that owes more to personal rapport than institutional framework. Such a climate of trust is also present in the other two newspapers we have been examining. Dunlap told me:

“We talk regularly – it’s showing mutual respect and trust – and have a monthly lunch. We’ll bring up problems and he lets me know sometimes about things he thinks would be a good idea and I kid him sometimes about his patience and willingness to accept that we don’t do it that way...By the time he goes forward to the board (of trustees) I’m in agreement with what he is doing. We discuss things formally and informally. If we were having a finance committee meeting and

²⁹³ Interviewed St Petersburg FL, 13 April 2010.

²⁹⁴ Interviewed St Petersburg FL, 15 April 2010.

there were some things that he had to do formally there, it would be very unusual for anything to come from that meeting that he and I had not agreed on in advance. The board is generally agreeable to those decisions but it's the normal trustee process: If the finance committee approves something it takes it to the board and the board has an opportunity to discuss, to object...I don't detect any lack of free expression but we don't have significant disagreements in the board. I credit the chairman for that. He does a good job."

This separation of roles is important because the Poynter Institute is ever mindful of the need to maintain an arms-length relationship with both the Times Publishing Company and the *St Petersburg Times* in order to secure its 501(c)3 tax-exempt non-profit status.²⁹⁵ In order to maintain that status, the institute is also required to refrain from any form of political advocacy. It is important therefore, that it be seen to be distanced from the newspaper's endorsement of political candidates and its stance on political issues. The association is handled with the finesse of diplomatic relations, and manifests itself in ways that may at first sight appear excessive, but which illustrate the determination to protect not only the institute's non-profit tax status but also its standing as an educational entity – which is vital to the preservation of the Poynter Institute's ability to hold all of the Times Holding Company shares. For example, there are established policies that require the *St Petersburg Times* to pay the going rate for any use of Poynter facilities or staff, and to avoid employing journalists immediately after they complete institute courses. The company can second personnel to the institute – Stephen Buckley (previously managing editor of the newspaper), is an example, but the process cannot operate in reverse. It is a peculiarity of Poynter's tax status, but the effect is similar to the separation between "owner" and newspaper achieved through very different means at the *Guardian* and *Irish Times*. A similar tax status prevents some of the start-up operations discussed in Chapter 8 from offering commercial services.

The unusual nature of the Poynter Institute's ownership of a major Florida commercial enterprise – *Florida Trend*, ranked the Times Publishing Company at 90th in a list of Florida's top 200 private companies (by turnover) in 2008, has led to periodic calls for greater disclosure of financial information. The legal disclosure requirements on the institute do not extend to detailed information on the activities of the Times Publishing Company, which as a private company, is not obliged to report publicly on its financial activities each year. This aspect of the company's policy, which in terms of corporate

²⁹⁵ The Times Publishing Company is a tax-paying entity.

transparency stands at the opposite end of the spectrum to the Guardian Media Group, renders it vulnerable to criticism.

The only area which the company makes full disclosure of financial information is the St Petersburg Times Fund, a non-profit offshoot that makes grants to non-profit organisations and offers scholarships to college students. Tash is the fund's president. Established by Nelson Poynter in 1953, it has made grants to non-profits worth \$US17 million, and awarded scholarships and fellowships worth \$US4.7 million. It has a \$US10 million investment fund and in 2009 distributed \$US780,000.

Could this lack of transparency be due to the editorial and commercial responsibilities, that in accordance with Nelson Poynter's wishes, are in the hands of one person? Would there be greater internal pressure to open the company books if the editor-in-chief was not also the chief executive? One can only surmise an answer. The Irish Times Company meets its legal obligations (as does the Times Publishing Company) and so too does the Guardian Media Group, but the latter is at the high end of disclosure. My own belief is that this is a reflection of Alan Rusbridger's broad influence on his group.

In recent years, the Poynter Institute has been active in seeking grants from philanthropic organisations²⁹⁶ such as the Knight Foundation, but its sustained source of income has been dividends from the publishing group. The institute's annual tax return has until recently, given a glimpse of the Times Publishing Company's growth (and some indication of the impact of recession) but also points to the consistency of the company's contribution to the institute. Although the investment income also reflects the proceeds from investment funds worth approximately \$US20 million, the bulk is derived from the subsidiaries of Times Holding Company. After investment income was almost halved in 2007, the contribution was above average in the following year to largely restore the balance. The company makes no contribution beyond the dividend.

²⁹⁶ Contributions and grants amount to approximately \$US1 million a year.

Table 7-5: Sustaining the institute

Year	Times Holding Company total income (\$US)	Poynter investment income(\$US)*
2002	262,763,621	6,464,408
2003	280,205,139	6,339,122
2004	296,000,000	6,360,074
2005	317,278,240	6,492,238
2006	335,000,000	6,766,929
2007	308,000,000	3,695,344
2008	n/a ²⁹⁷	8,675,388

* Includes SP Times and income from investment portfolio.

There is a strong attachment within both organisations to Poynter's views on independent ownership, which Tash says allows the company to think beyond the immediacies that inhibit market-listed companies. This has been particularly apposite in the difficult business environment that has beset Florida for the past three years. Tash says that while he does not have to worry about a share price, he does have to worry about getting money to the Poynter Institute, but for its part the institute "has a sense of pride in owning an accomplished journalism organisation and that it would be directly counter to its own mission (to uplift journalism around the world) by demanding profits that forced it into being a plundering owner of the newspaper". In a 2007 interview with the *New York Times* he said: "We don't put out a newspaper to make money, we make money so we can put out a great newspaper."²⁹⁸

The table above illustrates the *raison d'être* for a structure is essentially unchanged from the model created by Poynter's will – The *St Petersburg Times* exists to sustain a school of journalism, and that school resides its trust in one person to steer the commercial fortunes of a newspaper it is committed to keeping strong.

7.3.2 The chief executive

There is a safe deposit box in St Petersburg that contains the name of Paul Tash's successor. Tash chose the name, in fulfilment of Nelson Poynter's wish that each leader appoint his own successor and as insurance against an untimely demise, committed it to

²⁹⁷ The Poynter Institute's 2008 tax return did not report Times Holding income, but registered a holding company loss for the year of \$US3,399,201.

²⁹⁸ Krauss, Clifford, "Balancing Bottom Lines and Headlines", *New York Times*, 30 September 2007.

the vault on 14 May 2004 when he assumed command of the Times Holding Company and all of its offshoots. Only he knows whether the same name remains in the box six years later. He has the sole right to choose his successor without consultation, and is under no obligation to remain with his initial choice. Nor is he obliged to signal, before announcing his retirement (compulsory at 65), the identity of the new chief executive although it is almost certain that he will do so. It remains to be seen whether the elevation of Neil Brown to the editorship of the *St Petersburg Times* is part of a similar apprenticeship. Tash has almost a decade before he reaches the compulsory retirement age.

In his own case, he served an apprenticeship under Andrew Barnes that made it increasingly clear over time that Barnes had chosen him as his successor. Barnes publicly acknowledged his intentions in an article in the *St Petersburg Times* in 1999²⁹⁹ and told the *American Journalism Review* in 2004 that he had Tash in mind as his successor since 1992, when he invited a dozen candidates for the executive editor's job to answer the question: "What do you see as the main challenges and opportunities facing the company and what would you do if you were in charge?" Barnes himself had been chosen by Gene Patterson in 1984 and assumed the role of chairman and chief executive in 1988.

A member of the *St Petersburg Times* staff told me during anonymous interviews at the newspaper, that before Tash was revealed by Barnes as his likely successor there were several other people who had been mentioned as candidates: "They scared the hell out of me, and when Tash was appointed, all I could say was "thank God"."

Nickens believes that Tash exemplifies a culture that is instilled partly through the Poynter Institute's ownership of the newspaper and its values, and partly through a steady and logical progression of successors "who have come from the inside, from within the system, and who have been groomed on a long glide path". Nickens adds that while the institution is bigger than one person, the chief executive puts his imprint on it: "It's a matter of emphasis and direction and reacting to the changing environment – within an unchanging foundation of the values and the sort of journalism that we do." For his part, Tash acknowledges the power of his position, and when I asked what

²⁹⁹ Barnes, Andrew, "Who owns the St Petersburg Times? Why it matters to readers", *St Petersburg Times*, 26 December 1999.

checks and balances are imposed upon him, replies that he subscribes to the view, expressed by Barnes, that he “answers to an idea”:

I subscribe to that idea. I might express it a little differently but I answer to conscience, I answer to the terrific legacy of Nelson Poynter. I don't mean that in the sense that everything must be maintained as it was on the day he died but it is a tremendous thing that the man did – giving away his life's work in order to preserve it. I take that generous, hugely generous, decision that he made as a tremendous obligation. I will be the last chairman (God willing and unless something weird happens) who has a memory of him as a living human being. So you ask how do you inspire that sense of purpose and duty and possibility in those who come later and don't remember this man.

Tash, like those before him, demonstrates an almost religious attachment to the memory of Poynter and what he would expect. It is a belief system that permeates the *St Petersburg Times* and the Poynter Institute, just as there are physical reminders such as photographs, framed copies of the Poynter Principles and (at the Poynter Institute) Poynter's Royal typewriter. There is also a sense of continuity in the manner in which the chief executive manages the company due, in all likelihood, to what Tash calls the “inculcation” of values – embodied in Poynter's “sacred trust”, that takes place during the apprenticeship period. Tash is an example of appointment-from-within. In an article marking the newspaper's 125th anniversary, he noted that “we don't have rotating editors and executives, moving through town on their way up the corporate ladder”.³⁰⁰ There is no requirement that the successor must be an insider – Eugene Patterson was ‘brought in’ by Nelson Poynter, but the value placed on the organisation's culture suggests he or she will emerge from the ranks.

The management style also owes much to Poynter's determination to give control without ownership. No chief executive of the Times Publishing Company has been able to profit financially beyond his salary and bonuses, and has therefore not been tempted into decisions based on personal gain. Tash's remuneration is modest by American executive scales. In 2008, his salary and bonus amounted to \$US557,000 – which is remarkably close to that of Rusbridger (\$US586,000) and Kennedy (\$US555,000) in the same year.³⁰¹ Staff members attest to his approachability and collaborative style. This

³⁰⁰ Tash, Paul, “Top 10 reasons the St Petersburg Times reached its 125th anniversary”, *St Petersburg Times*, 19 July 2009.

³⁰¹ The *Guardian* editor's remuneration in 2008 totalled £401, 000 while that of the editor of the *Irish Times* totalled €399,000. Both figures were converted to \$US at the rate prevailing on December 31, 2008.

collegial style permeates to lower levels of the company although the desire to reach consensus at those levels may occasionally delay the decision-making process.

Tash, Kennedy, and Rusbridger all have the same level of editorial authority, but the fact that decision-making is different in each case is a reflection (noted elsewhere in this thesis) of the personality of the incumbent. It also reflects the fact that newsrooms are unusual workplaces – a paradoxical amalgam of authoritarianism, delegation, collegiality and egomania that works, in spite of all indications to the contrary.

Like Rusbridger, Tash has been an innovative contributor to the company's development. In September 2004, four months after he assumed command, the Times Publishing Company launched *tbt** (**Tampa Bay Times*) as a free weekly tabloid that targeted readers in the 25-35 age group. Two years later *tbt** became a weekday daily with an initial print run of 42,500. Tash had been advised that it would not be profitable for three years. It reached that target in two years. By 2009, the circulation had increased to 80,000 Monday–Thursday, and 111,500 on Friday and the publication had been joined by *tbt*two*, distributed each week to 65,000 high school students. The new weekday publication, with a remarkable record of readership growth, helped to offset the effects of recession on the *St Petersburg Times* (discussed in the next section).

Tash has also been a strong supporter of a ground-breaking editorial service that began in the *St Petersburg Times* and online in 2008. Politifact was devised by the newspaper's Washington bureau editor to track promises the *St Petersburg Times* identified as having been made by incoming president Barack Obama and to check (through a multiple-step verification process) the validity of statements by members of Congress, the White House, lobbyists, and interest groups. It is modeled on FactCheck.org established in 2003 by the Annenberg Public Policy Centre. The service which won a Pulitzer Prize in 2009, was then also 'regionalised' to scrutinise political statements in Florida through a partnership with the *Miami Herald*. It directly holds those in the political arena to account for the veracity of their statements, and has since been extended to a range of newspapers in other states.

Under Tash's leadership, the newsroom has been restructured to reflect the increasing opportunities that the Internet and interactive journalism provide in editorial operations. The *St Petersburg Times* newsroom includes a NOW desk, that covers and updates

breaking news stories on tampabay.com, tbt.com, and politifact.com. The newspaper's staff have also won awards for the use of computer-assisted reporting.

However, it is in the area of investigative reporting that Tash displays his commitment to Poynter's journalistic legacy, and for which his newspaper has gained a national reputation. It is a commitment that is consistent with the newspaper's public service principles, but he says it is made possible largely by the fact that he is free of the extraneous pressures that can be brought to bear on editors in publicly listed companies, and is best exemplified by the *St Petersburg Times*' reporting on the Church of Scientology. Coverage of the organisation dates back to its arrival in Florida³⁰², and during Tash's editorship there were special investigations in 2004, 2006, and in 2009 when the *St Petersburg Times* embarked on a major investigative series that drew on the experiences of former members of the congregation. In retaliatory publicity against the latest investigation, the Church of Scientology accused the Times Publishing Company of using "unethical and even illegal tactics" to destroy *Congressional Quarterly*'s principal competitor (Federal News Service) by poaching its accounts, accused the Poynter Institute of failing to register under the Contributions Solicitation Act, claimed Poynter and Times Publishing Company executives received high salaries when staff endured cuts (in fact Tash took a 10 percent cut compared with a five percent across the board reduction), and presented four "case studies" (including a \$US10 million libel award against the newspaper that was subsequently set aside by the trial judge) that questioned the newspaper's standards of investigative reporting.³⁰³ The church also threatened the *St Petersburg Times* with legal action that at the time of writing had not been pursued. A case brought by the Federal News Service was settled for what Tash describes as "nuisance value".

Tash told me he believes publication of material criticising such a formidable organisation was also materially assisted by the fact that he is not subject to corporate or share market pressure:

That work is directly tied to ownership that is private and independent because if we had been part of a chain, and particularly if we had been part of a chain that was publicly held, finding no satisfaction here in trying to derail that work, the officials of the church who are so vehemently opposed to that sort of coverage

³⁰² Including a Pulitzer Prize-winning series in 1980.

³⁰³ "Inside the St Petersburg Times: A Freedom Special Report", *Freedom Magazine* 2009.

would have reverted to the corporate offices, would have threatened (as they often do), very expensive and consuming litigation. They would have gone to the home office because they didn't get any satisfaction here and the bosses at the home office would have said: "Let's slow it down, let's have a look at the review" and, failing that, they would have tried to exert pressure through the public markets and for a publicly held company that sort of exposure would be very annoying if not worrisome. This [the Church of Scientology] is an organization that backed down the Internal Revenue Service.³⁰⁴ So writing about them, covering them – and we've had a little company in the past year from CNN and the New York Times (who acknowledged we were first) – this is not easily done. I think it's a clear example of the kind of work that is better able to be done because of our ownership structure.

It is a sentiment that can be equally applied to the *Guardian* and the *Irish Times*.

Editorial staff to whom I spoke described Tash's decision-making role as "huge". One staff member contrasts the decision-making process at the *St Petersburg Times* with his experience in a newspaper owned by a publicly traded company: "That paper did some extraordinarily good investigative work, but the final word on things came from another division on a different floor and, after the sale of the newspaper, from another state. It's helpful here when you are seeking an answer that you can go up [to Tash's office] and get the answer." Staff believe that while Tash might take the business into consideration, his editorial decisions are made "in terms of the journalism". It is an attitude that was present in his predecessors, and is also evident in the behaviour of Kennedy, Rusbridger and *their* predecessors – suggesting again, that it is a function of the type of organisation within which they operate.

7.3.3 Times Publishing Company and the *St Petersburg Times*

Each of Nelson Poynter's successors has faced a defining challenge. For Patterson, it was the translation of Poynter's dying wishes and the closure of the money-losing *Evening Independent*. For Barnes, it was securing the ownership of the Times Holding Company shares and resisting the Bass takeover bid. Tash's defining challenge has been in ensuring the survival of both the *St Petersburg Times* and the Poynter Institute during a recession that rendered Tampa Bay one of the economically weakest metropolitan areas in the United States.³⁰⁵

³⁰⁴ In 1993 the IRS settled a 40-year battle with Scientology, recognizing it as a tax-exempt church.

³⁰⁵ The Brookings Institute's *Metro Monitor* report in March 2010 ranked Tampa in the 19 weakest-performing metropolitan areas, with 12.4 percent unemployment.

The advertising revenue of the *St Petersburg Times* in 2009 was roughly half that of 2006. Driven by the Florida real estate crash that saw state-wide house prices fall by more than a third in that period, the revenue decline extended to retail, automotive sales, and employment advertising. The company recorded a \$US3.3 million loss in 2008, and has been forced to cut millions of dollars from its operating costs.³⁰⁶ It had made previous economies – eliminating quarterly cost-of-living salary adjustments for full-time staff in 2001 and reducing the width of the newspaper (with commensurate newsprint savings) in 2006 – but the pressures facing the company in 2007-2009 had not been seen in decades.

The American newspaper industry in the same period experienced widespread and deep staffing cuts. The Times Publishing Company also needed to reduce staff, and in 2008 offered an early retirement scheme that was accepted by 200 employees. In June 2008, it introduced a pay freeze that was extended in February 2009 when it also stopped making contributions to staffers' individual retirement savings accounts.³⁰⁷ Seven months later, Tash announced the five percent across-the-board pay cut and the phasing out of health care coverage for retirees on the company's health plan. By March 2010, the overall staff had been reduced by one-third (about 350 people) over a three-year period. In addition, the number of pages in each day's editions was reduced, some regional editions have been discontinued, and some stand-alone sections such as business coverage were incorporated into the body of the newspaper. To overcome the problems of reduced space, the *St Petersburg Times*' news stories were shortened and greater use made of the tampabay.com website to carry material that could not be accommodated on paper. In total, the company has reduced its operating costs by more than \$US70 million and expected to return to profit in 2011.

The recession had a greater impact on American newspapers because of their high reliance on advertising revenue than their British counterparts (Lanchester 2010, 5) and cuts have been made across the country. This raises two questions: Is the *St Petersburg Times* management no different from that in newspapers that are under much-criticised chain-ownership or in publicly held companies, and have cutbacks had similar effects to those on newspapers under those forms of ownership? By their nature and severity,

³⁰⁶ Paul Tash interview St Petersburg 13 April 2010.

³⁰⁷ The company's pension plan was closed to new entrants and benefits frozen at their current level. However, the company continued to make contributions to the plan (as required by law).

cutbacks could be expected to have a seriously negative impact on staff morale and, in many American newspapers that has been the case. It appears, however, that for a number of reasons the *St Petersburg Times* is different.

From comments gathered during anonymous interviews with staff at the *St Petersburg Times*, it appears there is general acceptance that the company delayed cost-cutting measures later than most of its contemporaries (there is some concern among staff that it may have waited *too* long and deepened its losses). They had been watching other newspapers make quicker and deeper cuts, including a severance offer by the Media General's Florida subsidiary (that owns the rival *Tampa Tribune*) aimed at cutting total staff numbers by 50 percent. In a 2011 survey 77 percent of *St. Petersburg Times*' staff said they were satisfied with the company, and 76 percent said they were satisfied with their jobs.³⁰⁸

The nature of staff cutbacks also sent a signal that the editorial mission of the newspaper would be preserved. While the overall reduction in staffing was about a third of the previous workforce, the editorial staffing was reduced by 25 percent. The effect was still significant, particularly in local area and 'stenographic' coverage, and a reduction in the number of dedicated reporters rounds or 'beats', but the concession did not go unnoticed. There is an acceptance that cuts were only as deep as were absolutely necessary.

Nickens told me he did not detect bitterness during the process but rather, an acceptance that the newspaper was "not where it needed to be", and that cost reductions were necessary: "I saw some cases where the person who had been told we no longer had a job for them was comforting the editor who had told them the job was no longer there." In the process, the company gave staff a much larger amount of information about its financial performance than it had done in the past in order to provide transparency.

Tash explains the reasoning behind the level of cost reduction: "We did not fail to cut deeper because we were sentimental about friends, neighbors, and colleagues – of course, we were sentimental about them but that's not why we didn't cut deeper. We didn't cut deeper because we were afraid that doing so would cause long-term damage to the relationship with readers and advertisers and that by doing such damage we

³⁰⁸ The survey results were leaked to a blog site and subsequently republished by Jim Romenesko on the Poynter Institute's website.

would be diminishing the long-term value of the franchise when things started to improve.” He adds that he is certain that if the Times Publishing Company had been publicly listed there would have been more cuts. Again we see parallels with the *Guardian* and the *Irish Times*.

The *St Petersburg Times* also benefitted from the fact that it was not required to meet a set profit target, which in publicly held companies has often been driven by market expectation to levels in excess of 20 percent (in many markets, not only the United States). The Times publishing Company has a 10 percent margin guideline, but did not use that as a measure by which to judge the depth of cuts. One staff member commended the company for foregoing high profit margins, recounting the case of a corporation that continues to deliver 15 percent profit margins, not from revenue growth but from continually cutting costs. The company needs to generate around \$US6 million a year in dividends to the Poynter Institute, and in the past there have been capital sums committed to the institute’s investment fund at the St Petersburg Times Fund, but other surpluses are returned to the company. This suggests the company had sufficient cash reserves to cushion the initial effects of the recession, although the sale of *Congressional Quarterly* indicates that it needed to bolster those reserves. Like the Guardian Media Group and the Irish Times, it was not burdened by the high levels of debt that many of its acquisitive contemporaries have had difficulty in servicing.

Tash and his fellow directors take a longer-term view of the business that is possible in many companies whose strategies are driven by current share prices. He told me that the changes would have been even harder had he been forced to manage in a way more characteristic of publicly held companies.

The *St Petersburg Times* has refused to curtail the activities that have earned it a national reputation. It has retained the long-form civic journalism that was once (but is no longer) a hallmark of many U.S. newspapers. It has continued to mount lengthy and expensive investigations and special reports. It sent reporters and photographers to Haiti on multiple missions following the 2010 earthquake, because as one editorial executive put it: “it is part of our region and this is regional reporting” and continued to send editorial staff to Iraq and Afghanistan. This commitment has not been limited to war and disaster. It has continued to investigate the financial crisis, tax issues, public education, crime, and environmental issues. It reported extensively on the Gulf of

Mexico oil spill. At the height of the cuts, it won two Pulitzer prizes in the same year – one for Politifact and the other for the harrowing story of a child so neglected that she could neither speak nor feed herself.

The newspaper has also been remarkably candid with its readers about the effects of the recession. Neil Brown (now the newspaper's editor) has acknowledged cuts and fewer pages on weekdays, but believes the economies were made in areas that were no longer of interest to the broad readership. Investigative reporting and narrative story-telling, he told readers, had been preserved.³⁰⁹

The newspaper has also compensated for lost coverage by for example, substituting web-based coverage for regional newspaper sections and replacing staff in local bureau with a system it calls Pro-Am, in which students from three colleges and residents write short stories on local events. Contributors are vetted and either accepted, rejected, or sent to the Poynter Institute for training (for which the *St Petersburg Times* pays). The newspaper also avoided a cost-cutting measure that has seen coverage of state government dramatically curtailed by the closure of bureau in state capitals. Rather than follow suit, the *St Petersburg Times* (which had cut its Tallahassee bureau staff from four to three) combined its resources with the *Miami Herald* (which had two reporters in the state capital) in 2009. Under the arrangement the newspapers split costs, the bureau chiefs of the two newspapers rotate leadership duties, and reporters' rounds (or beats) have been re-organised to avoid duplication.

Finally, the *St Petersburg Times* was able to draw on a deep reservoir of goodwill and commitment by staff to the newspaper. In 2001, the *Columbia Journalism Review*³¹⁰ published a four-page report on the newspaper headed "A Happy Newsroom, For Pete's Sake: Why people like working for the St Petersburg Times", in which reporters credited it with more freedom to innovate, more support, more guidance, fewer administrative mandates, and fewer power struggles than they had encountered in other (group-owned) newspapers at which they had worked. Almost a decade later, Nickens maintains that "overall that's still very much true". In addition, the staff are inculcated with the values that trace back to Nelson Poynter, in the same way that there is an ethos left on the *Guardian* by C.P. Scott. Another executive stated that "the tenets and

³⁰⁹ Brown, Neil, "At the St Pete Times, Pulitzers and beyond", *St Petersburg Times* 3 May 2009.

³¹⁰ *CJR* September/October 2001, pp. 54-57.

commitment have not changed: the 10 principles are pinned up around the place”. Staff are also well aware that the *St Petersburg Times* is *not* a non-profit enterprise even though its owner has that status. They accept that it is (and must be) run on a commercial basis. This has led to a pragmatism that is summed up by one staff member: “The recession has taken its toll. The cuts have led to real inroads in local coverage and it remains to be seen if that will be reinstated in better times. But I’ll take this boat anytime. It’s prepared to accept smaller profits to preserve its journalism.”

Tash’s balanced strategy may be showing signs of success. Audited circulation figures for the six months ended September 2010 showed that the *St Petersburg Times* was one of only three major U.S. newspapers to show gains in its Sunday edition (up 2 percent to 377,235), while the decline in weekday circulation had slowed to only 0.2 percent (to 239,684) while most other Florida weekday newspapers’ circulation had declined by between 2.4 and 11.8 percent. In the same period, the print run for the free tabloid **tbt* increased by 10,000 to become the fastest growing newspaper in the United States and its advertising revenue in the year to March 2010 had grown by 9 percent. It has a different (younger) audience than the *St Petersburg Times* and therefore has not cannibalised its readership.

**tbt* is an example of the difference that private and independent ownership can make by allowing a longer-term view of strategy. Its continual growth drew the attention of newspaper companies throughout the United States, and Tash began receiving calls from executives wishing to emulate its success. A year after it was launched, he received a call from the chief executive of a large, well-known public company: “He asked ‘Is it making money?’ I said ‘Not yet, I think it will be another year but it’s headed in the right direction’. There was a long pause at the other end of the telephone and he said ‘That’s going to be tough for us to do then’.” On an incremental basis **tbt* is now “carrying a nice profit”.

Tash has not, however, been tempted to follow the strategy of the Guardian Media group in diversifying away from his regions advertising-based markets.

Am I confident that I could pick the business? I don’t know. If it was another Kaplan [the educational business that has become a major profit centre for the Washington Post Company] great, but if you bought the wrong thing you could end up dragging the company down.

The company's attention he says, is consumed by the publishing business – the newspapers and the magazines – and “getting through this storm and positioning the company more strongly”. And Paul Tash must also be mindful of Nelson Poynter's attitude toward the creation of a large media group: “A ‘chain’ owner cannot do justice to local publications or radio stations. His devotion and loyalty to any one area is bound to be diluted or divided if he has other ownerships and interests.”³¹¹

7.4 Summary

Throughout this chapter, parallels have been drawn between the newspapers that form my trustee trinity. While none has been immune from the effects of changes to news media markets, each has exhibited a determination to preserve the core journalism to which the creators of their unique forms of ownership committed them.

The three have varying degrees of resilience that I identify as diversified business subsidiaries that are not subject to the same changes in market conditions as their parents. The uncertainty of news media markets mean that such commercial buffers are essential components of future strategy for publications that must continue to make decisions that give full weight to the importance of the civic journalism they are committed to uphold.

The chapter showed that such an editorial commitment is common to all three newspapers, and is embedded in ways that are not found in most publicly listed newspaper companies. Not only are there codified obligations that pass from editor to editor, and trustee to trustee, but each has an enduring culture founded on the principles of liberal journalism practised by men who loomed large in their past.

However, the parallels are accompanied by differences. Each newspaper is in a different form of ownership, although all have trusteeship in common. Each has a different relationship with its trustees, although all trustees have significant reserve powers. Each has a different attitude to disclosure of its financial details, although all place profit second to the needs of their flagship newspapers. The editor-in-chief of each newspaper has a different level of control in the organisation, although all are the undisputed custodians of editorial policy.

³¹¹ Nelson Poynter's “standards of Ownership”, 6 August 1947.

In the final analysis, the value of trust-like ownership of these three newspapers comes down to a single question: Would the *Guardian*, *Irish Times* and *St Petersburg Times* enjoy the same reputations as civic-minded, values-driven newspapers if they were owned by profit-driven, publicly listed groups? They would in every likelihood, be subjected to the same indiscriminate ‘economies’ that have debilitated many of their contemporaries in recent years.

Chapter 8: Also in the public interest

The public has more access to more content from more suppliers than ever before. But in embracing the benefits of the digital world, we must take care not to lose the core values we have traditionally attached to the 'old' public service model.

David Puttman in *The Price of Plurality* 2008, 39.

The focus of this thesis thus far has been on organisations that are governed or influenced by trust structures. However, there is another class of organisation in the media world that requires recognition: The structure that is a trust in all but legal definition. The most evident examples of such a structure are public service broadcasters and a number of news agencies, although in the age of uncertainty that confronts traditional media a range of new trust-like organisations have been established to fill the growing journalistic gaps. And waiting in the wings is an emergent business formation – the low-profit, limited liability company or L³C – that may be a catalyst to the creation of news media enterprises founded on principles of trusteeship.

Public service broadcasting (PSB) has been the subject of considerable research that need not be repeated here (Curran 2002, Curran & Seaton, Debrett, Freedman 2008, Hitchens, Horrocks & Perry, Inglis, Scannell) There are however, aspects of the structure of PSBs (and of some news agencies) that bear directly on their trust-like behaviour and which provide some insights into governance that might be employed (or avoided) by newspaper trusts that could emerge in the future. This chapter canvasses these matters before moving to an outline of organisations that have been established to compensate for the deficit in investigative journalism caused by cost-cutting in traditional newsrooms. Finally, the chapter outlines the L³C movement that takes advantage of a special tax status in the U.S. to combine the contributions of non-profit agencies and the efficiencies of for-profit business. It may offer a means of preserving significant journalism, while recognising the realities of altered media economics, by creating a new class of trustee structure.

8.1 Public Service Broadcasters

PSBs share a number of common characteristics that help them to achieve their principal goal of engaging viewers and listeners [and digital media users] in a dialogue

about public life (Freedman 2008, 147). First and foremost is a dedication to the public interest and a sense that their services are a public good that contribute to the democratisation of public life (Scannell 1989, 136). They have a commitment to what Scannell describes as properly public, social values, and these are reflected in a concomitant commitment to high programme standards (*ibid.*, 164). Their charters include cultural and educational imperatives, and wide accessibility as part of their role to reflect the national character in all its diversity. Each plays a vital journalistic role, sometimes providing the only non-partisan reportage in a media environment increasingly populated by outlets determined to promote a particular point of view. This journalistic contribution extends to a commitment to the reporting of political assemblies (be they congressional or parliamentary) that is matched by few commercial media organisations. Their governance structures are designed to protect, preserve, and enhance these attributes while maintaining a necessary distance from political influence.

In order to understand the unique aspects of governance in PSBs, I interviewed representatives from the BBC Trust (which in spite of its name is not a legal trust entity), the Australian Broadcasting Corporation, Australia's Special Broadcasting Service (SBS), and Radio New Zealand. In addition, material on PSBs in North America and Europe has been drawn from publicly available sources. Television New Zealand is a Crown-owned entity, but because it is wholly commercially oriented and no longer subject to charter obligations, it was not included in the study.

8.1.1 PSB empowering legislation

It is common for PSBs to be constituted under empowering legislation. For example, Australia's ABC and SBS which had been constituted under the Broadcasting and Television Act, are now covered by their own legislation – the Australian Broadcasting Corporation Act 1983 and the Special Broadcasting Service Act 1991. CBC-Radio Canada is governed by provisions of the Canadian Broadcasting Act 1991, and the New Zealand public service broadcaster by the Radio New Zealand Act 1995. In the United States, where public service broadcasting is based largely on regional and local cooperatives that depend on donations and philanthropy for their survival, a Corporation for Public Broadcasting was initially established under the Public Broadcasting Act in 1967, and from it grew the Public Broadcasting Service (PBS) and National Public Radio (NPR). In each case, a feature of the legislation is the provision of clauses that

distance the relevant organisations from direct government control and provide journalistic and programming independence.

In Europe, public service broadcasting is idiosyncratic (Tunstall 2008, 250), reflecting different socio-political structures and assertions of cultural identity. Arguably the most complex legislative arrangement for public service broadcasting exists in Germany. The German Constitution mandated the creation of public service broadcasting and also its de-centralisation to prevent a resurgence of the wartime national broadcasting system that had been a powerful Nazi propaganda tool. Each *Länder* (state) was required to establish a corporation to provide public service broadcasting under legislation that required a number of common principles, but which also reflected regional needs. Following German reunification and some consolidation, there are now nine such corporations running regional television and radio stations, plus digital services. They also formed a collective (ARD) under an inter-regional treaty to operate a national television network.

The exception to legislative mandate is the BBC, which has operated under a succession of Royal Charters since 1926. These instruments have created what Born describes as a “contradictory” relationship between the corporation and Parliament. Although the British Government has oversight of the BBC’s performance as each charter comes up for its (usually 10 year) renewal, and sets the public licence fee on which the BBC depends, it cannot claim the BBC as a direct instrument of state. The charter establishes the BBC as an independent corporation. Attempts to ‘rectify’ this situation by making the BBC subject to empowering legislation (and hence directly answerable to Parliament) failed when a new Royal Charter was granted in 2006, in spite of strong representations opposing the structure by the House of Lords Select Committee on the BBC’s Charter Review.

Protection from government interference is more apparent than real, in most of the jurisdictions with which we are concerned. In particular, the ability of governments to control PSB finances has been a powerful lever that has affected levels of production and the commitment to certain broadcast services. Governments have a long-standing record of ambivalent attitudes toward their public service broadcasters, and even the BBC is not immune (Freedman, Inglis, McChesney 2007, Humphreys).

8.1.2 PSB governance structures

In many jurisdictions, governments have reserved the right to determine both the governance structure and membership of PSB boards. The majority of PSBs operate a two-tiered system of governance (a board and an executive committee) that separates the appointed board from the day-to-day operations of the broadcaster. In part, this represents the same separation of board and management found in commercial enterprises, but it has the added purpose of distancing political appointees from operational decision-making. Some legislation also requires the appointment of advisory boards to monitor programme content. Table 8-1 shows the similarity between the legislatively (or Royal Charter) driven structural elements of governance in different jurisdictions. German PSBs are each governed by different state (or Länder legislation) and have been omitted.

Table 8-1: Government-mandated governance in PSBs

	Board of directors	Chairman	Managing director	Advisory boards	Charter	Interference protection
BBC	Govt appointed trustees (12 incl. 4 regional) Trust appointed executive board	Govt appointed	Trust appointed Director General who may chair Executive Board	Trust appointed regional audience councils (4) chaired by regional trustee	Objects, purpose and mission embodied in Royal Charter	Independence from interference in content and management
ABC	Govt appointed directors (Max. 7 plus CEO)	Govt appointed	Board appointed	Board appointed advisory council plus staff committee	Charter of functions and obligations	Subject to direction only in notified matters of national interest
SBS	Govt appointed (Max. 8 plus CEO)	Govt appointed	Board appointed	Board appointed Community Advisory Committee	Charter of functions and obligations	Subject to direction only in notified matters of public/national interest
Radio NZ	Govt appointed Board of Governors (Max. 9)	Govt appointed	Board nominated Govt appointed	None specified	Charter of functions & obligations subject to review by Parliament	Independence from interference in content and management
CPB*	President appointed ratified by Senate (max. 9)	Elected annually by board	Corporation president appointed by board	Required to report on minority interests	Policy on PSBs in Public Broadcasting Act	Prohibited

* The Corporation for Public Broadcasting (CPB) is the steward of U.S. federal investment in public service broadcasting.

PSBs are also subject to the oversight of external regulatory bodies that police public and commercial broadcasters. In Britain, the BBC is required to conform to Office of Communications (Ofcom) codes under its agreement with the Government, while in Australia the ABC and SBS defer to the Australian Communications and Media Authority (ACMA) in appeals over complaints. Radio New Zealand is subject to the complaints procedures of the Broadcasting Standards Authority (BSA). In North America, CBC/Radio Canada is subject to programme and policy oversight by the Canadian Radio-television and Telecommunications Commission (CRTC), while in the United States the Federal Communications Commission has oversight within the confines of the First Amendment. In each case, commissioners or authority members are government appointees. Coupled with dependence on state funding, this means PSBs may be subject to three-tiers of political patronage. The next section discusses the effect of this influence.

In structural terms, the governance of most PSBs is unremarkable. The boards of the ABC, SBS, and CBC/Radio Canada operate in much the same manner as any board of directors. For example, the managing director of SBS, Shaun Brown, told me that his organisation operates a “conventional governance relationship” in which the board scrupulously follows the dictate that it is there to set strategy and hold the managing director accountable while his responsibilities are to deliver on those strategies and to meet SBS’s charter obligations.³¹² Like his counterparts, he has wide management powers including the right to hire and dismiss staff. Nevertheless, public service broadcasting charters represent valuable templates for the documenting of public interest obligations to which trustees and executives in news media organisations might be held. Examples are therefore included in the appendices.

In 2006, the BBC underwent a major restructuring in the course of the review that usually precedes the renewal of its Royal Charter. At the same time, the Hutton Report into the corporation’s handling of the so-called ‘dirty dossier’ on Iraqi weapons of mass destruction, and the subsequent death of Dr David Kelly raised issues of the robustness of BBC governance.

At the time, the BBC was controlled by a Board of Governors whose relationship with the operational affairs of the broadcaster had been the subject of on-going criticism. On

³¹² Interviewed in Sydney 2 June 2009.

the one hand there were charges of interference, while on the other, there were claims that the Governors and the executive were too close for the former to discharge a role as representative of the public interest (or licence-payer). Born's analysis of the running of the BBC in the years immediately preceding the restructuring, concluded that "extensive reforms" were necessary to overcome "the vexed issues of governance and self-regulation, which lay at the heart of the BBC's escalating political difficulties in recent years" (2004, 505). While Born saw those reforms being achieved from within, a March 2005 Green Paper on the review envisaged a radical restructuring.

The Green Paper stated that the then-current BBC Board of Governors had to carry out two potentially conflicting roles: running the BBC, and assessing how well it was performing, and judged that "this model is increasingly out of step with best corporate governance" (2005, 6). The 2006 Royal Charter required the BBC to establish two bodies to overcome the conflict: a BBC Trust would set the overall strategic priorities for the corporation and provide oversight, and an Executive Board of the BBC would be responsible for delivery of BBC services. When the new structure came into effect in January 2007, the separation was symbolised by the installation of the Trust and its support body, the Trust Unit, in offices far removed from Broadcasting House. The Trust Unit employs about 70 people, the majority of whom are London-based. The unit advises trustees on their duties, manages the Trust's supervisory and regulatory functions, and provides independent assessments of proposals from the BBC's Executive Board.

The BBC Trust is interesting because it illustrates some of the ways in which guardianship can be institutionalised and secured by structural controls, against the temptation to become unhealthily close to operational decision-making. One of the unit's senior executives, the then deputy director, Christopher Woolard (who has since joined Ofcom as partner responsible for content, international, and regulatory development) told me that the Trust is unique in the United Kingdom but bears some similarity to European corporate supervisory boards.³¹³ In Germany for example, it is common for companies to have a two-tiered board structure in which a supervisory board is responsible for the appointment and supervision of an executive or

³¹³ Interviewed in London, 24 March 2009.

management board. Such a two-tiered system is required by the European Union for registration as a European Company or SE (Societas Europaea).

The Trust's chairman, Sir Michael Lyons, gave what was likely to be his last major speech in that role at the London School of Economics in March 2011. In his speech, he stated that the Trust was "not a traditional regulator, in fact not really a regulator at all, but with significant powers and resources to challenge BBC management and to shape the BBC on behalf of the public who own it". He went on to say that even now, within the corporation, there are some who do not fully understand the Trust's "parental powers and responsibilities". To remove any misconceptions he then outlined the purposes of the Trust:

- Fundamentally it is a supervisory board with some regulatory functions. Most notably the oversight of accuracy and impartiality, just like the Governors before us.
- It is markedly more separate from the Executive than was the case with the Governors and has its own professional support staff.
- It approves strategy and headline budgets; the Executive manages the day-to-day functions of the BBC and the Director-General is both chief executive and Editor-in-Chief, with the Trust there to protect the independence of that latter role.
- The Trust has one significantly different power compared with the Governors – it has the authority to approve new BBC services, a power that used to lie with the Secretary of State.
 - The charter defines these roles and focuses the Trust on the fundamental duty of representing the public interest in its governance of the BBC:
 - This translates, first of all, into guarding the independence of the BBC, for on that independence hangs the high level of public trust that the BBC enjoys.
 - But it also translates into a consistent challenge from the Trust to the Executive to do better in terms of value for money, impartiality,

distinctiveness, and better serving the BBC's many different audiences across the U.K.

In other words, the Trust sets itself apart from the operations of the BBC. As the representative of the public, it can function as auditor and defender without becoming cheerleader for the corporation. This distance is what particularly distinguishes the Trust from the Governors that it replaced.

The trustees' oversight of the BBC is carried out through seven committees: Audience and performance, finance and compliance, editorial standards, strategic approvals, remuneration and appointments, audience councils, and general appeals. Each committee is composed of between three and six trustees. Oversight is a combination of process – the Executive Board is required to submit significant proposals for approval – and pro-active governance when major issues arise.

An example of the former was the Trust's refusal to allow the BBC to develop a network of highly-localised websites that threatened to replicate the efforts of (already struggling) local newspapers, while placing significant strains on BBC resources. An initial strategic proposal put to the Trust by the Executive Board had won approval to proceed, but significant changes to the plan over time led the Trust to withdraw its approval. An example of the latter was the Trust's instigation of a forensic investigation and independent study by PricewaterhouseCoopers into the application by a third-party provider of revenue from premium rate audience phone-ins and mobile texts to BBC programmes. The enquiry led to the repayment of funds to charity, and an overhaul of BBC operating policy.

The Trust is the sovereign body of the BBC, and it is therefore responsible for negotiating a framework agreement with the Government, required under the Royal Charter, which elaborates some of the obligations that the Charter imposes and sets out the process by which the corporation will be funded. It imposes on the Trust an obligation to keep BBC spending under continual review. The Trust is also responsible for negotiating with the Culture Secretary the level of licence fee payment that is the BBC's principal source of income.

The Royal Charter set six public purposes for the BBC to fulfil, and the Trust in turn produced a series of 'purpose remits' that document priorities that trustees set the

Executive board in each of the areas which include ‘sustaining citizenship and civil society’, ‘promoting education and learning’, and ‘stimulating creativity and cultural excellence’. The Charter has also required the Trust to issue a licence for each BBC service. There are currently 11 television, 16 radio, and one online services licenced to the corporation. A licence sets out what each service is expected to achieve. Each service is subject to a formal review by the Trust at least once every five years. Before the BBC executive can launch a new service, it must seek the approval of the Trust, which is required to apply a public value test.

The framework agreement also required the Trust to establish a complaints procedure, through which viewers can seek redress over programme content. The BBC has a three-tiered complaint system under which the Trust acts as an appeal authority on matters of impartiality, inaccuracy, and some commercial matters. Aside from those three areas of concern, complainants alternatively can take their concerns to the outside complaints authority, Ofcom.

In spite of the detailed designation of functions for the Trust and the Executive Board that are contained in the Royal Charter and the BBC Agreement, the structure remains subject to criticism. The chairman of the House of Lords Select Committee on Communications, Lord Fowler (a former minister in the Thatcher government), has been critical of the BBC’s governance structure since it was first mooted. He told me in an interview in London³¹⁴ that the structure was “a complete nonsense” that prevented the normal corporate processes under which a chief executive and directors interacted with each other around a board table. Instead the executive (led by the director-general of the BBC) was separated from the board of directors (the BBC Trust) not only organisationally but physically. The creation of an Executive Board with non-executive members had allowed the director-general to function as an executive chairman, a position that was out of step with present-day views of corporate governance.

Lord Fowler remains committed to the replacement of the Royal Charter (which he describes as a “period piece that was a reaction to the Hutton Report”) with legislation that would bring the corporation under parliamentary oversight in terms of how it was organised, and holding it accountable for the spending of the public’s money. He also believes that the regulatory functions of the BBC Trust should be passed to Ofcom: “It

³¹⁴ Interviewed 23 March 2009.

regulates the rest of the television and radio industry so why not the BBC?" In short, he sees no real place for the Trust in an environment where the BBC would have conventional corporate governance and be subject to external regulatory oversight. It would in effect, be run along similar lines to ITV (without the advertising revenue).

However when we spoke, Woolard explained the structure as one that reflected the public's expectations of the BBC and its desire to see the corporation regulated to a higher standard than the rest of the broadcasting industry:

The Trust's stance has been to say 'The model is the model and we're making the model work'. If you want to strike that balance between formal regulation in terms of public interest and so on, and the ability to come in with a certain level of control then you need a body that can ride both horses. [BBC Trust chairman] Michael Lyons has said in public that essentially the idea of a board of directors acting as cheerleaders for a company is the Boy's Own Book of Corporate Governance, as he puts it. In his view a good chairman and board of directors acting in the interests of shareholders will at times be highly critical of their own management. I think his take is that the Cadbury Rules in the UK [a code of conduct that all British publicly-listed companies are expected to follow] and that model of corporate governance are compatible with the way the Trust is organized. The chairs might be stacked a little differently but the governance aspects are similar.

Woolard noted that the Trust had the ability to act more swiftly than an external regulator in the role of complaint adjudicator, and also could operate on the basis of a 'quiet word' that is more difficult for an external regulator to utilise. The structure also allowed the Trust to become involved in matters that would not be regarded as sufficiently major for an external regulator to intervene. Woolard also pointed to an aspect of oversight that places the Trust in what might be seen as a stronger position than an external regulator. As the sovereign body of the BBC, the Trust has an absolute right of access to information within the corporation. Woolard commented:

Normally, for our own sanity and to protect the operational/strategic divide, we don't as a matter of course seek it, but we make it very clear – and beneath the Charter we have a whole series of protocols that say 'You will deliver any information we ask for, you will deliver any staff member we want to talk to, and if it's not immediately forthcoming the Trust reserves the right to come around and access that directly if we want to'. It sounds draconian but [it is] within the bounds of company property [law].

The Trust must tread two parallel fine lines: It has twin roles as regulator and authoriser, plus it must (under the terms of the Royal Charter) preserve its separation from the day-

to-day operations of the BBC. This requires a certain delicacy in the handling of major projects for which the executive requires Trust approval, and has led to a degree of reserve in relationships between the two bodies. As Woolard put it: “they mind their P’s and Q’s in the company of the Trust”. For its part, the Trust adheres closely to process guidelines because anything it does is open to judicial review.

In spite of its detractors and claims that the Trust and the director-general are too close (Deans 2011), there are few signs that the BBC Trust structure will fall victim to the change of Government in 2010, although the chairmanship changed in April 2011. The retention of the Trust may be due in part to a reluctance to pass the regulatory responsibilities entirely to Ofcom, thus increasing the power of an already potent authority. From a public interest standpoint, there could also be political fallout (an avoidable risk in the Conservative-Liberal coalition) from passing all oversight of the BBC to an organisation some believe was established to privilege the role of consumers over that of citizens (Freedman 2008, 118), although Ofcom states the two roles are held in balance.

The structure remains controversial – a halfway house between internal and external regulation. However, for the purposes of this study the BBC Trust is a useful model of the codified separation of functions between trustees and the executive. The Royal Charter sets out in detail the functions of both bodies and the manner in which they should interact. Section 24 contains 17 provisions detailing the Trust’s functions, while Section 38 details nine functions that are reserved to the executive. The Charter also binds the BBC to provisions in the Framework Agreement that give additional functional detail, setting out the Public Value Test that the Trust is required to apply to all new services proposed by the executive. The Agreement also sets out procedures under which the Trust develops protocols and codes of practice to be followed by operational units of the BBC, and gives the Trust specific powers to direct the Executive Board on the allocation of ‘an appropriate amount’ of programme schedule time for news and current affairs. Explicit in the Royal Charter and implicit in the Framework Agreement, is the need for the Trust and the Executive Board to play different roles within the BBC and ‘never act together as a single corporate body’. Explicit in both documents is the guaranteed independence of the BBC, but in common with other PSBs, the corporation has found throughout its long history that it is not immune from political pressure.

8.1.3 Government influence over PSBs

The principal means by which governments assert influence over public service broadcasters who theoretically shelter under an ‘independent’ umbrella, are through appointment processes and appropriation of funds. Indirect influence is applied through regulatory bodies that are also subject to influence through government appointment processes. There are inherent limits in PSB autonomy, because the public service operation is “a creature of legislation and politicians, and can only go so far astray” (Herman and McChesney 1997, 5). Interference in bodies such as the BBC, ABC, SBS, CBC/Radio Canada, and Radio New Zealand needs to be kept in perspective – it is far less intrusive than in some state-owned broadcasters and must be judged alongside the services that the PSBs *are* able to deliver, yet it illustrates the need to be aware of the limitations of apparent safeguards.

Dependence on funding that is controlled by outside agencies is a fundamental weakness. The licence fee system that funds the BBC, the United States’ Corporation for Public Broadcasting, and the New Zealand Broadcasting Commission (NZ on Air) are attempts to place funding at one remove from direct Government appropriation but in fact, in each case the Government of the day exercises control over any movement in the level of funding. In the case of the BBC, the licence fee negotiating process has been called “profoundly political” (Freedman, 162). The coalition government in the United Kingdom imposed a six-year freeze on the level of the fee in 2010, the National-led government in New Zealand froze radio New Zealand funding “for the foreseeable future” in March 2010, and the Obama Administration’s 2012 Budget proposes cuts to public broadcast funding. CBC/Radio Canada’s hybrid funding system (a combination of federal funds, subscription fees, and advertising revenue) depends on an annual appropriation from the Canadian Government appropriations for more than 70 percent of its income, which has been subject to cuts. In Australia, a triennial funding system operates for both the ABC and SBS. The former has been relatively successful in securing funding increases, while the latter’s calls for additional money to fund digital services has been largely ignored.

Hence, politicians may not exert control over content such as news and current affairs, but they have a significant influence over how much content is produced and how it is done. It is the same type of control that management and major shareholders exert over

the news budgets of newspapers – as editor then editor-in-chief of the *New Zealand Herald* over almost a decade, I worked with an editorial budget that was ultimately decided by the chief executive. It is a situation in which finance controllers do not infringe the letter of editorial freedom (they do not attempt to determine the nature of content) but their effect on editorial output can be profound in terms of quantity and quality.

Radio New Zealand is a good example of such effects. The chief executive and editor-in-chief Peter Cavanagh, does not believe that government uses financial approvals as a coercive means of dictating content. However, he has no doubt about the effects of inadequate funding. In 2007, the then government commissioned a review of Radio New Zealand funding to be carried out by the accountancy and auditing group, KPMG, which had conducted a similar review of the ABC for the Australian government. The study found that Radio New Zealand baseline funding was 20 percent below what was considered necessary to sustain services. This baseline would have added \$NZ8-9 million to the existing budget of \$NZ32 million. The following year, the PSB was granted an additional \$NZ2.6 million but subsequent appropriations were frozen at \$NZ34.3 million for the foreseeable future without any compensating reduction in Radio New Zealand's Charter obligations. Cavanagh told me in an interview:³¹⁵

It may be possible for us to perform at an adequate level in the future but not at the same level we are [achieving] at the moment. The Charter is a qualitative not quantitative document and quality is a subjective thing. I think we'll probably need a few years in the future before we can look back at this time to see whether we were producing at the same qualitative rate that we are currently...Now the most optimistic person in the world could not possibly say that we can maintain our performance at the same rate of qualitative output in all of our Charter areas over that time without any increase in funding. It just won't happen so there will undoubtedly be reduced qualitative outputs. One of our challenges over the next couple of years will be to work out how to maintain the highest quality that we are able to maintain for the funding and resources that we have and to provide the best service we can within our means.

Radio New Zealand's dilemma is apparent elsewhere. The chief executives of the BBC, SBS, and CBC/Radio Canada each made public statements in 2010 stating that funding shortfalls were compromising their ability to meet their mandates. In each jurisdiction, PSB directors/trustees have limited ability to influence the political decision-making

³¹⁵ Interviewed in Wellington 15 June 2010.

process on funding, while remaining vulnerable to criticism for failing to protect the interests of their organisations.

This is but one of the political perils that face PSB directors/trustees. Other vulnerabilities highlight the need for public interest-driven news organisations to employ structural mechanisms that limit as far as possible, the ability of external agents to exert undue influence.

At some time each of the PSBs in Britain, Canada, the United States, Australia and New Zealand has been subjected to accusations of political bias and political cronyism. Successive British governments (before, during, and after the Hutton report) were accused of intrusive interventions in the affairs of the BBC (Born 2004, 500), and the choice of a former chairman of the Conservative Party (Lord Patten) to replace former Birmingham City Council Labour councilor and advisor to Gordon Brown, Sir Michael Lyons as head of the BBC Trust in 2011, preserves a perception of continued political patronage and promotes controversy. The incoming chairman was the first however, to appear before a House of Commons select committee in a pre-selection hearing, although a veto of his appointment was unlikely. In 2005, a review by the United States Corporation for Public Broadcasting Office of Inspector General, lent weight to claims during the George W. Bush Administration of conservative political bias by the presidentially-appointed board and which led to the resignation of its chairman. The Inspector General found that the CPB chairman had applied a “political test” in the appointment of a chief executive and that the organization allowed the chairman and CPB executives to operate without “appropriate checks and balances”. DeBrett’s review of Television New Zealand (2010, 161-182) concludes that “a history as political football has left public service broadcasting in New Zealand without the cushioning of traditions or collective public memory to inspire public support”. An Australian Senate inquiry in 2001 found: “The overwhelming view of submissions received by the inquiry was that the ABC has become politicised, has lost its independence, and accordingly, has lost the confidence of the public”.³¹⁶

Over time, a significant element of such allegations has been the appointment process. As set out in 10.1.2, the vast majority of the PSB boards are appointed by the executive wing of government, and political affiliations are to be found in most of them. A

³¹⁶ Above Board? Methods of appointment to the ABC Board 2001, 2.3.

proposal by the Australian Labor Party (which would have been implemented had it won the 2004 election) was to replace appointments by Cabinet with a civil service selection panel, operating under the British Nolan rules, which would interview candidates for advertised vacancies (Inglis 2006, 558-9). The 2001 Senate inquiry had recommended a selection panel made up of both houses of Parliament. Neither proposal was adopted, but they represent an unfulfilled desire to distance selection processes from those who would seek to derive benefits from the appointments.

In political terms, these benefits range from acquiescence over controversial government policies, to the application of internal pressure aimed at modifying news coverage that is critical of the government. Empowering acts and charters set a framework of independence, but require resolve on the part of directors/trustees (and executives) to resist informal pressures. Political appointment is not of course, a sentence of subservience, and there are numerous examples of such appointees standing against the will of government when they believed proposed actions were not in the interests of a PSB or of the public. For example, a former chairman of the ABC, Maurice Newman, was described as “notoriously his own man” despite the fact that was a friend of the Prime Minister (Simons 2007, 172). Nonetheless, in an industry in which the public interest is to the forefront, transparency and distance are elements that should be given expression in an appointment structure. None of the PSBs under study here has gone more than partway toward this goal, although the parliamentary vetting of Lord Patten’s appointment suggests the BBC has advanced further than its counterparts.

Politicians unhappy at the news coverage they receive from PSBs are wont to claim the broadcasters are failing to ‘meet their charter obligations regarding fairness and accuracy’. As Cavanagh notes, qualitative provisions are inherently subjective. However, it is evident from comments made by all of the PSBs under study that charter provisions are taken seriously and their annual reports list outputs that contribute to meeting these obligations (see for example, the annual reports of Radio New Zealand).

8.2 News agencies

The national news agencies of Britain, North America, Australasia, and India see themselves as bastions of unbiased, accurate reportage, and also have been governed by trust-like stewardship.

In 1941, Reuters News Agency was in disarray and came close to collapse at the very time that its international news coverage of the war effort was most needed. It was rescued when the Press Association (owned by Britain's provincial newspapers) joined forces with the country's national newspaper owners and later, the news agencies of Australia and New Zealand. The result was an organisation that set journalistic benchmarks and which operated, under the terms of their formal agreement "in the nature of a trust" (Read 1992, 244).

In the 70 years since the Reuter Agreement was signed much has changed. Reuters is no longer a cooperative, but is in the hands of a Canadian corporation (largely owned by the descendants of Lord Thomson of Fleet) that is centred on business information. The other news agencies that once sat around the Reuters board table have been forced to augment their news services in a bid to meet the challenges of a declining market in traditional media. Each agency has endeavoured however, to maintain guarantees of journalistic independence and quality that are exemplified by the 1941 document. Yet none is a trust – with the exception of Thomson Reuters and Canada's domestic agency Canadian Press,³¹⁷ each is a cooperative in which the owners forego dividends in order to sustain the agency's newsgathering capacity.

8.2.1 In the nature of a trust

The development of successful national news agencies in the English-speaking world has been based on the cooperative model with ownership vested in member news organisations. The need for these organisations to adopt a form of self-interested neutrality in order to share information led to boards of directors acting as custodians of a service provider rather than as drivers of profit and corporate efficiency. Some wrote the concept of service above profit into Articles of Association, where others publicly bound the board to codes of practice adopted by their news service. Some were content to defer to strong (sometimes legendary) managers who ensured that their agencies embodied the concepts of service and trust. Hand-in-glove with instruments to safeguard editorial independence and journalistic values, were anti-competitive provisions that enhanced the economic value of membership and locked out other subscribers. It reached a climax in the *United States v Associated Press* in 1945.

³¹⁷ Formed as a non-profit cooperative in 1917, Canadian Press experienced severe financial difficulties and in 2010 became a for-profit corporation owned by three major Canadian media groups. The new owners gave guarantees of editorial independence.

Here is not the place however, to canvass the history of wire services. Rather, it is useful to highlight three aspects of news agency governance that contribute potential ingredients to trust structures of the future.

The first is Reuters, and the trust deed signed on 28 October 1941. The deed, endorsed by the wartime British government, stated that the parties “will regard their respective holdings of shares in Reuters as in the nature of a trust rather than as an investment” and committed them to ensure:

- a) That Reuters shall at no time pass into the hands of any one interest group or faction.
- b) That its integrity independence and freedom from bias shall at all times be fully preserved.
- c) That its business shall be so administered that it shall supply an unbiased and reliable news service to British, Dominion, Colonial, Foreign and other overseas newspapers and agencies with which it has or may hereafter have contracts.
- d) That it shall pay due regard to the many interests which it serves in addition to those of the Press.
- e) That no effort shall be spared to expand develop and adapt the business of Reuters in order to maintain in every event its position as the leading world news agency.³¹⁸

The two shareholders each appointed four trustees and the independent chair was nominated by the Lord Chief Justice. When the Australian Associated Press and the New Zealand Press Association became shareholders in 1946, each was allowed to appoint a trustee. The role of the trust was to “act in a consultative capacity with the board”, and it had the power to reject nominations to the board and to dismiss directors. The P.E.P Report on trusts acknowledged the Reuters agreement, but made no comment on its effectiveness. However as later events were to prove, the deed was no more than a shareholders’ agreement that could be altered (Read 1992, 234). Its provisions also could be sidestepped, as in the acceptance of money from the Foreign Office that was characterised as a commercial contract but which was in fact a subsidy that flew in the face of “integrity, independence, and freedom from bias” (*ibid.*, 326-332). The flotation of Reuters as a public company in 1984 (on the back of its lucrative move into financial

³¹⁸ Read 1992, 244.

data services) led to restructuring that altered the trust deed and the trustees played an active role in protecting what had become known as the Reuters Trust Principles. The result was the creation of a Founders Share Company that held one special share with over-riding voting rights in certain circumstances. Under the new structure, the trustees could invoke the Founder's Share to prevent a single group acquiring control, and could prevent any move to vary the Founding Share's protective power (*ibid.*, 364). Additional trustees with no connection with Reuters or the newspaper industry were appointed. The trust was reckoned to have been strengthened by the flotation and restructuring. When associated transactions had the effect of increasing Rupert Murdoch's holding of Reuters "A" shares to 23 percent (*ibid.*, 403-4), the possibility of trustee intervention was sufficient to force divestiture. However, this apparent strength did not prevent the merger of Reuters and the Thomson Corporation (an effective takeover by the latter) in 2008 when the article that had kept Murdoch at bay was ignored. It was clear evidence that the deed protected only those things that directors wished to protect at any given time.

Nonetheless, when Reuters merged with Thomson the mechanism, which *has* protected the editorial integrity of the agency, was maintained and the Founder Share and Founder Share Company provisions were written into the new articles of association (Article 1.5).

The second noteworthy example is the way in which the Press Association in Britain has applied the trustee principle. The PA Group's memorandum of association sets out the objects of the company that includes (Section 3a) the collection and dissemination of news and information "on as reliable and impartial a basis as reasonably possible". It then goes on to list a wide range of other functions that contribute to the group's broadening commercial interests. Section 3a is a somewhat equivocal rendition of the journalists' mantra of independence and impartiality, and in 2007, driven by the increasingly commercial focus of the group in the face of rapidly declining fortunes in its traditional newspaper market, the board decided that it needed another mechanism to demonstrate the independence of its traditional editorial services. It established a consultative committee known as the Press Association Trust, to oversee editorial activities and altered its articles of association (Article 97a) to require the three-person Trust to provide an annual audit of editorial services.

The Trust is composed of a former editor-in-chief of the *Daily Telegraph* (John Bryant), a former BBC Controller of Editorial Policy (Philip Harding), and the director of journalism at the University of Sheffield (Professor Peter Cole). In its first annual report, the Trust was required to address serious criticism of the Press Association (Davies 2008) that was based on research by Cardiff University. The Trust supported the agency's view that the report contained errors, and noted that the section on Press Association had been withdrawn "pending further checks". In its second report, it dealt with the effects of the financial crisis on editorial staffing amid accusations that PA was cutting back on its domestic U.K. reporting and investigated the agency's processes for correcting errors.

The Trust is a recent development, and has yet to challenge either the board or management of the agency. Others have supported Davies' criticism that the agency had become overly dependent on public relations company and government press releases, in spite of Cardiff University's retraction under pressure from PA. One critic notes in a dismissive tone that he had "encountered no reports of the Trust challenging PA output" and is critical of the agency's move into more lucrative 'content provider' roles (Paterson 2010, 234-237). Whether the Press Association Trust represents an effective check on boardroom and management power and a guardian of the public interest remains to be seen.

The third example is a means by which the self-interest of stakeholders can be kept in check, and is found in the operations of the Australian Associated Press news agency. Australia's newspaper conglomerates (News Corporation and Fairfax Media) have a competitive and antipathetic relationship that as the two principal shareholders of AAP, could spill over to the agency's operation with disastrous effects. However, as I found in a review of the news agencies of Australia and New Zealand conducted in 2010 (Ellis 2010, 106-121), such difficulties have been anticipated in the company memorandum and in a management agreement. The former includes in the company objectives: "To preserve the integrity, independence, and freedom from bias of the company's services by, amongst other things, maintaining a balance of control between members" that prevents one group outvoting the other (a situation that could have arisen when Fairfax Media merged with another shareholder, Rural Press, in 2007) and which has promoted a degree of consensus that has had the boardroom nicknamed 'Switzerland'.

However, while the shareholders could be kept in balance, there was also a need to ensure that their own interests did not interfere with the agency's autonomy. A former chief executive of AAP, Clive Marshall (now chief executive of the Press Association in the United Kingdom), negotiated a formal management agreement with the board that established an arms-length relationship between directors and management that gives AAP a free hand to develop and sell services. The agreement extends to editorial independence and the editor-in-chief of AAP, Tony Gillies, told me that neither shareholders nor the editors of their newspapers apply pressure to the agency over news coverage.³¹⁹

The combination of company articles and shareholder-management agreement is a belt-and-braces approach that has worked well at Australian Associated Press, and illustrates the advantages of not relying on a single element of formal governance to provide appropriate environments and safeguards. It stands in contrast to its near neighbour, the New Zealand Press Association, which following the withdrawal from the service of Fairfax Media (one of the two major Australian-owned newspaper groups that were the principal owners of NZPA, and a significant shareholder in AAP), was due to be wound up before the end of 2011 after 131 years of service (statement by NZPA chairman, Michael Muir, 6 April 2011).

8.2.2 Future importance of news agency governance

Governance structures that protect the ability of news agencies to function as non-partisan, and accurate gatherers and distributors of news and information in the public interest may take on added significance in a future where traditional newspaper and broadcasting newsrooms are under increasing cost pressures.

The editor of the *Guardian*, Alan Rusbridger, told a Media Standards Trust seminar in 2009 that the decline of local news reporting warranted a government subsidy to the Press Association to undertake local public service journalism, which described as a “kind of utility” which was just as important as gas and water (Holmwood 2009). The Press Association at the time was attempting to start a pilot scheme to redress its own decline in local council and court coverage. Rusbridger's comments were in response to

³¹⁹ Interviewed in Sydney 5 June 2009.

an alarming decline in local news coverage in Britain, but it is a phenomenon also seen in elsewhere.

There is a heavy reliance on news agency material in mainstream newsrooms, which is growing as the number of journalists in those newsrooms and their satellite bureaus declines (Davies 2008, 74-108). News agencies therefore see opportunities to become the principal provider of bread-and-butter content on a more economic basis than individual publications and broadcasters can achieve. Already, international news agencies have come under more pressure to provide foreign coverage in newspapers and broadcast outlets that previously fielded their own overseas correspondents (Moore 2010, 43).

News agencies represent important components in the growth and maintenance of national character and social awareness (Day 1990, 238). Should their influence increase further, the governance structures under which they operate will assume even more importance. The majority of the mechanisms discussed above, function principally as reserve powers. The primary responsibility for adhering to editorial values and standards in the provision of public interest journalism lies at an operational level and within the editorial department. Nevertheless, the provision of even reserve powers is an important element of trustee governance.

8.3 Stand-alone non-profit journalism

While news agencies may play a special part in future news media, a range of other entities also has grown up to fill the vacuum left by the degradation of traditional news services (Compaine & Cunningham 2009, Deuze 2007, Picard & van Weezel 2008). They range from incorporated not-for-profit organisations and cooperatives, through university adjuncts, to loose forms of social media. Their purpose is to fill specific needs within the journalistic spectrum, and they have flowered particularly in the United States. These organisations are worthy of their own research project and this section will limit itself to examining some aspects of the more institutionalized enterprises. Structurally, these are conventional but they provide a number of insights. They show, for example, that stand-alone non-profit organisations set up solely to carry out a journalistic function *can* attract tax-free status and philanthropy that is currently unavailable to existing newspapers with a circulation/advertising revenue base. However, recent experience by one such organisation demonstrates the need to build

safeguards into philanthropic funding models and to seek a diversified range of donors. An examination of these start-ups also shows that the vision and drive displayed by their founders largely determine the culture and editorial ethos that develops within them. What has yet to manifest itself, however, is a framework that ensures a founder's legacy will endure after he or she has gone.

8.3.1 Structure of major investigative reporting organisations

Stand-alone organisations without formal links to newspapers or broadcasters are not new. The oldest still in existence in the United States is the Center for Investigative Reporting that was established in California in 1977. It has since been joined by a raft of similar organisations in other states, the most prominent of which are the Center for Public Integrity (1989) and ProPublica (2008). Each of these three organisations has been registered as a non-taxable, non-profit 501(c)3 corporation eligible to receive grants and donations. The incorporation documents in each case are designed to conform to the requirements of the federal Internal Revenue Code for non-profit organisations, and do not include provisions to safeguard editorial integrity, although they all state that their purpose is to produce and distribute investigative journalism in the public interest. Their status (designed to facilitate tax-deductible donations as well as exemption from paying taxes), precludes them from selling the results of their editorial endeavours or from selling advertising space. Strict provisions are applied by the IRS to ensure that eligibility is maintained. The model therefore, is more appropriate for an emerging class of editorial organisation than one that is likely to be adopted by existing newspapers or commercial broadcasters. It is the reason why the *St Petersburg Times* is a taxable business while its owner, the Poynter Institute, is a non-taxable 501(c) 3 educational organisation.

Typically, these non-profits have conventional boards of directors that include founders, academics, prominent journalists, and philanthropists. For example, the Center for Investigative Reporting board includes Leonard Downie (former executive editor of the *Washington Post*) and representatives of two charitable foundations; the Centre for Public Integrity has a large 20-person board that includes Arianna Huffington (founder of the *Huffington Post*) and Geneva Overholser (director of the School of Journalism at the University of Southern California's Annenberg School for Communication); while ProPublica's board includes representatives from three prominent philanthropic

foundations. Each organisation also maintains at least one advisory board that includes academics, journalists, lawyers, and community representatives. Each operates under a code of conduct that is tailored to the complexities of investigative journalism. At least two other non-profit investigative journalism units (The Texas Tribune and the London-based Bureau of Investigative Journalism) have been modeled on ProPublica.

Annual tax returns show that the Center for Investigative Reporting received local grants and donations worth \$US11.6 million in the five years to December 2009, and the Center for Public Integrity received \$US23.4 million over the same period. ProPublica received \$US16.3 million between its inception in 2007 and 2009. Despite these significant sums, philanthropic support requires considerable fundraising effort on the part of these organisations. An Aspen Institute forum on future models for journalism in 2009 noted that there was reluctance on the part of charitable foundations to “fund media”.³²⁰

The newsrooms of the organisations vary in size and structure. The Center for Investigative Reporting (CIR) has only seven staff reporters and correspondents, but its associated enterprise California Watch has 12 reporters, and CIR also calls on the services of 39 contributing correspondents. The Center for Public Integrity has a fulltime staff of 40, 70% of whom are engaged in editorial duties, and ProPublica has a staff of 33 fulltime journalists. Each organisation is led by a veteran journalist – the Center for Investigative Reporting by Robert Rosenthal (former managing editor of the *San Francisco Chronicle*), the Center for Public Integrity by Bill Buzenberg (former vice president for news of National Public Radio), and ProPublica by its founder, Paul Steiger (former managing editor of the *Wall Street Journal*).

The methods of distributing their investigative endeavours vary from organisation to organisation. Some like the Center for Public Integrity, operate a creative commons approach under which their stories are available to all media outlets for publication. Others like ProPublica, typically negotiate exclusive arrangements for first publication of major investigations with partner publications that range from the *New York Times* to the *Denver Post* and *Albany Times Union*. Material is placed in a creative commons environment after exclusive first publication, and ProPublica pro-actively ‘pushes’

³²⁰ Aspen Institute, *Of the Press: Models for transforming American Journalism* (A report of the 2009 Aspen Institute Forum on Communications and Society).

stories to individual newspapers. Its general manager, Richard Tofel, told me the choice of placement is where the story will have the greatest impact and that exclusivity invariably means better display of a story. A ProPublica staff member was awarded a Pulitzer Prize in 2010 for an investigation, published by the *New York Times*, into the aftermath of Hurricane Katrina at New Orleans' Memorial Medical Center. In 2011 ProPublica became the first organisation to win a Pulitzer for an investigation (on Wall Street and the recession) that was published only online and not in print.

8.3.2 Issues with non-profit investigative units

Substantial funds are needed to sustain the quality and range of investigative projects that these organisations undertake each year. A core issue is the ability to tap into a stream of grants and donations that allow similar-sized budgets to flow from year to year. Equally important however, is the need to secure a range of donors to prevent over-dependence on one source. This prospect faced ProPublica, which was established on the basis of a multiple-year grant from its principal supporter, the Sandler Foundation. When I visited ProPublica's offices in the financial district of New York, both Steiger and Tofel emphasised that diversifying the donor base was a high priority that was supported by the Sandler Foundation.³²¹

Herbert and Marion Sandler were instrumental in the establishment of ProPublica, and in 2007 made what Tofel describes as: "a minimum three-year rolling commitment" under which their foundation indicates at the end of each year whether it will roll over the funding. As a result the organisation is able to place a three-year horizon (currently to 2013) on its financial planning but the foundation did not see itself as the sole funder of the enterprise and Sandler is now, according to Tofel, a "principal fund-raiser" on ProPublica's behalf. The Knight Foundation, which is a strong supporter of journalism projects, made a grant under which three-quarters is devoted to a fund-raising development strategy. In its 2009 tax return, ProPublica disclosed that the Sandler Foundation contributed 70 percent of the \$US6.4 million received in grants and donations. Six of ProPublica's donors were committed to funding for two or more years.

Diversified funding is simply a sensible strategy. Browne advises organisations like this to be wary of philanthropic funding because of "potentially competing and hidden

³²¹ Steiger and Tofel were interviewed in New York on 20 April 2010.

agendas” (2010, 901). ProPublica had an indication of potential problems when a donor came under public criticism. The Slanders were the owners of a respected financial institution, Golden West Financial Corporation, the sale of which in 2006 provided the couple with a \$US2.4 billion fortune that they then applied to philanthropic projects like ProPublica. However, during the credit crisis the Slanders were subjected to high profile media criticism from the *New York Times* (among others), that included being part of a *Time* magazine list of ‘people to blame for the financial crisis’. A five-page investigation by the *Columbia Journalism Review* (March/April 2010, 40-44) largely exonerated the Slanders, and between January and June 2009 the *New York Times* issued three corrections to its 25 December 2008 front page criticism of them.

Steiger admits the episode caused concern among the staff: “but it was not worrisome for me because, as someone who covered this stuff as reporter and mostly as editor, I understood the difference between what Golden West was doing and what the engines of disaster were doing”. Steiger told the staff that ProPublica was monitoring the issue, and if he and the managing editor saw something that they believed merited investigation, ProPublica would do so. He also invited staff to suggest any aspects of the controversy that they thought the organisation should pursue. In this event, ProPublica’s reputation was not tarnished (nor in the long run has the Slanders’), but the episode highlighted the need for organisations such as ProPublica to scrutinise their funding sources, not be overly reliant on a single source whose removal could cause severe financial problems, and to place a clear distance between donor and editorial output. In 2010 a similar start-up, The Fiscal Times, provided a story to the *Washington Post* on federal spending, but did not disclose that its own financial backer, Peter G. Peterson, had a strong interest in the subject and connections to some of the experts quoted (Pérez-Peña, *New York Times*, 18 January 2010). The *Washington Post* later acknowledged it should have made the disclosure. ProPublica has in place board resolutions to prevent such associations. Steiger told me:

[At the formative stage] the Slanders and I were discussing how it [ProPublica] would operate. I said I thought the best way would be for them to have no knowledge of what we were working on and there should be no intervention in what we were working on from them or any other board member or donor. They agreed with that with no argument whatsoever and it was their idea to make it part

of the minutes at the first two board meetings. [It is a board resolution that] I think would be immutable.³²²

Many news media companies observe similar conventions, but Tofel is unaware of any other organisation that has codified editorial independence to this degree through board resolution.

Culture, as we have already seen, is an important element of any newsroom. The culture of these start-ups owes much to the vision of their founders who seek to inculcate it as rapidly as possible into a body of journalists (experienced and inexperienced) who come from a variety of backgrounds to work in an organisation with no pre-existing heritage. The background of the founder therefore strongly informs the ethos that develops. In the case of the Center for Investigative Reporting, two of its founders, Lowell Bergman and David Weir, were former staff writers on *Rolling Stone* magazine. Charles Lewis was a producer on CBS's *60 Minutes* before establishing the Center for Public Integrity, and both Steiger and Tofel had distinguished careers on the *Wall Street Journal*. In each case, their former employment influenced the values that they brought to their new undertakings. Tofel (a former lawyer), for example, re-wrote the Code of Ethics at the *Wall Street Journal* before writing ProPublica's code. He admits to "plagiarising myself" although ProPublica's code also drew on those of other news organisations. Steiger explains the cultural development process:

First of all, the Sandler and the board are committed to the principles here and I have been lucky enough to assemble a team led by Dick Tofel and Steve Engelberg (managing editor) and they totally embrace the principles and helped refine and shape them. Then we have a very strong collection of senior reporters and senior editors that all share that vision. And we're all busy, not only doing stories and pumping out a website, but also creating a culture so the kids who are the web posters are embracing and refining that culture themselves. So there is an engine in development here that I think is building a lot of momentum and [which] can continue.³²³

In a farewell email when he left in 2004, Charles Lewis encapsulated the ethos that had grown during his 15 years leading the Center for Public Integrity. In it he said:

The Center must always maintain courageous, fearless "edginess" and a willingness to expose abuses of power, from Presidents to multibillion dollar corporations. But edgy and compelling must also always accompany fair and accurate at the Center for Public Integrity, and nothing beneath this standard

³²² Interview in New York on 20 April 2010.

³²³ Interview in New York on 20 April 2010.

should ever be published. There is no such thing as too careful when it comes to information gathering...The stakes are very, very high just as the opportunities to create high impact national and international journalism are extraordinary. Don't ever let the bastards get you down or intimidate you. But also, don't ever, in any way, enable them to diminish your credibility as a truth-teller (Lewis 2007, 18).

He told me the email was: "the closest thing I ever did in my time at the centre to setting forth what I think is the way it should be done", but added: "No-one at the centre has a copy. It's not up on the wall".³²⁴ With hindsight, Lewis believes he should have done more to codify the values and ethos of the centre, but admits that although he has re-joined the board of the centre it is now too late to commit to paper the values that he inculcated during his period of leadership. It is one of several regrets he has about governance of the operation.

The frustrating thing about discussing founders is that founders don't go to Founders' School and they don't read books on founding. It's all based on instinct and adrenalin [and] your wits. And even after you've done it and succeeded there is not enough of a sense [of the need] to preserve what you've created. I hate to admit that and I'm deeply proud of what I did at the centre...I knew how temporal life is. I knew how temporal it is with people and I knew about my time with those 15 years [at the centre] after I created it. I did understand that whoever came after me...would have different sensibilities. I was reluctant, a little shy and, with humility, wasn't sure it was my place to codify my vision...Was my humility misplaced? Yes it was.

Lewis also believes that insufficient attention was paid to succession planning. His attempts to groom successors within the centre failed, and after extending his departure date by a year, he was unwilling to further extend his tenure. The events that followed his decision highlight the need for three things:

- A board must recognise the stresses on a chief executive when he or she is facing burn-out.
- It must instigate a succession process early enough to avoid deadline-driven decisions.
- A board must have sufficient independent representation to function as a governance body rather than a support mechanism for the founder who almost invariably chooses the inaugural directors.

³²⁴ Charles Lewis interview with author, American University, Washington D.C., on 19 April 2010.

None of this was present when the replacement of Lewis was considered. His successor remained in the post for only 16 months. Lewis explains the consequences in a report on non-profit journalism:

The mark of a true institution is one that has been able to survive one or more leadership transitions. I came to the sober realization a few years ago, after passing a milestone birthday, that at some point the founder has to leave the building, for the long-term wellbeing of the enterprise. The past two transition years have been very difficult to watch. Most of the Center's carefully assembled, very talented, senior staff had quit by the fall of 2005; the successor executive director's 16-month tenure ended abruptly in June 2006, followed by an acting executive director for another six months. During this time, with a few notable exceptions, the reports, while undeniably important and fulfilling a public need, were generally unremarkable, generating neither substantial news media coverage nor web interest. Worse, some stories even required embarrassing public corrections. Fundraising revenue to the Center for 2005 and 2006 was only about half what it had been in 2004, and in early 2007, the number of full-time staff was reduced by one-third (Lewis 2007, 21-2)

The centre recovered after the arrival of its present director and the appointment of a number of new directors that changed a founder's board into a governance board (*ibid.*, 23). However, Lewis is somewhat rueful that the necessary processes were not put in place *during* his 15-year tenure. Paul Steiger is more sanguine about his successor at ProPublica: "The board will decide on my successor. We don't have a name in the safe [a reference to my asking whether ProPublica followed the same convention as the *St Petersburg Times*], but we are a very flat structure and the board knows the people here and the board has a sense of who is outside. I think if I got hit by the proverbial train the board would deal with it."

However, there is a difference between Lewis' open-ended tenure and the situation at ProPublica where Steiger committed to a 3-5 year appointment. His third year ended in December 2010, and the board indicated its desire for him to stay beyond that point. Nonetheless, the board of ProPublica knows it must address the succession in the relatively near future as Steiger was born in 1942. However, it seems in the nature of organisations such as the Center for Investigative Reporting, the Center for Public Integrity and ProPublica that their concentration is on the present and on survival rather than on the preservation of the short heritage that they have been able to build.

As Downie and Schudson demonstrated in their 2009 study *The Reconstruction of American Journalism*, the field of non-profit journalism is full of experimentation, risk,

and hope. Like the endeavours themselves, the governance of these entities is a work in progress. As there is little doubt that non-profit journalism will play a part in the future of news media, attention to structure and governance is as important as the editorial output if the fledglings are to survive.

8.4 Low profit limited liability companies

The non-profit investigative units discussed above, exist on the philanthropy of concerned citizens and foundations and are, for the present and in spite of their websites, content providers rather than mainstream media outlets like newspapers and television networks that publish their investigations. Trusts and institutions such as those that own the *Guardian*, *Irish Times*, and *St Petersburg Times* lie between the non-profit organisation and the familiar profit-centred public company. Their profits go to sustaining their endeavours (and in the case of the Florida newspaper, maintaining an educational institution) rather than returning dividends to shareholders. However, as we have also seen there are numerous legal hurdles involved in charitable trusts operating for-profit enterprises. There is scope therefore, for an additional enterprise structure that provides the altruistic governance required of trustees, the virtuous circle of continuing reinvestment, and a public interest focus – without the potential legal difficulties of marrying charitable trust and commercial enterprise.

On the horizon is the use of a special type of company structure recognised in a number of U.S. states and which may get federal support. In many ways, it is the antithesis of the high-profit, bottom-line-driven commercial newspaper groups that are the norm. Called Low-profit Limited Liability Companies (L³Cs), they sit in the gap between non-profit and commercial enterprises, and receive tax concessions for putting social purposes ahead of profit. The L³C is being suggested as an alternative for news media, but may require legislative change to make ‘the news’ a social purpose. It could be the basis for news media trusts that cannot achieve charity status because they sell their content.

The L³C structure serves two worthwhile purposes. First, it provides a governance structure that is an appropriate recipient of tax concessions that contribute to viability, and secondly, it could overcome potential legal issues associated with establishing media organisations as charitable bodies. Disseminating the news in the ways with which we are familiar is not yet a charitable purpose, and those run by profit-driven

corporations doubtless never will be. However, should an epiphany (unlikely as it may sound) lead to decisions to cast some publications as serving principally social purposes, the L³C may provide an appropriate structure within which they can operate.

The first legal recognition of the L³C structure took place in 2008 when Vermont amended its company laws. By the first quarter of 2011, the L³C was recognised in eight states and a further 21 jurisdictions were considering legislative amendments.

The L³C is still in relative infancy and subject to continuing interpretation and legal development. Nonetheless, the structure is being seen as a possible pathway down which sections of the financially battered news media may pass. It is being seen as a means by which the news media organisations of the future could attract capital in an environment where newspapers and television stations are no longer seen as attractive investments, and news websites have a lower earning capacity than their traditional counterparts once enjoyed. There are however, hurdles aplenty. The most significant of those barriers is the difficulty in persuading legislators and tax officials that a newspaper (or any of the other traditional forms of news media) can be included within the rubric of social purposes. Schmalbeck (2010, 251-271) mounts an argument that they *should* be included, but freely concedes there are many features of contemporary newspapers that would be hard-pressed to defend their existence in terms of ‘achieving a lessening of the burdens of Government’, ‘advancement of education and science’, and ‘promotion of social welfare’. He finds little in the current L³C laws to accommodate newspapers – most politicians would subscribe to the view that newspapers *increased* their burden. However, it is a situation that could be remedied a unilateral ruling by the Inland Revenue Service or by Congress to alter the qualification for L³C status. There are good grounds, Schmalbeck says, for seeing that done (*ibid.*, 270-271):

So we are left saying, I think, simply that publication of a newspaper *should* qualify as a valid charitable objective. This is an activity that involves tremendous positive externalities that cannot be easily captured by the publisher, but which are essential to the political, economic, and social health of the community served by the particular newspaper. This is so clear to many individuals that they would be willing altruistically to support the publication of the newspaper with disinterested contributions. And newspaper publishing is perhaps the single best example of an activity that is in the public interest, but which should nevertheless not be conducted by the government, since criticism of government performance

is one of its greatest services, and accomplishment of that goal would be compromised by government ownership and operation.

The model has yet to migrate, but it does offer potential that is not limited to North America. As Schmalbeck notes, because the core problem of newspapers is a financial one, the solutions presumably come in the form of new financial structures (*ibid.*, 251). The L³C offers the potential of a viable financial structure that because of its inherent social purpose, is an ideal vehicle for a self-sustaining (as opposed to profit-centred) news media trust.

8.5 Lessons

It is clear that news media trusts do not have a monopoly on governance in the public interest. There are other structures that have the potential to shore up the gathering and distribution of democratically significant and socially sustaining journalism. However, the purpose in detailing the governance of these other entities has been to show that there are lessons in them for the types of trust that are our primary focus.

Public service broadcasters (PSBs) for example, will be instructive should state subsidies form part of the private sector media landscape, as Rusbridger suggests might in the case of Press Association coverage of local/regional matters (10.2.2). PSBs show how external bodies can have an over-riding influence, either formal or informal, through control of finance. Should some form of state funding eventuate, PSBs could show that an impenetrable barrier must be put between politics and those who allocate the funds to say, trust-run newspapers. PSBs also offer lessons for newspaper trusts about mechanisms that help to sustain the journalistic pursuit of the public interest.

News agencies show how trust-like agreements and documented executive powers can enshrine journalistic values and separate the interests of the shareholders and the agency. They also illustrate the inability of a trust-like agreement to prevent the inevitable consequences of rising shareholding value, and the irresistible urge to realise that value even when the result is the destruction of a cooperative and ownership in the hands of a foreign corporation (as was the case with Reuters).

The growth of investigative journalism units to fill a gap in the editorial landscape has provided proof, that in the United States at least, philanthropy can go hand-in-hand with a public-spirited desire by the founders of such organisations to hold power to account

through good journalism. These are young organisations whose ethos and embryonic heritage owes much to the character and vision of those founders. There is a warning here, that the demands of the present can draw attention away from the medium and long-term future. As Charles Lewis noted: “The mark of a true institution is one that has been able to survive one or more leadership transitions”. The lessons to be drawn from the L³C are two-fold. There is much to commend Schmalbeck’s belief that the solution to financial crisis in the news business lies in emerging financial structures, altered to accommodate newspapers – and models like the L³C offer the prospect of institutional change in which the socially significant purposes of journalism can be embedded and protected under trustee control.

Chapter 9: Conclusions – possibilities and realities

It is today that we can establish the framework conditions, underlying infrastructure, and regulatory environment for the journalism of tomorrow. Not acting may be as consequential as taking deliberate and decisive action.

Levy & Nielsen, *The Changing Business of Journalism and Its Implications for Democracy* 2010, 145.

Journalism cannot be divorced from the business and ownership structures within which it is housed, just as the media are an inseparable part of a broader socio-political environment (Altschull 1984, 286). Yet little attention is paid to ensure that those structures are capable of nurturing the journalism necessary to sustain that environment. This thesis set out to determine whether trusts and trust-like stewardship are capable of providing a sustaining framework within an industry that is struggling to find alternatives to a flawed business model. The normative qualities of most kinds of trustee stewardship are inherently positive, so this exercise has been an appraisal, based on a number of cases, of the practical application of that form of governance in an industry with fluctuating fortunes and strong personalities.

There will be solutions to the current disturbing state of mainstream media. Some of those solutions will be revolutionary, others evolutionary. There are enormous opportunities for low-cost entry to the open-ended world of digital broadband, while large conglomerates have the resources to sustain and enhance their mainstream news media outlets if they are determined to produce quality, professional journalism. Some new ventures will be short-lived because they have been ill-conceived, and there will be further faltering and failure of established organisations – the 2011 demise of the New Zealand Press Association after 131 years as the country's national news agency is a case in point. Voids may be created by these failures that others can seek to fill, but faltering outlets may be saved by changes that are not limited to their newsrooms and the content they produce. Private sector news media organisations that make a significant contribution to the public interest may be sustained by including ownership structure in the mix of novel restorative changes.

The study has shown that in each case, the use of trusts and trust-like structures in the news media has been a reaction to unique circumstances. Unique circumstances mean each of the news media trust studied here has been different, although it shares common elements with its counterparts. Each has also been modified over time in order to meet changed circumstances or the challenges of conflicting aspirations. This chapter draws together observations made throughout this thesis, and concludes that a trust does offer structural protection and journalistic focus, but trustee governance requires careful crafting, is difficult to attain, and will owe its success or failure to not only the skill and insight of trust founders in establishing appropriate institutional structures and guarantees but also to the personalities of key players.

9.1 Summary

The introductory chapter set out the proposition that trust ownership or trustee-like governance offered a structure that could protect democratically significant journalism in mainstream media, particularly newspapers or their direct electronic counterpart accessed via eReaders or tablet computers. I defined democratically significant journalism as the type of reportage, commentary, and analysis that helps citizens make informed judgements about politicians and bureaucrats, and hold them to account. It provides catalysts and platforms for debate, and in its broader coverage, contributed to the social and cultural well-being of society.

Chapter 1 stated that this research was about institutions and briefly outlined that approach in relation to the structures and processes of news media organisations.

Chapter 2 provided the rationale for investigating trusts as an alternative form of ownership and governance. It presented evidence of the factors that have contributed to the weakening (and in some cases failure), of the business model under which newspapers have operated. Four development phases were identified. The first was the growth phase, in which the upward trend in circulation and advertising revenue after the Second World War provided a 30-year bonanza that turned newspapers into attractive businesses which gained the attention of the share market. This led to the concentration phase in which the owners of private media companies were persuaded to unlock the value of their newspapers by selling to newspaper groups. Ownership of newspaper titles became concentrated in the hands of a relatively small number of publicly listed groups. It was a trend that severed the close ties that many local owners had with their

communities through association with other local businesses and agencies, together with accountability to readers they were likely to meet in the street. Several corporate characteristics (that were to have later consequences) emerged in this phase: A desire by investors for earnings stability that led to the use of cost-control in editorial departments as a profit smoothing mechanism; an institutionalised view that acquisition equalled growth; and the financing of acquisition by large-scale borrowing that could be covered by healthy cash flow.

Healthy cash flow was the key to the newspaper business, but during the destabilisation phase the business began to change. In the 1990s, newspaper circulation began to decline in most English-speaking countries, and in the first decade of the 21st century the rate of decline accelerated. My analysis of circulation and revenue in six of these countries identified what I have termed a 'service gap'. From 2002 to 2005, there were inverse trends in circulation and advertising revenue. As the former declined, the latter rose. Even when readership assessments were substituted, the service gap remained. Readership was at best, flat-lining, but advertising revenue continued to grow. At the same time, the newspaper share of advertising in five of those markets declined in the decade to 2005. The industry was receiving more for delivering less and the situation was unsustainable.

Companies entered a short but disastrous high risk phase in which large news media corporations began to absorb each other and borrowed huge amounts of money to fund the transactions. Such aggregations improved current accounts by merging revenue streams, but the balance sheets of the enlarged groups revealed alarming debt/equity ratios. In some cases, media companies were acquired by speculators and private equity firms that loaded the cost of purchase back onto the news media companies' books.

Large interest costs and relatively short-term credit arrangements propelled the companies into crisis when the international financial meltdown of 2007 sent circulations into free-fall and advertising volumes into dramatic decline. Net revenue that had made news media companies the darlings of the stock exchange evaporated and sent some into bankruptcy. I concluded that the financial crisis which newspapers found themselves in, was produced by a misguided view that the companies had to expand or die, by incaution bred by market expectations and personal incentives, and by collective industry belief in the 'legitimacy' of their strategies. The victim in this crisis was the

professional, print-standard journalism that became squeezed between budget cuts and the Internet.

Chapter 2 ended with an assessment of the ability of individual citizens to use the Internet to substitute for the professional, socially significant journalism that has been seriously eroded in the past five years. I concluded that while citizen journalism and blog-based commentary made valuable contributions, they were not substitutes for the influential journalism that emanated from professional newsrooms. These newsrooms serve mass audiences and employ people, trained to observe the normative values of journalism, who have unparalleled access to the holders of power because of their organisations' audience reach. However, the evidence presented in this chapter suggested that investors in publicly listed media company may be unable or unwilling to support such journalism in the long term if it no longer offers the rate of return that initially attracted them. This in turn, pointed to the need to assess alternative forms of ownership and governance that would be willing to sustain effective professional journalism. The remainder of this thesis examined trusts and trust-like structures as vehicles to serve that need.

History is a vital component of this study, and detailed examination of trusts over time has revealed lessons that can (and have) informed the development of more robust and purposeful institutions. The following common themes were identified:

- The organisations on which trusts and trust-like structures have been built were imperfect entities.
- The motives and methods that led to trustee governance were instrumental in creating vehicles that could not stand the rigours of time.
- The finances of the organisations had a fundamental influence on their development, affecting both structure and editorial capacity.

These characteristics were not limited to news media trusts and Chapter 3, showed that even an exemplar of trustee governance (the Wellcome Trust), which is the United Kingdom's largest non-governmental source of biomedical research funding – progressed fitfully toward its present model status. It demonstrated the need for example, to underpin the trust with an appropriate legal instrument (a benefactor's last will and testament proved inadequate). It showed the absence of robust and clearly

delineated procedures can draw trustees and managers into disagreement and potential conflict. It also highlighted the limitations of an investment strategy based solely on the traditional core business, which in the case of the Wellcome Trust, limited its income for many years. However most importantly, the chapter set out the current governance structure and strategy of the Wellcome Trust, which I maintain is a model that others might follow. That trust operates under flexible instruments that offer sufficient freedom of action while protecting assets and objectives. Its internal governance and operational structures ensure the separation of business and non-commercial activities in a way that would be usefully employed in news media operations (with journalism designated a non-commercial activity). The chapter also underlined the benefits of risk management through diverse investment strategies that act as financial shock absorbers, as the Guardian Media Trust also demonstrated in Chapter 8.

The selflessness of the Wellcome Trust stood in contrast to some of the trust architects discussed in Chapter 4. The purpose of this chapter was to not only describe the genesis of newspaper trusts, but also to demonstrate how the trust deed could be used to perpetuate the political and religious beliefs, or to mask the true intentions, of the founder. However, it also showed how organisations that were not trusts in the legal sense could embody trustee-like principles in their articles of association to protect the editorial independence of a publication and ensure stable ownership.

Chapter 4 dwelt on the findings of the P.E.P. report on trusts, because its conclusions were instructive. It placed great importance on the form of a trust, the selection of its first trustees, and the process for their replacement. Yet it was under no illusion that a trust necessarily created editorial independence, or was capable of turning a poor newspaper into a very good one. Its finding on editorial independence was somewhat prophetic. Rupert Murdoch's trustee undertakings, given to secure ownership of *The Times* and *Sunday Times*, were largely negated by his management style. This left a strong impression that the arrangement was no more than a Trojan horse to get him inside the gate.

When the chapter turned to examination of newspaper trust development in North America, it found the majority were endowment trusts established to protect family assets for the benefit of family members. There were exceptions: Trusts were used to allow staff members a share of ownership (for example, at the *Kansas City Star*), to

allow religious institutions to own publications (notably the *Christian Science Monitor*), or to bequeath newspapers (such as *The Day*) for charitable purposes. Trust status was also used in an attempt to secure ownership of newspapers virtually in perpetuity, but as the case of the Frank E. Gannett Foundation showed, legislation and market forces could conspire against such desires. Likewise, the chapter showed how legislation had thwarted the wishes of benefactors to establish trusts, but gave the example of the *Toronto Star* to show that determined executors could enshrine the benefactor's values in a company's articles and ethos.

Chapter 4 concluded by drawing some lessons from history. It found a trust could be hostage to its founder while he or she was alive and such influence could persist from the grave. It found trustees could be usurped or marginalised when other owners were involved in an organisation and that such owners could jeopardise editorial independence. It found a complex relationship existed between trustees and editors that required careful and explicit codification and exercise of each party's powers. Finally, it re-affirmed the need for flexibility in trust instruments and articles to account for future change.

The family endowment trusts encountered in the history of newspaper trust development bore many of the characteristics of the family firm. Chapter 5 canvassed these attributes and found that researchers had identified the following characteristics in family firms: loyalty, sole leadership, integrated decision-making, 'Shared Dreams', family-centric altruism, primogeniture, sibling rivalry, an expanding beneficiary base, and inefficient management. Such attributes were to be found in the examination of significant news media family trusts that followed, although the 'family firm' in the modern media world had become one in which the family was the privileged holder of a class of shares that secured control of a company which had opened its doors to public shareholders and their capital.

The Ochs-Sulzberger, Graham, Bancroft, and Harmsworth families over successive generations each controlled newspapers with international reputations. The Murdoch family, similarly endowed, effectively is in its first generation and yet to experience the events that moulded the other families. Chapter 5 revealed that the survival of such family newspaper trusts required strong leadership and diplomacy to forge structures

that were able to withstand the combined effects of family expectations and aspirations, shareholder and share market demands, and financial fluctuation.

The Ochs-Sulzberger family's control of the *New York Times* provided several lessons: Carefully constructed trust instruments and covenants can minimise the likelihood of internecine conflict, inculcating each generation with appropriate family values can sustain an ethos that will put journalism before profit, primogeniture opens the company to criticism (whether justified or not), dual voting systems can be maintained by resolute family unity but require adroit management of shareholder relations, and such control can be compromised by circumstance (such as the financial rescue package provided by Carlos Slim).

The principal lesson from the Graham family was that although it had been subjected to heavy budget cuts, the survival of the *Washington Post* had been enhanced by a diversification strategy applied by Katherine Graham and her son Donald, with the eminent advice of Warren Buffett (whose Hathaway Corporation is a major shareholder). Donald Graham's leadership of the family trust and of the company also told us that trusts do not, of themselves, generate a sentimental attitude toward the business: His management of the *Washington Post* has been commercially pragmatic and the sale of loss-making *Newsweek* magazine showed that any attachment to a publication could be outweighed by business realities.

The Bancroft family provided two important lessons: The first was that lack of involvement in a company's affairs could be as damaging as overt interference in its operational management. The Bancroft family's 'hands-off' attitude left the company with no clear sense of strategic direction. The second lesson was that in the absence of restrictive clauses to prevent sale of a controlling interest, 'cousin stage' differences could be exploited, particularly when coupled with the maxim 'everyone has their price'.

The Harmsworth family are British media aristocracy and as such, presented a striking case study in institutionalised primogeniture and the lottery that it represented for the protection and promotion of the editorial fortunes of the *Daily Mail* and its sister publications. Fortuitously, both the third and fourth Viscount Rothermere proved to be able leaders who displayed strong support for their editors-in-chief and the concept of

editorial independence along with a degree of business acumen. The family, like its counterparts across the Atlantic, benefitted from a two-tiered share structure that had been criticised by other shareholders seeking a greater say in the Daily Mail & General Trust. However, for decades DMGT resisted the temptation to raise capital through rights issues and limited the number of shares. Through two family trusts, Viscount Rothermere also exercised control over a majority of the family's voting shares that he did not own outright. It was a further lesson in the maintenance of company control.

The existence of trusts cannot be cited as the reason why the families discussed in Chapter 5 owned such highly influential and prestigious newspapers. The trusts contributed to the ethos but their principal purpose was to protect family interests and, in every case, the continued existence of a commitment to journalism was due to the men and women who led the dynasty and their close associates. It is a theme that runs throughout this thesis: Structure cannot be divorced from the strength of those who lead it.

Three newspapers in trust or trust-like ownership have been at the core of this study, and inspired my interest in trustee stewardship of news publications. *The Guardian*, the *Irish Times*, and the *St Petersburg Times* are newspapers whose journalism is outstanding, and whose political influence is greater than their circulation numbers would suggest. Chapters 6 and 7 explored why that should be so.

A survey of the origins of each publication and the circumstances that led to a dramatic change in the nature of its ownership provided little common ground. As noted at the beginning of this chapter, the move to trustee stewardship involved novel reactions to unique circumstances. However, all three newspapers had already established reputations as liberal publications that had taken principled stands on significant issues. In other words, there was an established tradition of liberal journalism. Two of the three had owner/editors (C.P. Scott and Nelson Poynter) with a well-developed sense of the requirements of good journalism and the role of the newspaper in the community and in democratic society.

None of the newspapers at the time of the ownership change would have been considered a high financial performer, but could have been a takeover target. Trust (or

in the case of the *St Petersburg Times*, educational institute) ownership was a means by which that undesirable possibility was kept at bay.

It was at this point that similarities between the publications ended, but they were to prove fundamental to the future ethos of each newspaper. As the unique circumstances played out, each enterprise found its own trustee structure, but all built into their articles an obligation to pursue high journalistic ideals solely in the public interest – even the tantalisingly simple phrase “as heretofore” that had been C.P. Scott’s last wish for the running of the *Guardian* was the embodiment of such ideals. And each expressed the desire to continue to do so in perpetuity.

Chapter 6 examined the development of each of the three trusts (for the sake of convenience let us regard the Poynter Institute in the same way as its two counterparts) and found that in all cases there were significant structural and governance changes over time. Some alterations were legal adjustments to account for law changes and taxation interpretations, but others were to overcome weaknesses exposed by events.

The first three decades of the Scott Trust’s existence were dominated by members of the family whose generosity led to its formation. However, the relationship exposed two weaknesses in the arrangement: A readiness by descendants of a benefactor to display proprietorial tendencies, and a power imbalance created by allowing such a descendant to be both trustee and managing director in an environment where the powers of a trust are effectively unstated. It would have been churlish for the Trust to move formally against family influence given the Scott family’s generous gift, but events in the 1960s and 1970s brought an end to family dominance of the trust.

The outcome is instructive. So too, is the company’s attempt to diversify its business. While initial efforts were relatively unrewarding, the strategy adopted in the 1970s and 1980s provided an investment portfolio that helped to sustain the *Guardian* in loss-making years. The final decade of the 20th century saw what might be regarded as a maturing of the Scott Trust in providing active governance of the Guardian Media Group through a well-constructed articulation of its responsibilities and those of the executive. Structural maturity is not however, a complete defence against risk-taking and the purchase of the *Observer* (followed by the appointment to a succession of editors) illustrated that trustees and executives acting together, could expose an

organisation to risk. Public exposure of the consequences of such actions, however, led to one wholly beneficial outcome: The Scott Trust and GMG became, in the first decade of the 21st century, a model of transparency and public accountability. The one constant throughout the history of the Scott Trust was its commitment to preserve and promote the liberal journalism of the *Guardian*.

The Irish Times Trust's history is shorter than that of the Scott Trust, but there was a remarkable similarity between the two in terms of the exercise of power. The *Irish Times* had not been a family newspaper, but one of the architects of the trust in which it was vested acted with the same proprietary style as members of the Scott family. The position of Major Tom McDowell was protected by the trust deed, and as trust chairman and chief executive he acted like an owner (but an attempt at nepotism was a step too far). It was an example of concentrated power that ran counter to the broader interests of a trust board. As a result, the trustees themselves were little more than window-dressing while McDowell was in command.

However, McDowell did not interfere editorially. He and his fellow trustees and directors clearly felt bound by prescriptive editorial objectives and principles that provided both focus and commitment. The separation of editorial and managerial responsibilities had however, been established before the trust was formed. Nonetheless, the enshrining of an editorial ethos in the articles undoubtedly contributed to the *Irish Times* emerging as a liberal newspaper serving all Ireland. Its status allowed it to attract journalists who gave it added weight as a politically important journal.

The Irish Times Trust's record of governance was not as positive and reflected years of supernumerary status under McDowell. The adoption of new articles in 2001 fundamentally altered the balance of power between trustees and management. We saw here the enactment of an important principle: Trusts should oversee and managers should manage. It is debatable whether *too much* power was vested in the Irish Times' executive board, but trustees' power of veto was well entrenched.

Concentration of power was at the centre of Nelson Poynter's plans for the *St Petersburg Times*. He believed that to be successful, the newspaper must be under the firm hand of one person who chose his or her successor. The system established on his death provided strong leadership for the newspaper, but it stands or falls on the quality

of the person chosen for the role, and therefore, must be seen as a potential institutional weakness. Although the Scott Trust's experience with the *Observer* editorship showed trustees as capable as individuals of making mistakes, collective leadership has more checks and balances.

There are further lessons to be taken from the development of the Poynter Institute and its ownership of the *St Petersburg Times*. The first relates to the danger of a structure in which significant shares are beyond the control of the trustees (in this case members of Poynter's family). Resolution of this problem proved expensive for the institute. The second is the delicate relationship between an educational body (or perhaps, a charity) and its commercial enterprise. A tax-free status is essential for the former, and a robust separation between the entities is necessary to preserve it.

Mature governance structures have emerged from the development of the three 'trusts', and a significant legal change took place when the Scott Trust was transformed into a private company. It offered better protection from tax liability, but interestingly, was accomplished with no discernable change to the way in which trustees have continued to operate. The important point that this raises is that organisations can operate with all the provisions and principles of trustee stewardship without the formal shell of legal trust status. Indeed, given tax authorities' apparent difficulty in categorising trusts that operate commercial enterprises, the new structure of the Scott Trust may be a model for others to follow.

The policy of transparency pursued by the Scott Trust and the Guardian Media Group are also worthy of emulation, not only by future enterprises but also by their Irish and Florida counterparts who meet only minimum legal requirements. The Poynter Institute and Times Holdings Company in particular, do not practice the level of financial disclosure they exhort other bodies to follow. This highlights the need for trust ownership to practice higher standards of accountability as a concomitant element of the special relationship with the public. That said, the cornerstone mastheads of the three organisations continue to stand for liberal journalism pursued in the public interest, and Chapter 7 examined how each has faced the considerable challenges that had been canvassed in Chapter 2.

The different business structures of each organisation described in Chapter 7 have influenced its ability to withstand the rigours of recession and the downturn in audiences for traditional media. However, two common elements stand out in the responses covered in the chapter: A commitment to the maintenance of core journalistic resources that many other editors have been unable to secure; and a determination to protect the principal newspaper – the founder’s central bequest, even at the expense of other publications and assets in the group.

The editor is central to the performance of most newspapers (a few figureheads are still to be found) but Chapter 7 illustrated the signal importance of the editor-in-chief in trust-run publications. The senior editors: Rusbridger, Kennedy, and Tash, were each shown to have institutionalised power in both the business and editorial sense. Each was a director of the respective operational board, and two were members of the ‘trust’ board as well. The chapter demonstrated that in addition to this institutionalised power each possessed a dominant personality (albeit expressed in different ways), that was impressed on his or her publication. Each was shown to be a champion of the type of journalism that holds political power to account. Once again, it was an illustration of the fact that personalities cannot be divorced from the equation in assessing the institutional effectiveness of trust ownership.

Nonetheless, one should not lose sight of the fact that the appointment of an editor is ultimately the responsibility of the trustees, and even the Poynter Institute would be forced to intercede if the ‘name in the vault’ nominated by the incumbent was manifestly inappropriate. It is equally significant that the editor-in-chief in each case has established a good professional relationship with the chair of the trust, or in the case of the *St Petersburg Times*, the head of the Poynter Institute.

Chapter 7 explored the business approaches of the three organisations in response to current financial problems, and found that diversified interests had acted as buffers, particularly for the *Guardian* and the *St Petersburg Times*. The flexibility to divest loss-making or non-core activities was equally helpful, but low debt will undoubtedly be a pivotal factor in the short-term future of all three organisations. The implicit degree of caution that is embodied in trustee stewardship acts as a moderating influence on balance sheets, and it is significant that none of the trust-owned groups have the debt millstones that have plagued their corporate counterparts.

The over-arching business lesson drawn from that chapter is that trustees must recognise that the modern media world is complex and survival requires the expert skills of professionals. This suggests the desirability of a two-tiered system of governance in which trustees safeguard core purposes and values including editorial independence while directors oversee business strategy and management.

Such a two-tiered system was present in the BBC Trust model set out in Chapter 8, which examined the governance of public service broadcasting and the new start-ups that have emerged to fill gaps in the journalistic landscape. That chapter found that charters that set out the values and obligations were taken seriously by public service broadcasters and gave them a clear sense of direction. These are instruments that could be readily employed in organisations other than state-owned enterprises, supplementing trust deeds and articles of association in a way that allowed fixed-term reviews and (when necessary) more routine change than formal alteration to articles. However, the chapter also illustrated how even the most diligent drafting of empowering documents did not fully immunise an organisation against outside influence and interference, particularly when there were external elements of financial control. This provided an object lesson for the type of organisation, also discussed in the chapter, which depends on philanthropic contributions for its survival.

Philanthropically supported organisations, set up primarily to undertake investigative journalism, are trusts in all but name. They operate similar governance structures to the newspaper trusts discussed in the previous two chapters, albeit without commercial enterprise. However, they exhibit two traits that the newspaper trusts have left behind: A pervasive founder influence (a function no doubt of their relatively recent formation), and a less codified approach to governance (perhaps as a result of the way in which 501(c)3 status dictates incorporation documentation).

That notwithstanding, these bodies represent a viable form of trust-like governance for journalistic undertakings. Large scale philanthropy (an established part of American society but less ubiquitous elsewhere) has made it possible for these organisations to be established as charitable institutions. That application is limited and limiting, because it precludes commercial revenue generation. The L³C structure discussed in Chapter 8 is a means by which trustee governance might be maintained, while allowing an enterprise to generate enough commercial revenue to sustain itself.

As this thesis explored trust ownership and governance throughout the 20th century and into the present millennium, it encountered numerous elements that contribute to (or detract from) the use of this form of ownership and oversight by organisations engaged in journalistic endeavours. Positive and negative attributes emerged over successive chapters. Trusteeship could promote and protect such journalism, but there were potential shortcomings in this form of governance. When it was poorly constructed, or placed in the hands of people who were able to usurp its collective role by exercising dominant personal power, it became a weak vessel.

Most trusts and trust-like entities were sentenced to pass through periods of adversity or uncertainty, and not all emerged to become stable and sustainable enterprises. Each, however, contributed something to our understanding of the dynamics of trusteeship in the news media. Taken together, they may provide a roadmap by which others might avoid collisions or running off the highway.

The key attributes have been summarised in the Table 9-1 on the following page, before then turn to the future.

Table 9-1: A summary of positive and negative attributes in examples of trustee stewardship

Chapter 3: Exemplar trust (Wellcome Trust)	Chapter 4: Historic trusts (20th century development)	Chapter 5: Family Trusts (Family-run newspapers)	Chapters 6-7: The Trinity (<i>Guardian, Irish Times, St P. Times</i>)	Chapter 8: PSB an start-ups (TV, wire services and investigators)
<ul style="list-style-type: none"> • Appropriate legal structure. • Balance between trustee powers and liabilities. • Clear trust objectives. • Flexibility. • Pragmatic business approach. • Diversified trust assets. • Comprehensive risk management. • Comprehensive internal governance. • Separated management functions. • Financial transparency. • Constructive trustee/executives relationship. 	<ul style="list-style-type: none"> • Memoranda and codicils morally bind trustees. • Founders can ‘direct from the grave’. • Proprietors can usurp advisory trusts. • Relationship between trustees, ‘proprietors’ and editors is finely balanced. • Flexibility is the key to both the governance and operation of a long-running trust. 	<ul style="list-style-type: none"> • Interaction of family unit, individual family members and the business itself. • Need for formal governance often ignored. • Exhibit shortcomings of many family firms. • Strong individuals can nurture family’s ‘Shared Dream’. • Primogeniture can weaken leadership. • Generational family expansion is potential source of friction. 	<ul style="list-style-type: none"> • Circumstances dictate nature of ownership. • Tax law is a deciding factor. • Family/former owners may exercise hold on leadership. • Clear demarcation required between trustee and executive roles. • Business and editorial transparency that is not always forthcoming. • Dominant editors play key roles. • Public service can be enshrined in trust deed or company articles. • Editorial departments cannot be isolated from financial realities. • Trust-owned newspapers preserve core editorial functions. • Need diversified business strategies. 	<ul style="list-style-type: none"> • Politicised appointment processes. • Political intervention possible in spite of protective legislation. • Two-tiered governance system advisable. • Charters mandate services and performance requirements. • Formal management agreement may serve purpose similar to charter. • Survival of editorial values depends on the goodwill of the buyer. • Status of start-ups strongly influenced by tax laws. • Over time, independent trustees should replace founder appointees. • Guiding principles should be codified. • Robust, transparent funding processes are essential. • Formal processes required to ensure succession and renewal.

9.2 Possibilities and realities

The proposition explored in this thesis was that trust ownership or trustee-like governance offered a structure that could protect democratically significant journalism in mainstream media. More than 50 years ago the P.E.P. report on newspaper trusts ended with the observation that it would “be necessary to watch the performance of trusteeship over many more years before its success or failure can be measured”. Those many years have passed and my conclusion is that this form of stewardship can meet that laudable aim but that it does not guarantee it.

The purpose for which a trust is formed is central to the issue. There are no guarantees that a trust established to protect the interests of family members will protect the journalism in any publication in which the family has an interest. The focus of these trusts is family, and any other benefits are incidental. Similarly, trusts established to ensure continuity of ownership and prevent the breaking up of media groups have a primary responsibility that offers no quality guarantees or protection of editorial resources. The most likely candidates for success are trusts established to preserve and promote in perpetuity the core editorial values of an already-good newspaper or to establish and maintain high professional standards in a new organisation set up to fill a significant journalistic vacuum.

The three newspapers studied in detail in the thesis meet that test. Editorially, the *Guardian*, *Irish Times* and *St Petersburg Times* can be judged successful and committed to high journalistic ideals. Commercially, they are rocked by the same uncertainties that beset their contemporaries but their strategies to ensure survival are driven by preservation of editorial legacies rather than return on shareholder equity. They cannot claim a monopoly on commitment to journalism, but they differ from other champions in that their resolution is an enduring requirement of their trusteeship rather than the mortal desires of a proprietor that may not be held by a successor. All three are likely survivors.

Similarly, investigative units such as the Center for Public Integrity, Center for Investigative Reporting, and ProPublica appear likely to continue to attract sufficient philanthropy to continue in operation, although they will remain vulnerable to funders’ grants decisions. It remains to be seen whether over time, they develop more substantial formal frameworks to sustain the trust-like governance under which they operate and

are likely to continue to function. The issue of succession planning and evolution beyond the founder legacy continue to be problematic for such organisations. It is also unclear where an operation such as ProPublica would fit into the media landscape should it no longer have access to the mass circulation newspapers with which it currently cooperates. Its influence is drawn not only from the quality of its investigative reporting, but also the size of audience it can deliver through cooperative projects.

The burning question is whether or not other major newspapers or news organisations could move into a form of trust ownership. In other words, is there another ‘Scott family’ or group of ‘Irish Times shareholders’ or ‘Nelson Poynter’ willing to gift a ‘*Guardian*’ to a trust? In the course of this research, I interviewed numerous people in the United Kingdom, United States, and Australia. The views of some have been presented here, but all contributed to my understanding of the realities of the news media landscape. The overwhelming consensus is that there will not be another Scott Trust.

There are a number of reasons for this view, not least of which is the very small number of major newspapers left in private ownership. As far as investors are concerned, listed media companies exist only to increase the value of tradeable securities and to produce dividends. Such investors do not practice collective philanthropy. The fiduciary duty that directors owe to their investors requires them to attempt to realise value in the sale of even an ailing newspaper, which in today’s market may mean the buyer assuming a level of debt. It is unlikely that a trust would be willing and able to assume such a burden. Directors see even closure of a title as a better alternative when a company can write off its losses. Put plainly, the economics of major media companies – afflicted by the strategies set out in Chapter 2, represent an impediment that would daunt the most public-spirited potential trustee.

A more likely prospect lies in the regional or local market where in Britain and America, large-scale closures have already occurred. Here the scale may be such that groups of individuals could either take over a title or start a new news enterprise. However, the form of ownership would require careful thought. In many jurisdictions, there are issues over how the news might be classified to reflect a move away from the profit-driven commercial model. News collection and distribution for example, is not classified as a charitable endeavour (although a body of opinion suggests that in certain

circumstances it could be so designated). Not-for-profit status may be difficult to reconcile with a business model that still requires the sale of advertising, and a cover price to cover staffing and operating costs. It is here that a variation of the L³C structure may enable a regional or local newspaper trust to operate in a self-sustaining manner while attracting tax concessions that improve its viability. For the moment however, this remains an area requiring legislative and tax code attention by central government. However, legal structure should not be seen as an insurmountable impediment. As this research has demonstrated, workable trust and trust-like operations can and do exist. The focus should be on the type of governance that would be employed. Trustee stewardship, manifested in a number of the ways described in preceding chapters, represents a means by which agreed journalistic objectives and values can be entrenched.

It is debatable whether such enterprises should operate as local cooperatives or as formal trusts. The former may not be as robust or enduring as a trust as each member would retain an ownership share. A further alternative suggested to me was the purchase of a newspaper by an altruistic local resident, who could place the oversight of the publication in the hands of a local board of trustees – as an alternative to hands-on local ownership and direction by what were described as “not media barons but media squires”.

On a wider stage, the investigative units of the United States suggest there is more scope for this type of enterprise to fill journalistic gaps that have emerged in other markets, although funding options may be more limited. A trust structure may also offer alternatives to ownership by fragmenting media groups for some news agencies which, caught in the breakdown of the traditional structure of regional and local newspapers, may require reorganisation. A broadly based trust could for example, be formed to take over the operation of the New Zealand Press Association, which is trapped between the conflicting attitudes of the two Australian media groups that own most of New Zealand’s newspapers.

The consensus appears to be that trusteeship is a viable option at these levels but not at national level. However, the consensus is based on the belief that a national newspaper is too large a financial commitment (in the form of invested capital or accumulated debt) to be gifted by present owners or afforded by those who would seek to emulate the

Irish Times Trust. It is a pragmatic view with which it is difficult to argue, although it ignores the possibility (unlikely though it may be in an era of government fiscal austerity) of state assistance for the creation of a new public service news organisation based on the written word.

In any event, the traditional mainstream media is a game that is still being played. Financial results for news media companies in 2010 suggest a recovery in their fortunes – modest profits have followed large losses. However, in the majority of cases those profits have been achieved in spite of falling revenue suggesting, first, that cost cutting continues in those groups and, second, that the underlying problem of falling circulation and advertising remains in place. Newspapers continue to be a problem in search of a solution that will become more pressing as each financial year closes. A consequence may be a decline in their net value. Selfless benefaction may no longer place influential newspapers in trustees' hands, but a media company could wish to simply divest itself of a publication to which it has paid insufficient attention and turned into a loss maker. A realistic (or nominal) price for a 'product' no longer deemed 'attractive' may allow trustees to raise sufficient funds to rescue a publication to which they could give their undivided attention. If not, in a world where 'publication' no longer involves ink and paper, the start-up costs of an electronic equivalent do not present trustees with the market barrier that once made newspapers so commercially attractive.

Over time, the news has become a less attractive investment. Declining revenue, combined with decreased direct competition through newspaper mergers and closures, has seen fewer resources deployed in newsrooms in the struggle to maintain profitability. Perversely, although the number of media outlets and user has grown exponentially in the digital age, the breadth and depth of news coverage by mainstream media has diminished. Society may have no alternative but to seek creative ownership solutions if it wishes to retain a mass-audience alternative to the quality journalism produced by state-owned public service broadcasting. The need for multiple sources of such journalism is self-evident, not least because the notion of a state-owned monopoly on newsgathering carries with it significant difficulties.

The United States Bill of Rights invested the press with an untouchable quality. Commercial enterprise throughout the 20th century reinforced the proposition that as conscientious custodians of the public interest, the news media could be left to be

masters of their own destiny. In the 21st century, there is a strong case for institutional change if commercial enterprise cannot guarantee the supply of democratically significant journalism and a commitment to the public interest that transcends other interests (and there is ample evidence that in many quarters it is failing to do so). This thesis has found that those newspapers with trust ownership or trust-like governance possess a uniquely enshrined, sustainable commitment to journalism, and a determination that their newsrooms will not become what the Canadian Davey Commission on the Press described as “boneyards of broken dreams”.

In 1989 Leo Bogart stated that: “...the worst appears to be over” for U.S. newspapers facing declining revenue and readership (1989, 49). It was the year in which Tim Berners-Lee proposed the World Wide Web, and Rupert Murdoch launched Sky Television in Britain. Obviously, there are risks in prediction and what follows may owe more to hope than certitude. It is safe to say however, that digital technology *will* deliver an information-rich future. The contributions of citizens (informed and otherwise) will sit alongside the work of professionals. There is potential for more news, more analysis, and more high quality journalism. There is scope for the newspaper to move to a multi-media iPad/tablet platform that retains in-depth reportage and analysis without the burden of printing and distribution costs. At the other end of the spectrum, there is potential for this type of journalism to be further fragmented and eroded. My prediction is that in time, this journalism will recover when citizens realise the democratic deficit that results from its loss. New structures will evolve where the old forms of ownership and governance are found to be inadequate or inappropriate. Trusteeship will not be seen as quixotic or eccentric, but as a natural expression of the public interest in a segment of the news media that will regard income as the key to editorial sustainability rather than shareholder satisfaction.

Appendices

Appendix 1: Participants

Interview subjects

London

Lord Fowler, Chair, House of Lords Select Committee on Communications.

John Stewart, Company Secretary, Wellcome Trust.

Chris Woolard, Deputy Director, BBC Trust.

Dr Martin Moore, Director, Media Standards Trust.

Stephen Whittle, Reuters Institute & former BBC Controller of Editorial Policy.

Dr Aeron Davis, Goldsmiths College.

Dr Natalie Fenton, Goldsmiths College.

Dr Des Freedman, Goldsmiths College.

Lord Puttnam, House of Lords.

John Mulholland, Editor, The Observer.

Peter Williams, Group Finance Director, Daily Mail & General Trust

Robin Esser, Executive Managing Editor, Daily Mail.

Douglas Wills, Managing Editor, Evening Standard.

Guy Black, Director Corporate Relations, Daily Telegraph.

Chris Wade. Head of Corporate Relations, Guardian Media Group.

Dame Liz Forgan , Chair, Scott Trust.

Steve Folwell, Director of Strategy, Guardian Media Group.

Alan Rusbridger, Editor, The Guardian.

Michael Pelosi, Managing Director, Northcliffe Newspapers.

One anonymous interview.

Oxford

Dr David Levy, Director, Reuters Institute.

Tim Gardam, Reuters Institute

Dr Keith Ruddle, Said Business School

Dr Andrew Currah, Reuters Institute.

One anonymous interview.

Brighton

Professor Roy Greenslade, City University London.



Ireland

Geraldine Kennedy, Editor, Irish Times.

Prof David McConnell, Chair, Irish Times Trust.

Dr Mark O'Brien, Dublin City University.

St Petersburg, Fl.

Paul Pohlman, Senior Faculty, Poynter Institute.

Karen Dunlap, President, Poynter Institute.

Roy Peter Clark, vice-president, Poynter Institute.

Rick Edmunds, Media Business Analyst, Poynter Institute.

Stephen Buckley, Dean, Poynter Institute.

Howard Finberg, Director interactive learning, Poynter Institute.

Kelly McBride, Senior Faculty (ethics), Poynter Institute.

Bill Mitchell, entrepreneurial programmes, Poynter Institute.

Julie Moos, Director, Poynter Online.

Paul Tash, Chief Executive & Editor-in-Chief, Times Publishing.

Tim Nickens, Editor of Editorial, St Petersburg Times.

Five anonymous interviews.

Washington D.C.

Charles Firestone, Executive Director, Communications and Society Program, Aspen Institute.

Charles Lewis, American University.

New York

Paul Steiger, Editor & CEO, ProPublica.

Richard Tofel, General Manager, ProPublica.

Sydney

Mark Scott, Managing Director, ABC.

Paul Chadwick, Director of Editorial Policies, ABC (videolink to Melbourne).

Shaun Brown, Chief Executive, SBS.

Gerald Stone, board member, SBS.

Mark Armstrong, Communications Policy Research Forum.

Clive Marshall, chief executive, Australian Associated Press.

Tony Gillies, Editor-in-chief, Australian Associated Press.

Chris Mitchell, Editor-in-Chief, The Australian (by telephone).

Wellington

Peter Cavanagh, Chief Executive and Editor-in-Chief, Radio New Zealand.

Tim Pankhurst, Chief Executive, Newspaper Publishers Association.

Nick Brown, Editor, New Zealand Press Association.

Participant information sheet

You are being asked to participate voluntarily in an interview as part of an approved programme of advanced study and research to meet the requirements of the degree of Doctor of Philosophy at the University of Auckland, New Zealand. This document sets out the scope of the research project, the nature of your participation should you agree to take part, and the obligations to which the researcher will be committed.

RESEARCH PROJECT: *Structural issues in the preservation of the functions of professional journalism.*

The rapidly changing financial model for traditional news media – together with institutional issues within media organisations (such as convergence and ownership change) – has led to reductions in the number of journalists employed on daily and weekly newspapers and in network television newsrooms. The impact has not, however, been uniform. This project asks whether trustee and trustee-like governance structures found in news media organisations affect responses to the crisis and contribute to the well-being of professional journalism.

RESEARCHER: Gavin Ellis, doctoral candidate, Department of Political Studies, and former editor-in-chief of New Zealand's largest daily newspaper *The New Zealand Herald*.

PARTICIPATION: Your voluntary participation in this project is being sought because of your involvement with the industry and the insights you can bring to a study of the structures that govern the news media today. Your input may help to determine whether particular structures offer better protection for the types of journalism to be found in traditional news media's publications, broadcasts and associated websites.

FORMAT: You are invited to participate in an interview based on a range of topics that will be forwarded to you in advance in an email. You are at liberty to decline to discuss any of the suggested topics and to add subjects that you believe will be useful. The interview will take a minimum of 30 minutes and may be extended if you are able to make more time available (up to a maximum of two hours).

RECORDING: I wish to record the interview on a digital voice recorder for the purpose of accuracy and will seek your permission to do so (see consent form). If you wish to discuss any matters off-the-record, the recording will be stopped and only resumed when you are ready to permit its resumption. The recording of the interview will be used only for the purposes of this research and remains confidential to the researcher. Transcriptions of any sections that I propose to use in my doctoral thesis or published research will be referred back to you for editing. The recordings will be stored as digital (.WAV) computer files.

ATTRIBUTION: Your position within the industry is such that attributed comments will add weight to the research. However, your anonymity will be guaranteed if you wish your contribution to the project to be unattributed (in whole or in part). Confidentiality will be maintained over of any information that you wish to be used only as background (i.e. not for inclusion).

DATA STORAGE: Recordings and notes of interviews will be kept in secure storage available only to the researcher and supervisor. Data will be identified by your name or, alternatively, by a code number if you wish to remain anonymous. Researchers should retain recordings for six years. Your permission will be sought to retain the record of your interview for at least that period. Should you wish to have the recording destroyed, you can indicate your preference on the consent form.

PERMISSION: Would you please indicate on the consent form if permission from another person is needed for your participation in this project. Please supply the name of the person within your organisation from whom permission should be sought. Information derived from the interview with you will not be provided to that person by the researcher. You are, of course, at liberty to discuss the interview and the transcripts referred back to you for editing.

RIGHTS: You have the right to withdraw from this project at any time and to withdraw any information up to 90 days after the interview and receipt of transcripts.

FUNDING: Funding for this research has been sought from the University of Auckland Postgraduate Research Student Support Account and the Faculty of Arts Doctoral Research Fund.

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For any queries regarding ethical concerns you may contact the Chair, The University of Auckland Human Participants Ethics Committee, The University of Auckland, Private Bag 92019, Auckland 1142. Telephone 09 373-7599 extn. 83711.

Approved by the University of Auckland Human Participants Ethics Committee
on October 8, 2008 for (3) years, Reference Number 2008/406.

CONSENT FORM

This form will be stored for a period of six years

PROJECT: *Structural issues in the preservation of the functions of professional journalism.*

RESEARCHER: Gavin Ellis, doctoral candidate, Department of Political Studies

I CONSENT TO:

- Be interviewed by the researcher on topics relevant to his research.
- The digital recording of the interview, subject to any conditions I may require.
- The use of material from the interview in the researcher's doctoral thesis and in any publication that may result from the research.
- Secure storage of recordings from the interview.

I UNDERSTAND THAT:

- A list of relevant topics will be forwarded to me via email before the interview.
- I can decline to discuss any of the suggested topics and to add any subjects that I believe will be useful.
- The recording will be interrupted if I wish to discuss matters off-the-record. Recording will resume only when I am ready to permit its resumption.
- The recording will be used only for the purposes of this research.
- Transcriptions of any parts of the interview that the researcher proposes to use in his doctoral thesis or published research will be referred back to me for editing.
- The recordings will be stored as digital (.WAV) computer files and will be held in secure storage (restricted to the researcher and his supervisor) for a period of not less than six years unless I indicate otherwise below.
- My name may be used with consent
- My anonymity will be guaranteed if I wish my contribution (in whole or in part) to be unattributed.
- Information provided only as background (i.e. not for inclusion), will remain confidential.
- I have the right to withdraw from this project at any time and to withdraw any information up to 90 days after the interview and receipt of transcripts.

NAME:

ORGANISATION:

POSITION:

[SIGNATURE]

[DATE]

I consent to the use of my name ☐

I wish to remain anonymous ☐

Appendix 2: Wellcome Trust Constitution

**Constitution of the
WELLCOME TRUST**

(Charity registered in England & Wales no. 210183)

Established by a Scheme of the Charity Commissioners for England and Wales
dated 20 February 2001,

as amended by a Scheme of the Charity Commission for England and Wales
dated 9 January 2009

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ADMINISTRATION

1. Administration

- (1) The charity is to be administered in accordance with the Constitution established by this Scheme, which replaces the former trusts of the charity.
- (2) Words and phrases defined in Schedule D to this Constitution shall bear the same meanings in this Constitution.

CONSTITUTION

2. Name of the charity

The charity is to be known as the “Wellcome Trust”.

3. Trustee

- (1) The Wellcome Trust Limited, a company incorporated in England under number 2711000, shall continue to be the trustee of the Trust.
- (2) The Trustee may perform or discharge its functions as trustee of the Trust in any manner permitted by this Constitution, by law or by its memorandum or articles of association from time to time.

OBJECTS

4. Objects of the Trust

The objects of the Trust are:

- (1) to protect, preserve and advance all or any aspects of the health and welfare of humankind and to advance and promote knowledge and education by engaging in, encouraging and supporting:
 - (a) research into any of the biosciences; and
 - (b) the discovery, invention, improvement, development and application of treatments, cures, diagnostics and other medicinal agents, methods and processes that may in any way relieve illness, disease, disability or disorders of whatever nature in human beings or animal or plant life; and
- (2) to advance and promote knowledge and education by engaging in, encouraging and supporting:
 - (a) research into the history of any of the biosciences; and
 - (b) the study and understanding of any of the biosciences or the history of any of the biosciences.

5. Research in accordance with clause 4(1)

In pursuing research in accordance with clause 4(1), the Trustee shall do so with the intention of producing results that add or may add to scientific knowledge. It is expected that a large part of such research may lead to results that will benefit the life, health and well-being of humankind.

POWERS OF THE TRUSTEE

6. Object powers

In furtherance of the objects of the Trust, the Trustee may exercise the powers and undertake the activities set out in Schedule A to this Constitution and, in addition, all such other powers and activities as shall in the opinion of the Trustee further the attainment of the objects.

7. Administrative powers

In administering the Trust and in furtherance of the objects of the Trust, the Trustee may exercise the powers set out in Schedule B to this Constitution and, in addition, do all such other acts and things as shall in the opinion of the Trustee further the proper administration of the Trust or the attainment of the objects.

8. Investment powers

The Trustee may invest the property of the Trust as set out in Schedule C to this Constitution.

9. Exercise of powers

The Trustee shall be free to exercise the powers conferred on it under this Constitution anywhere.

10. Regard to charitable status

In furthering the objects of the Trust and in exercising all the powers conferred by this Constitution and all other powers conferred by law, the Trustee shall at all times have regard to the status of the Trust as a charity.

DISCHARGE OF DUTIES

11. Duties of the Trustee

The Trustee shall ensure that proper consideration is given and, where appropriate, proper advice is obtained in relation to the performance or discharge of its functions as trustee of the Trust.

12. Delegation

- (1) The Trustee may delegate, and may permit the sub-delegation by any delegate of, the performance or discharge of any function to any person that the Trustee reasonably believes to be qualified by his, her or its expertise to perform or discharge such

function. In particular, it shall be reasonable for the Trustee to believe that a sub-delegate is so qualified if the person proposing to delegate to such sub-delegate so advises the Trustee. The Trustee shall exercise reasonable supervision over any delegate and, unless it shall have made proper provision for a delegate to do so, over any sub-delegate. Any such delegation or sub-delegation may be general or in relation to a specific act or to specific acts.

- (2) Clause 12(1) shall not apply in the case of any delegation of the Trustee's powers of investment, the delegation of which shall be governed by the provisions of Schedule C to this Constitution.
- (3) Notwithstanding anything to the contrary in this Constitution, the Trustee shall be liable for any loss caused by an act or omission of a delegate or sub-delegate of the Trustee (whether appointed under clause 12(1) or under Schedule C to this Constitution) only if and to the extent that such loss is attributable to:
 - (a) a breach of trust or breach of duty by or other material default of the delegate or sub-delegate that any Governor had actual knowledge of or recklessly disregarded and, in either case, that the Trustee shall have failed to take reasonable steps to remedy or mitigate; or
 - (b) a failure by the Trustee to exercise reasonable care in the choice of the delegate or sub-delegate in question, or in the fixing or enforcing of the terms of the delegation, or in its renewal or review, provided that the Trustee shall not be liable for any such loss caused by a sub-delegate of the Trustee if and to the extent that the Trustee shall have made proper provision for the delegate appointing or supervising such sub-delegate to exercise the relevant function of the Trustee on its behalf.
- (4) If the Trustee shall consider that it is reasonably necessary to do so, it may include among the terms of any delegation or permit a delegate to include among the terms of any sub-delegation (whether under clause 12(1) or under Schedule C to this Constitution):
 - (a) provision for the limitation of the liability of the delegate or sub-delegate to the Trustee; or
 - (b) provision for the delegate or sub-delegate to act in circumstances capable of giving rise to a conflict of interest.

13. Liabilities of the Trustee

- (1) All liabilities lawfully incurred by the Trustee in fulfilling its duties and administering the Trust shall be discharged or reimbursed to it from the Trust Fund. In particular, the Trustee shall be reimbursed any amount required:
 - (a) to discharge its liabilities to any person howsoever arising;
 - (b) to be paid to the Governors, whether pursuant to clause 16, the Memorandum or Articles of Association of the Trustee from time to time, or otherwise;
 - (c) to maintain appropriate insurance for itself and those acting or having acted:

- (i) as its Governors, other officers or employees or as trustees, officers or employees of the Trust; or
 - (ii) as directors of or in any other capacity in relation to any other body, either to which they are or were appointed or seconded at the request of the Trustee or the Trust, or in which capacity they represent or represented the interests of the Trustee or the Trust; or
 - (iii) as trustee of the Trust from time to time; and
- (d) to discharge the costs and expenses incurred by it in acting as trustee of the Trust.
- (2)
 - (a) None of the Trustee, any other person that is or was at any time a trustee of the Trust, or any Governor, other officer or employee from time to time of the Trustee or the Trust shall be liable in respect of any act or omission unless and to the extent that the act was committed or the omission was made by such person knowing it to be, or in reckless disregard of whether it would be, a breach of trust or breach of duty.
 - (b) If, notwithstanding sub-clause (a), any such person is so liable, such person (together, in the case of an individual, with his or her estate) shall be indemnified by the Trustee out of the Trust Fund against such liability unless and to the extent that the act was committed or the omission was made by such person knowing it to be, or in reckless disregard of whether it would be, a breach of trust or breach of duty.
- (3) The Trustee may pay the reasonable and proper remuneration for work carried out for the Trust of any professional firm or company (whether incorporated or not) or any other firm or company that carries out work requiring special skills, knowledge or expertise possessed by such firm or company and of which a Governor is a partner, member, director, consultant or employee, provided that:
 - (a) such Governor shall be absent from the part of any meeting at which the employment, retention or remuneration of such firm or company is discussed;
 - (b) such Governor shall not vote on any resolution at any such meeting relating to the employment, retention or remuneration of such firm or company; and
 - (c) a majority of the other Governors present and counting in the quorum at any such meeting shall be satisfied that the employment, retention or remuneration (as the case may be) of the firm or company is expedient and in the interests of the Trust.
- (4)¹
 - (a) A person (“the creditor”) who deals with the Trustee in good faith and for value where the Trustee states that it is acting as trustee of the Trust shall, in respect of any liability of the Trustee arising out of such dealing, have unlimited direct recourse to the assets from time to time of the Trust and be entitled to be fully indemnified out of the Trust Fund notwithstanding the existence of any indebtedness or liabilities owed to the Trust by the dealing Trustee or any successor Trustee (whether incurred as trustee of the Trust or

¹ Clause 13(4) of the Constitution was inserted by a Scheme of the Charity Commission for England and Wales dated 9 January 2009.

otherwise) where the dealing arises out of a written contract which refers to the creditor having the benefit of this clause.

- (b) Nothing in sub-clause (a) shall reduce any liability of the Trustee to the Trust arising out of any dealing referred to in that sub-clause.
- (c) To the extent that any action by the Trustee under sub-clause (a) results in the grant of a mortgage, this clause provides general authority for the grant of such mortgage.

14. Conflict of Interests

- (1) The Trustee shall not be precluded from entering into or implementing any matter giving rise to an actual or potential conflict of interests merely because any Governor, other officer or employee has an interest, personal or otherwise, in it, provided that the Trustee shall have properly fulfilled its duty to consider such matter, including such actual or potential conflict of interests.
- (2) A Governor, other officer or employee shall have no obligation to account for any benefit he or she receives in relation to any matter giving rise to an actual or potential conflict of interests, provided that:
 - (a) such interests shall have been properly disclosed; and
 - (b) other than in the case of an interest that is not material, or as otherwise permitted by the Articles of Association from time to time of the Trustee in relation to Governors, such Governor, other officer or employee shall not have been party to any decision to enter into or implement the matter giving rise to such actual or potential conflict of interests.

15. Use of income and capital

- (1) The Trustee shall hold the Trust Fund as to both income and capital upon trust, after the discharge of any liabilities lawfully incurred by the Trustee and any liabilities in respect of which any other person has the right to be indemnified by the Trustee out of the Trust Fund, to further the objects of the Trust or any of them in such manner as it shall think fit.
- (2) The Trustee may apply the Trust Fund without distinction between capital and income. It may, in its absolute discretion and without altering the expendable nature of the Trust Fund, treat such part or parts of the Trust Fund as capital as it thinks expedient for the prudent administration of the Trust. It may also make reserves out of income to recoup any expenditure funded out of capital, to smooth fluctuations in income or to provide for future income expenditure, or in any other manner permitted by the law of charity. The Trustee shall be free from any obligation strictly to distinguish assets or liabilities as between income and capital so long as it observes a proper balance between the need to allow for present demands on the Trust and the need to allow for future demands.

16. Remuneration of Governors

- (1) Governors shall be entitled to receive remuneration from the Trustee in respect of such office in accordance with the terms set out in this clause 16.
- (2) Subject to any adjustment in accordance with clause 16(3), (5) or (6), each Governor shall be remunerated at the rate of £57,100 per annum.
- (3) The remuneration payable to Governors shall be adjusted in each year (with effect from 1st April in such year) by an amount equal to that percentage of the remuneration payable in the immediately preceding year as is equal to the percentage increase recommended by the Review Body on Senior Salaries (or any successor body from time to time) in respect of such year in the minima and maxima of the salary pay bands of the Senior Civil Service. If such recommendation shall not have been made on or before 1st April in the relevant year, Governors' remuneration shall be adjusted immediately following such recommendation being made and shall be deemed to have taken effect on 1st April of such year. Any increased remuneration payable by reference to the period prior to the recommendation being made shall be paid with the next monthly payment of remuneration thereafter.
- (4) If the Review Body on Senior Salaries shall cease either to exist or to have the function of recommending adjustment to the salaries of the Senior Civil Service, then, if it shall be succeeded by another generally recognised body providing the same service, reference in this clause to such Review Body shall be to such successor body.
- (5) Notwithstanding anything to the contrary in this clause 16, the Commission may by order increase the remuneration payable to all or any of the Governors above the level at which remuneration would otherwise be payable under this clause 16.
- (6) If at any time the Trustee shall consider that any of the provisions for remuneration contained in this clause are no longer appropriate, the Trustee may apply to the Commission to amend the provisions and the Commission may by order, if it shall consider it appropriate to do so, make such amendments.
- (7) If the Commission shall decline to amend the provisions of this clause 16 pursuant to clause 16(6), the Trustee may, subject to the requirements of section 33 of the Charities Act 1993 (or such other enactment or statutory provision as may replace that section) and without prejudice to any other right that it may have, apply to the Court for a scheme for the administration of the Trust.

AMENDMENTS

17. Amendment of Constitution

- (1) Subject to the provisions of this clause, the Trustee may amend the provisions of this Constitution.
- (2) Any amendment shall be made by a resolution of not less than two-thirds of the Governors.
- (3) The Trustee may not make any amendment that would:
 - (a) vary clause 4 (Objects of the Trust);

- (b) vary clause 13 (Liabilities of the Trustee);
 - (c) vary clause 16 (Remuneration of Governors);
 - (d) vary this clause 17; or
 - (e) confer a power to dissolve the charity.
- (4) The Trustee shall obtain the prior written approval of the Commission before making any amendment that would:
- (a) vary clause 2 (Name of the charity);
 - (b) vary clause 18 (Amendment of the Memorandum and Articles of Association of the Trustee);
 - (c) vary the Trustee's powers of investment set out in Schedule C to this Constitution; or
 - (d) vary the definitions set out in Schedule D to this Constitution.
- (5) If the Commission shall decline to give approval under clause 17(4), then the Trustee may, subject to the requirements of section 33 of the Charities Act 1993 (or such other enactment or statutory provision as may replace that section) and without prejudice to any other right that it may have, apply to the Court for a scheme for the administration of the Trust in respect of an amendment to the relevant provision.
- (6) The Trustee shall:
- (a) promptly send to the Commission a copy of any amendment made under this clause; and
 - (b) keep a copy of any such amendment with this Constitution.

18. Amendment of the Memorandum and Articles of Association of the Trustee

- (1) If at any general meeting of the Trustee any resolution is passed to amend:
- (a) the Memorandum of Association of the Trustee; or
 - (b) the Articles of Association of the Trustee, insofar as the same relate to the maximum number of Governors, the appointment and retirement of Governors, the remuneration of Governors, Governors' interests or the requirements for membership of the Trustee,
- then, unless the prior written approval of the Commission shall have been given, upon such amendment being made, the Trustee shall be bound to report to the Commission and to apply for a scheme for the administration of the Trust.
- (2) If the Trustee shall fail to make such an application as is required pursuant to clause 18(1), the Commission shall be entitled to make a further scheme for the administration of the Trust on the basis of the same application as that on which the scheme establishing this Constitution is made.

GENERAL PROVISIONS

19. Interpretation Clauses

- (1) Headings are used in this Constitution for convenience only and shall not affect its construction or interpretation.
- (2) In this Constitution:
 - (a) words such as 'including' and 'in particular' shall be construed as being by way of illustration or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding words; and
 - (b) the powers of the Trustee to exercise object powers pursuant to clause 6 in addition to those set out in Schedule A to this Constitution and to exercise administrative powers pursuant to clause 7 in addition to those set out in Schedule B to this Constitution shall not be limited or construed in any way by reference to the powers included from time to time in such schedules.
- (3) In this Constitution, unless the context does not so admit, reference to the singular includes a reference to the plural and reference to the plural includes a reference to the singular.

20. Questions relating to the Constitution

Upon the written application of the Trustee, the Commission may decide any question put to them concerning:

- (1) the interpretation of this Constitution; or
- (2) the regularity or validity of anything done or intended to be done under it.

SCHEDULE A

1. Powers and activities that may be exercised or undertaken in furtherance of the objects of the Trust set out in clause 4(1):

- (a) the performance and support of research in relation to the prevention, diagnosis, treatment or cure of disorders; or that might assist in the understanding of disorders; or that might lead to treatments for the control of insects, micro-organisms and other pests that might cause, carry or spread disorders; and the production and distribution of medicines and treatments derived from the results of any research, for the benefit of all or any part of the public; including:
 - (i) the research and development, production and distribution of any such prevention, diagnosis, treatment or cure, whether or not there is any likelihood of the costs of such research and development or the costs of producing or distributing any such prevention, diagnosis, treatment or cure being recoverable;
 - (ii) the research and development, production and distribution of any such prevention, diagnosis, treatment or cure, notwithstanding that the results of any such development are incapable of protection by patent or otherwise;
 - (iii) the performance and support of clinical trials or other post discovery processes in relation to any prevention, diagnosis, treatment or cure;
- (b) the establishment and maintenance of, or other involvement in, scientific research units, centres or institutions that are wholly or partly devoted to any subject, matter or thing that may at any time be of relevance to such objects; and/or the collection and exchange of information relating to any subject, matter or thing that may at any time be of relevance to such objects;
- (c) the development of skills relating to any subject, matter or thing that may at any time be of relevance to such objects; and the provision of facilities wholly or partly devoted to such subject, matter or thing;
- (d) the promotion of public education, understanding and awareness of, or interest in, science, or of any subject, matter or thing that may at any time be of relevance to such objects, whether or not among those who might pursue a career or become otherwise involved in such subject, matter or thing, including the performance and support of any activities that might improve such public education, understanding, awareness or interest;
- (e) the awarding of prizes or other marks of distinction for innovative research and for any other charitable object of the Trust, including the study of or research into any subject, matter or thing that may at any time be of relevance to such objects, and the making of regulations from time to time in respect of the value of any such prizes and any qualifications necessary to be eligible for them;

- (f) the making of awards, grants and fellowships and the making of rules as to their value, the methods of ascertainment and selection of candidates and, where appropriate, their period of tenure;
- (g) the funding of posts at education or research institutions and the funding of grants for research programmes or specific research projects at educational or research institutions, including the funding of personnel directly or indirectly related to such programmes or projects (including research assistants, technicians, computer programmers, laboratory managers, secretaries and other administrative staff, nurses and any other persons);
- (h) the funding of any equipment, infrastructure, facilities, building or materials necessary or desirable in connection with the activities covered by such objects or any other subject, matter or thing that may at any time be of relevance to such objects;
- (i) the award of travel grants to teachers, research scientists, students and related personnel to enable them to perform or to attend seminars, conferences, lectures, courses and meetings in respect of or relating to any activity covered by such objects or any other subject, matter or thing that may at any time be of relevance to such objects;
- (j) the promotion, arrangement, organisation and conduct (either alone or with others) of seminars, conferences, lectures, courses and meetings in respect of or relating to any activity covered by such objects or any other subject, matter or thing that may at any time be of relevance to such objects;
- (k) the promotion and encouragement of a multi-disciplinary approach to research projects relevant to any activity covered by such objects or any other subject, matter or thing that may at any time be of relevance to such objects;
- (l) the furthering of the benefit to the public of any subject, matter or thing that may at any time be of relevance to such objects by:
 - (i) publishing or procuring the publication of all or any part of the results of any research, whether or not any intellectual property forming part of those results has patent or other protection;
 - (ii) disseminating, procuring or allowing the dissemination of, or otherwise making available to the public or any part of the public, all or any part of the results of any research; or
 - (iii) such other means as the Trustee may decide;

in each case whether or not making a charge to any person for so doing;
- (m) the promotion and furtherance of the study of the provision of medicine and health care, including the study of administration of the provision of medicine and health care and the study of procedures undertaken in prescribing medicines and in effecting other medical processes, including preventative, diagnostic and therapeutic processes;

- (n) the promotion of public education, understanding and awareness of ethical issues arising in relation to any subject, matter or thing that may at any time be of relevance to such objects;
- (o) the exercise of any power set out in paragraphs (a) to (n) above in conjunction with or ancillary to the exercise of any power of investment set out in Schedule C to this Constitution.

2. Powers and activities that may be exercised or undertaken in furtherance of the objects of the Trust set out in clause 4(2):

- (a) the advancement of the education of the public in any of the biosciences or the history thereof;
- (b) the establishment, provision, maintenance and administration of museums, libraries and other facilities for students or members of the public to study any of the biosciences or the history thereof;
- (c) the sale or exchange of any object or book, or collections of objects or books, owned by the Trust from time to time; the acquisition by gift, purchase, exchange or otherwise and the acceptance on loan of any object or book, or collections of objects or books, by the Trust from time to time; or the lending by the Trust from time to time of any object or book, or collections of objects or books, of scientific interest;
- (d) the use for the public benefit, as the Trustee shall think fit, of any part of the Wellcome Collections:
 - (i) by making accessible to the public such items as it considers to be suitable for the purpose;
 - (ii) by using items to enhance displays of other items suitable for public exhibition;
 - (iii) in such other manner as the Trustee shall determine to be suitable for the advancement of the objects of the Trust (including the sale or other disposal (whether or not for valuable consideration) of items that the Trustee shall consider to be unsuitable for display or otherwise surplus to the requirements of the Trust); or
 - (iv) to promote research relating to the Wellcome Collections;
- (e) the preparation and publication, or assistance in the preparation and publication, of material, whether in physical, electronic or other format, relating to any of the biosciences or the history thereof, or the content and work of the museums and libraries maintained by the Trust from time to time;
- (f) the promotion of co-operation between museums and libraries and further and higher educational establishments, so that an interest in or in research into any of the biosciences or the history thereof may be engendered in their students;

- (g) the promotion of public education, understanding and awareness of, or interest in, science, any of the biosciences or the history thereof, or any subject that may be relevant to any of the biosciences or the history thereof, whether or not among those who might pursue a career or become otherwise involved in the study of any of the biosciences or the history thereof, including the performance and support of any activities that might improve such public understanding, awareness or interest;
- (h) the awarding of prizes or other marks of distinction for innovative research or for any other charitable object of the Trust, including the study of or research into any subject, matter or thing that may at any time be of relevance to the objects in clause 4(2), and the making of regulations from time to time in respect of the value of any such prizes and any qualifications necessary to be eligible for them;
- (i) the funding of grants for projects relating to the study or understanding of any of the biosciences or the history thereof at any educational or research establishment or institution; the making of awards, grants and fellowships and the making of rules as to their value, the methods of ascertainment and selection of candidates and, where appropriate, their period of tenure;
- (j) the funding of any post directly or indirectly related to the study of any of the biosciences or the history thereof at any educational or research establishment or institution, including posts relating to the teaching or learning of or research into any of the biosciences or the history thereof;
- (k) the funding of any equipment, infrastructure, facilities, building or materials necessary or desirable in connection with the study of any of the biosciences or the history thereof or any of the activities covered by the object of the study and understanding of any of the biosciences or the history thereof;
- (l) the award of travel grants to teachers, researchers, students and related personnel to enable them to perform or to attend seminars, conferences, lectures, courses and meetings in respect of or relating to any of the biosciences or the history thereof;
- (m) the promotion, arrangement, organisation and conduct (either alone or with others) of seminars, conferences, lectures, courses and meetings in respect of or relating to any of the biosciences or the history thereof;
- (n) the promotion of public education, understanding and awareness of ethical issues arising in relation to any of the biosciences or the history thereof;
- (o) the exercise of any power set out in paragraphs (a) to (n) above in conjunction with or ancillary to the exercise of any power of investment set out in Schedule C to this Constitution.

SCHEDULE B

Administrative powers that may be exercised in administering the Trust and in furtherance of the objects of the Trust:

1. (1) to establish, or to participate or assist in, or to acquire all or any of the assets and/or liabilities of, or to undertake, manage or administer, any body or any of the activities of any body;
- (2) (a) to invest money in any other body with or without limited liability, whether by subscription for securities, loan or otherwise;
- (b) to make grants; to lend, advance money and give credit to any person; and to guarantee or otherwise secure the performance of the obligations of any person; and
- (c) to undertake in any way to discharge or assume the obligations of any person, whether or not for valuable consideration;
- (3) to enter into and carry into effect deeds, contracts and other agreements and otherwise to co-operate with any person, including for the provision of services by or to the Trust;
- (4) to retain, acquire, obtain or protect ownership or any other rights, whether belonging to the Trust or others, in the results of any research or any other activity undertaken in pursuing the objects of the Trust; to provide funds and assistance therefor; to grant licences and other rights of access to and use of any such rights; and to assign or otherwise dispose of any such rights;
- (5) to acquire, dispose of, deal in or exploit any research (whether or not research funded by the Trust), or the results of any other activity undertaken in pursuing the objects of the Trust, or any rights in any of it; and to fund, invest in, carry on or support clinical trials, development, dissemination, production, distribution, or other use of the results of any such research, other activities or rights;
- (6) to purchase, lease, hire or otherwise acquire land or any interest in land of any tenure; to develop land, construct any buildings or refurbish any existing buildings; to sell, lease or otherwise dispose of land or any interest in land of any tenure (subject to such consents as may be required by law); and to exercise all the powers of an absolute owner in relation to any such land;
- (7) to purchase, lease, hire or otherwise acquire, and to sell, lease, lend or otherwise dispose of, equipment, goods and other items of personal property, in each case upon such terms as the Trustee shall determine;
- (8) to carry out research for any person;
- (9) to seek to influence opinions, regulation, legislation or policies; and to seek to ensure that members of the public, public bodies, policy makers and public institutions are well informed on questions relating to research, its funding and any other objects or powers of the Trust; and to make representations to any of them when issues arise that affect the objects or powers of the Trust;

- (10) to borrow, raise money and grant any security;
- (11) to give undertakings, guarantees (whether gratuitous or not), warranties and indemnities;
- (12) to provide advice in such terms as the Trustee considers appropriate; to provide advisory services and centres for information for those who are interested in the work of the Trust; and to provide, supervise and licence any accommodation for persons using any of the facilities of the Trust and to supply them with goods and services on such terms as may be thought fit;
- (13) to delegate its functions in accordance with this Constitution;
- (14) to employ such persons as officers and employees as the Trustee shall consider desirable; to pay and provide benefits to such officers and employees (not being a Governor) as the Trustee may deem proper; to enter into service agreements with such officers and employees on such terms as it may consider desirable, including power to terminate any such employment upon such terms as the Trustee may agree; and to enter into and defray the cost or any part of the cost of any pension or super-annuation scheme as the Trustee shall think proper for the benefit of such officers and employees;
- (15) to insure the property of the Trust against such risks as the Trustee shall consider prudent and to take out such other insurance policies from time to time as the Trustee shall consider necessary or desirable to protect the Trust;
- (16) to enter into such arrangements from time to time as the Trustee may think fit for the vesting of any Trust assets in any person (or persons) as nominee, trustee, agent or attorney on behalf of the Trustee and for any such person to act as the nominee, trustee, agent or attorney of the Trustee in respect thereof;
- (17) to hold money in any and every currency; to enter into contracts (including spot and other foreign exchange contracts made as a means of carrying out the objects, powers or administration of the Trust) for the purchase or sale of money in any currency; and to apply the same in furthering and fulfilling the objects or administration of the Trust;
- (18) to sell or otherwise dispose (whether or not for valuable consideration) of all or any part of the Wellcome Collections;
- (19) to apply the Trust Fund towards such expenditure, purposes and other things as:
 - (a) promote the interests and reputation of the Trust; or
 - (b) are for the benefit of and are reasonably incidental to furthering the objects of the Trust.

2. The Trustee may exercise any power set out in paragraph 1 of this Schedule in conjunction with or ancillary to the exercise of any power of the Trustee set out in Schedule C to this Constitution.

SCHEDULE C

INVESTMENT POWERS

1. Powers of Investment

- (1) The Trustee may invest, lay out or apply trust money in investments in any part of the world and administer, manage, realise and dispose of any investments as freely as if the Trustee were absolutely and beneficially entitled to the money so invested, laid out or applied.
- (2) For the purpose of this schedule, the word “investments” shall be deemed to include any and every form of property, interest or rights in or upon or for which money or other property is capable of being laid out, applied or exchanged; whether or not producing income, of a wasting nature, or involving liabilities or risk; whether with or without security; and whether or not the same shall fall within the meaning ascribed to that word by law or by common usage. Investments shall include in particular the following:
 - (a) stocks, shares, debentures, bonds, loan stock, deposits, certificates of deposit and any other securities;
 - (b) rights and interests in limited partnerships, limited liability partnerships and other entities conferring limited liability, collective investment schemes, open ended investment companies and unit trusts;
 - (c) land and any interest in land of any tenure and the development of land for investment purposes;
 - (d) chattels;
 - (e) loans, including loans upon personal credit;
 - (f) units, warrants, cash and currencies;
 - (g) instruments convertible into any other form of investment;
 - (h) options, futures (including future foreign exchange contracts), swaps and contracts for differences;
 - (i) stock lending contracts; and
 - (j) any other form of investment recognised from time to time in reputable financial circles.
- (3) If the Trustee is in doubt as to the suitability of any form of investment in which trust money has not previously been invested, neither the Trustee nor any investment manager referred to in paragraph 6 of this Schedule shall be entitled to invest trust money in such form of investment unless and until the Trustee is satisfied, having obtained proper investment advice, that the form of investment in question is suitable for the investment of money comprised in the Trust Fund.

- (4) The exercise of any power of investment of the Trustee in this Schedule may be undertaken in conjunction with or ancillary to the exercise of any object power.

2. Underwriting

The Trustee may only underwrite or sub-underwrite any offering of a security or securities if:

- (1) such underwriting or sub-underwriting is of an offering of a security or securities eligible to be held by the Trust; and
- (2) the Trustee does so in order to secure an allocation of the security or securities (and not for the sole or main purpose of obtaining commission).

3. Portfolio management

- (1) The Trustee may only enter into or acquire an investment that may be characterised as creating or having the potential to cause the Trust to incur an unlimited financial obligation or liability (whether such investment is a form of investment referred to in paragraph 1(2)(h) or (i) of this Schedule, entered into pursuant to paragraph 3(2) of this Schedule, or otherwise) if either:
 - (a) it enters (at substantially the same time) into a matching investment that limits the financial obligation or liability of the Trust in respect of the first such investment to an ascertained or ascertainable amount; or
 - (b) it does so for the purpose of efficient portfolio management or protection in circumstances where the purpose of the transaction is to manage risk rather than to take advantage of risk.
- (2) The Trustee shall have power to create investments and enter into transactions in respect of such investments of whatever nature it may think fit for the purpose of protecting the Trust Fund against the risk of any form of loss or liability or limiting the exposure of the Trust Fund to such risk or otherwise as it may think expedient for the purpose of enhancing the resources of the Trust.

4. Suitability of investments

- (1) In exercising its powers under this Schedule, the Trustee must have regard:
 - (a) to the need for diversification of investments insofar as it is appropriate to the circumstances of the Trust; and
 - (b) to the suitability to the Trust of investments of the description of investment proposed and of the investment proposed as an investment of that description.
- (2) Before investing in any manner, the Trustee must obtain and consider proper investment advice as to whether the investment is satisfactory having regard to the matters mentioned in paragraph 4(1) of this Schedule, provided that this duty shall not apply in cases where the Trustee makes investments in accordance with any law or regulation relating to the investment of trust funds where investment advice is not required to be obtained and considered, or where the Trustee reasonably concludes that in all the circumstances it is unnecessary or inappropriate to do so.

- (3) The Trustee shall at all times maintain a written investment policy for the Trust and shall review such investment policy at regular intervals.

5. Exercise of power of investment

The Trustee may exercise its powers of investment itself, providing it has first taken proper investment advice (either generally or in relation to any investment) if it is required by paragraph 4(2) of this Schedule to do so, or may delegate or permit the sub-delegation of all or any of such powers to investment managers on the terms set out in paragraphs 6, 7 and 8 of this Schedule.

6. Appointment of investment managers

The Trustee may appoint as an investment manager for the Trust, or permit an investment manager to appoint as its sub-delegate pursuant to paragraph 8(1) of this Schedule, any person that the Trustee is satisfied is a proper and competent person to act in that capacity. The Trustee may appoint and an investment manager may sub-delegate to more than one investment manager from time to time.

7. Terms of delegation to investment managers

- (1) The Trustee may delegate to an investment manager power at his, her or its discretion to invest trust money in investments and to administer, manage, realise and dispose of investments for the Trust on behalf of the Trustee in accordance with the investment policy applicable to that investment manager, as laid down by the Trustee pursuant to paragraph 7(2)(b) of this Schedule.

- (2) Where the Trustee makes any delegation or permits any sub-delegation under paragraph 8 of this Schedule, it shall, or shall require that an investment manager appointing a sub-delegate shall:

- (a) inform the investment manager in writing of the extent of the Trustee's investment powers;
- (b) lay down in reasonable detail an investment policy for the Trust applicable to that investment manager in respect of that part of the Trust Fund to be managed by such investment manager and immediately inform the investment manager in writing of such investment policy and of any changes to it;
- (c) ensure that the terms of the delegated authority are clearly set out in writing and notified to the investment manager;
- (d) take such steps as it considers prudent (having regard to any relevant market practice) to protect the Trust from losses occasioned by reason of the investment manager not having all (if any) necessary authorities from relevant regulatory bodies to exercise the powers so delegated;
- (e) ensure that it is kept informed of and reviews on a regular basis the performance of that part of the Trust's investment portfolio managed by the investment manager and the exercise by such manager of his, her or its delegated authority;
- (f) take all reasonable care to ensure that the investment manager complies with the terms of the delegated authority;

- (g) review the appointment at such intervals not exceeding 48 months as the Trustee thinks fit;
 - (h) pay such remuneration to the investment manager as the Trustee shall reasonably decide or approve; and
 - (i) agree such proper terms as to notice and other matters as the Trustee shall decide or approve and as are consistent with this paragraph 7(2).
- (3) In addition to the delegation of investment powers by the Trustee pursuant to paragraph 5 of this Schedule and the sub-delegation of investment powers by an investment manager pursuant to paragraph 8(1) of this Schedule, the Trustee may delegate to an investment manager:
- (a) any administrative power that is ancillary to or otherwise furthers the exercise of investment powers so delegated; and
 - (b) any administrative power that is analogous to an investment power and that the Trustee considers may be exercised by such an investment manager

and an investment manager may sub-delegate any such administrative power to another investment manager.

8. Power to sub-delegate

- (1) Subject to paragraph 8(2) of this Schedule, the Trustee may appoint an investment manager on terms that such investment manager may sub-delegate to another investment manager all or any of the powers and duties delegated to it by the Trustee.
- (2) In exercising its powers under paragraph 8(1) of this Schedule to permit any sub-delegation of powers by one investment manager to another, the Trustee shall take such steps as it considers prudent (having regard to any relevant market practice) to protect the Trust from losses occasioned by any default on the part of any such sub-delegate.

9. Nominees and custodians

- (1) The Trustee may from time to time enter into such arrangements as it shall think fit for:
 - (a) the vesting of any investment or other assets comprised in the Trust Fund in any person or persons that the Trustee is satisfied is or are proper and competent to act as nominee or nominees or custodian or custodians on behalf of the Trustee; and

- (b) the payment to such person or persons of such remuneration as the Trustee shall reasonably decide or approve.
- (2) Any arrangement pursuant to paragraph 9(1) of this Schedule may provide for the nominee or custodian (as the case may be) to appoint some other person to perform all or part of the services to be provided to the Trustee pursuant to such arrangement, provided that in relation to any such arrangement, the Trustee shall take such steps as it considers prudent (having regard to any relevant market practice) to protect the Trust from losses occasioned by any default on the part of such other person.
- (3) In exercising its powers pursuant to paragraph 9(1) of this Schedule, the Trustee may in relation to any investment, including any securities, any bearer securities or new forms of investment, adopt any usual or local market practice that it considers to be expedient in the interests of the Trust and may pay any consequential expenses out of the Trust Fund.

10. Charity Commission approval

If the Trustee wishes to perform any act relating to investment in a manner that is not expressly or impliedly permitted by this Schedule, it shall be entitled to do so only if and to the extent that it has first obtained in writing or by order the approval of the Commission in respect of such proposed exercise.

SCHEDULE D

DEFINITIONS

In this Constitution:

“animal or plant life”	includes cells, organisms and micro-organisms of any nature.
“biosciences”	means the sciences that deal with human beings or animal or plant life; any allied subject; and any subject or subjects that have or at any time may develop an importance for scientific research that may conduce to the improvement of the physical or mental conditions of human beings or animal or plant life. Biosciences includes medicine, surgery, bacteriology, biology, chemistry, epidemiology, the environment, genomics, immunology, materia medica, neurosciences, pharmacology, pharmacy, physiology, psychiatry, therapeutics and virology.
“body”	includes any charity, government, governmental or statutory body, company, body corporate, corporation, partnership, joint venture, association (whether incorporated or unincorporated), friendly society, club, institute, organisation, hospital, university, college, school, trust or funding body, in each case whether or not having separate legal personality.
“Commission”	means the Charity Commissioners for England and Wales.
“disorders”	includes physical, mental and all other illnesses, afflictions, diseases and disorders suffered or incurred by human beings or animal or plant life.
“employee”	means any employee of, seconded to, or other individual who shall provide services under a contract for personal services to, the Trust or the Trustee.
“foreign exchange contract”	means any contract for the sale or purchase of foreign exchange.
“future foreign exchange contract”	means a foreign exchange contract that is made for investment purposes.
“Governor”	means a Governor of the Trustee, as such term is defined in the Articles of Association of the Trustee.
“investment manager”	includes any sub-delegate (appointed pursuant to paragraph 6 of Schedule C to this Constitution) of another investment manager.
“liabilities”	includes actual, contingent or prospective liabilities and costs, charges and expenses of whatever nature.
“officer”	includes the Governors and other officers of the Trust or the Trustee from time to time (other than their respective auditors).
“person”	includes any individual or body.

“proper advice”	means the advice of a person that is reasonably believed by the Trustee to be qualified by his, her or its expertise of the relevant matter. Such advice may constitute proper advice notwithstanding that the person giving it is a Governor, other officer or employee of the Trustee or the Trust.
“proper investment advice”	means the advice of a person, whether or not an employee, that the Trustee reasonably believes to be suitably qualified by ability in and practical experience of financial matters and the management of investments to advise the Trustee as to the suitability of an investment or form of investment to the Trust.
“research”	includes basic, strategic and applied research.
“Trust”	means the Wellcome Trust.
“Trust Fund”	means the assets from time to time subject to the trusts of the Trust.
“Trustee”	means The Wellcome Trust Limited, a company incorporated in England and Wales under number 2711000, or any successor trustee or trustees.
“Wellcome Collections”	means the collections of items gathered by Sir Henry Wellcome in his lifetime and entrusted to the Trust and all other items added thereto by the trustees from time to time of the Trust, as comprised in the Trust Fund from time to time.

Appendix 3: The Poynter Principles

1. Operating a news publication must be the honoring of a sacred trust. We cannot compromise with the integrity of the news. Neither can we forget that our privilege of freedom under the First Amendment burdens us with a companion responsibility to exercise it fairly, carefully and in the public interest.
2. We will be sensitive to the unusual obligations that any worthy publication bears to the community in which it operates, aggressively volunteering service to the public with enthusiasm and never waiting to be prodded into it with reluctance. Because a chain owner's devotion to any one area is bound to be diluted or divided, we owe a commitment to our community to retain local, independent ownership of this newspaper.
3. To maintain our independence, we must resist debt, build reserves, sustain financial strength, forbid voting stock to scatter, and determine that a newspaper is so individualistic in nature that complete control, and thereby responsibility, should be concentrated in an individual.
4. Because a news organization encumbered with outside interests cannot best serve its public purposes, our editorial policy and news coverage will not be tainted by ownership in enterprises not related to our primary mission of informing the public.
5. The manager of any department of our particular enterprises should have a well-rounded appreciation of and respect for the contributions that are made by staffers in all departments.
6. Second to staff, modern equipment should be regarded as vital to the service of our readers and advertisers, and essential to the achievement of our goal of highest excellence. Dividend policy will take into account these capital needs.
7. We seek to assemble a staff on which every member is above average, and so we must be willing to compensate staffers above average, and then expect the staff to demand of itself performance above the average.
8. Our profits are to be shared with the staff on a formula that recognizes contribution to the enterprise.
9. Pensions are to be paid that promise dignified retirement to members of the staff who devote their lives to the institution.
10. Our publications' policy is very simple – merely to tell the truth.

Appendix 4: Guardian readers' editor terms of reference

Readers' editor terms of reference

The Guardian, Thursday 14 May 2009

To collect, consider, investigate, respond to, and where appropriate come to a conclusion about readers' comments, concerns, and complaints in a prompt and timely manner, from a position of independence within the paper.

To seek to ensure the maintenance of high standards of accuracy, fairness, and balance in our reporting and writing.

To create new channels of communication with and greater responsiveness to readers, whether by 'phone, email, the internet, surface mail, or through the columns of the paper.

To seek the views and where appropriate, the written comments, of journalists whose work is the focus of readers' concerns: to take these views into account when responding to readers, and to make critical appraisals, if judged necessary, on an objective and fully-informed basis.

To look for ways of improving the paper's work and performance, in the broadest sense, by collating and analysing readers' concerns, ideas, and suggestions and identifying possible new or alternative courses of action and/or ways to develop the paper for the benefit of its readers and the paper itself

To write a regular – and, where possible – weekly column addressing one or several aspects of readers' concerns/suggestions/complaints, the content to be determined independently and not subject to prior approval by the editor or others on the staff, other than in respect of matters of fact, style, spelling and grammar.

To use this column as a platform and forum for readers' views.

To require of the editor that he take steps to ensure that his staff co-operate fully and promptly with the readers' editor should they be requested to provide assistance in responding to readers' concerns and complaints. Similarly, the management and commercial departments of GNL, insofar as their activities relate to readers' concerns about editorial content.

In consultation with the editor and/or managing editor, to decide whether and when a correction should be published and/or apologies tendered, when deemed necessary, insofar as any correction/apology is not the subject of, or may be prejudicial to, a current complaint to the press complaints commission, our defence of an actual or possible legal action against the paper, or actual or possible legal or other action by the affected journalist(s).

In order to keep fully in touch with the workings of the paper, the readers' editor should have an established right of access to the editor, to heads of department meetings, budget meetings, to daily news conferences, and to other relevant forums. The readers' editor should be available to report, on an ad hoc, basis, to the editor and to these other groupings. The existence of the readers' editor, and how to contact him or her, should be advertised fairly prominently on a daily basis in the paper.

The readers' editor can refer to the external ombudsman any substantial grievances, or matters whereby the Guardian's journalistic integrity has been called into question.

The readers' editor will initially be appointed for two years. He/she can be reappointed. He/she can only be removed from the post within two years by a vote of the Scott Trust.

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Appendix 5: Guardian Editorial Code of Conduct

Guidelines

The Guardian's Editorial Code

Updated April 2007

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Summary

"A newspaper's primary office is the gathering of news. At the peril of its soul it must see that the supply is not tainted."

The most important currency of the Guardian is trust. This is as true today as when CP Scott marked the centenary of the founding of the newspaper with his famous essay on journalism in 1921.

The purpose of this code is, above all, to protect and foster the bond of trust between the Guardian (in print and online) and its readers, and therefore to protect the integrity of the paper and of the editorial content it carries.

As a set of guidelines this will not form part of a journalist's contract of employment, nor will it form part, for either editorial management or journalists, of disciplinary, promotional or recruitment procedures. However, by observing the code, journalists working for the Guardian will be protecting not only the paper but also the independence, standing and reputation of themselves and their colleagues. It is important that freelancers working for the Guardian also abide by these guidelines while on assignment for the paper.

Press Complaints Commission Code of Practice

The Guardian — in common with most other papers in Britain — considers the PCC's Code of Practice to be a sound statement of ethical behaviour for journalists. It is written into our terms of employment that staff should adhere to the Code of Practice. It is published below so that all editorial staff can familiarise themselves with it — and comments in this document that relate to the PCC Code are marked with an asterisk.

1. Professional practice

Anonymous quotations We recognise that people will often speak more honestly if they are allowed to speak anonymously. The use of non-attributed quotes can therefore often assist the reader towards a truer understanding of a subject than if a journalist confined him/herself to quoting bland on-the-record quotes. But if used lazily or indiscriminately anonymous quotes become a menace.

We should be honest about our sources, even if we can't name them.

The New York Times policy on pejorative quotes is worth bearing in mind: "The vivid language of direct quotation confers an unfair advantage on a speaker or writer who hides behind the newspaper, and turns of phrase are valueless to a reader who cannot assess the source."

There may be exceptional circumstances when anonymous pejorative quotes may be used, but they will be rare — and only after consultation with the senior editor of the day. In the absence of specific approval we should paraphrase anonymous pejorative quotes.

Children* Special care should be taken when dealing with children (under the age of 16). Heads of departments must be informed when children have been photographed or interviewed without parental consent. (See PCC code, section 6)

Copy approval The general rule is that no one should be given the right to copy approval. In certain circumstances we may allow people to see copy or quotes but we are not required to alter copy. We should avoid offering copy approval as a method of securing interviews or co-operation.

Direct quotations Should not be changed to alter their context or meaning.

Errors It is the policy of the Guardian to correct significant errors as soon as possible. Journalists have a duty to cooperate frankly and openly with the Readers' Editor and to report errors to her. All complaints should be brought to the attention of a department head, the managing editor or the Readers' Editor. All journalists should read both the daily and weekly column.

Fairness *"The voice of opponents no less than of friends has a right to be heard . . . It is well to be frank; it is even better to be fair"* (CP Scott, 1921). The more serious the criticism or allegations we are reporting the greater the obligation to allow the subject the opportunity to respond.

Grief* People should be treated with sensitivity during periods of grief and trauma. (See PCC code, section 5)

Language Respect for the reader demands that we should not casually use words that are likely to offend. Use swear words only when absolutely necessary to the facts of a piece, or to portray a character in an article; there is almost never a case in which we need to use a swearword outside direct quotes. The stronger the swearword, the harder we ought to think about using it. Avoid using in headlines, pull quotes and standfirsts and never use asterisks, which are just a cop-out.

Legal Our libel and contempt laws are complex, and constantly developing. The consequences of losing actions can be expensive and damaging for our reputation. Staff should a) familiarise themselves with the current state of the law and seek training if they feel unconfident about aspects of it; b) consult our in-house legal department or night lawyers about specific concerns on stories; c) read the regular legal bulletins about active cases and injunctions emailed by the legal department.

Payment In general, the Guardian does not pay for stories, except from bona fide freelance sources. The editor or his deputies must approve rare exceptions.

PCC and libel judgments Judgments by the PCC and the outcome of defamation actions relating to the Guardian should be reported promptly.

Photographs Digitally enhanced or altered images, montages and illustrations should be clearly labeled as such.

Plagiarism Staff must not reproduce other people's material without attribution. The source of published material obtained from another organisation should be acknowledged including quotes taken from other newspaper articles. Bylines should be carried only on material that is substantially the work of the bylined journalist. If an article contains a significant amount of agency copy then the agency should be credited.

Privacy In keeping with both the PCC Code and the Human Rights Act we believe in respecting people's privacy. We should avoid intrusions into people's privacy unless there is a clear public interest in doing so. Caution should be exercised about reporting and publishing identifying details, such as street names and numbers, that may enable others to intrude on the privacy or safety of people who have become the subject of media coverage.

Race In general, we do not publish someone's race or ethnic background or religion unless that information is pertinent to the story. We do not report the race of criminal suspects unless their ethnic background is part of a description that seeks to identify them or is an important part of the story (for example, if the crime was a hate crime).

Sources Sources promised confidentiality must be protected at all costs. However, where possible, the sources of information should be identified as specifically as possible.

Subterfuge Journalists should generally identify themselves as Guardian employees when working on a story. There may be instances involving stories of exceptional public interest where this does not apply, but this needs the approval of a head of department.

Suicide Journalists are asked to exercise particular care in reporting suicide or issues involving suicide, bearing in mind the risk of encouraging others. This should be borne in mind both in presentation, including the use of pictures, and in describing the method of suicide. Any substances should be referred to in general rather than specific terms if possible. When appropriate a helpline number should be given (eg Samaritans 08457 90 90 90). The feelings of relatives should also be carefully considered.

2. Personal behaviour and conflicts of interest

The Guardian values its reputation for independence and integrity. Journalists clearly have lives, interests, hobbies, convictions and beliefs outside their work on the paper. Nothing in the following guidelines is intended to restrict any of that. It is intended to ensure that outside interests do not come into conflict with the life of the paper in a way that either compromises the Guardian's editorial integrity or falls short of the sort of transparency that our readers would expect. The code is intended to apply to all active outside interests which, should they remain undeclared and become known, would cause a fair-minded reader to question the value of a contribution to the paper by the journalist involved.

These are guidelines rather than one-size-fits-all rules. If you are employed as a columnist — with your views openly on display — you may have more latitude than a staff reporter, who would be expected to bring qualities of objectivity to their work. (The Washington Post's Code has some sound advice: "Reporters should make every effort to remain in the audience, to stay off the stage, to report the news, not to make the news.") If in doubt, consult a head of department, the managing or deputy editors, or the editor himself.

Commercial products No Guardian journalist or freelance primarily associated with the Guardian should endorse commercial products unless with the express permission of their head of department or managing editor.

Confidentiality Desk editors with access to personal information relating to other members of staff are required to treat such information as confidential, and not disclose it to anyone except in the course of discharging formal responsibilities.

Conflicts of interest Guardian staff journalists should be sensitive to the possibility that activities outside work (including holding office or being otherwise actively involved in organisations, companies or political parties) could be perceived as having a bearing on — or as coming into conflict with — the integrity of our journalism. Staff should be transparent about any outside personal, philosophical or financial interests that might conflict with their professional performance of duties at the Guardian, or could be perceived to do so.

Declarations of interest

1. It is always necessary to declare an interest when the journalist is writing about something with which he or she has a significant connection. This applies to both staff journalists and freelances writing for the Guardian. The declaration should be to a head of department or editor during preparation. Full transparency may mean that the declaration should appear in the paper or website as well.
2. A connection does not have to be a formal one before it is necessary to declare it. Acting in an advisory capacity in the preparation of a report for an organisation, for example, would require a declaration every time the journalist wrote an article referring to it.
3. Some connections are obvious and represent the reason why the writer has been asked to contribute to the paper. These should always be stated at the end of the writer's contribution even if he or she contributes regularly, so long as the writer is writing about his or her area of interest.
4. Generally speaking a journalist should not write about or quote a relative or partner in a piece, even if the relative or partner is an expert in the field in question. If, for any reason, an exception is made to this rule, the connection should be made clear.
5. Commissioning editors should ensure that freelances asked to write for the Guardian are aware of these rules and make any necessary declaration.

Declarations of corporate interest The Guardian is part of a wider group of media companies. We should be careful to acknowledge that relationship in stories. Anyone writing a story concerning Guardian-related businesses should seek comments and/or confirmation in the normal way. Staff should familiarise themselves with the companies and interests we have. At the end of this document is a summary of the areas and companies that GMG owns or in which it has an interest. Full details are on the GMG website at <http://www.gmgplc.co.uk/>

Financial reporting

Top of Form

For many years the Guardian's business desk has maintained a register of personal shares. All staff are expected to list all shares that they own, any transactions in those shares and any other investments which they believe ought to be properly disclosed because of a potential conflict of interest. While it is acceptable for financial members to own shares, it is not acceptable for them to be market traders on a regular basis. It is most important that the register is kept and that all information is up to date. The attention of Guardian journalists is also drawn to Section 13 of the PCC Code of Practice (below) and to the PCC's best-practice guidelines on financial journalism (<http://www.pcc.org.uk/news/index.html?article=OTM>) which can also be found in the "code advice" section of the PCC website <http://www.pcc.org.uk/>.

Bottom of Form

The Code:

- prohibits the use of financial information for the profit of journalists or their associates;
- imposes restrictions on journalists writing about shares in which they or their close families have a significant interest without internal disclosure;
- stops journalists dealing in shares about which they have written recently or intend to write in the near future; and
- requires that financial journalists take care not to publish inaccurate material and to distinguish between comment, conjecture and fact. This is particularly important for any journalists making investment recommendations to readers about whether to buy, sell or hold shares.

Freelance work As a general rule avoid freelance writing for house magazines of particular businesses or causes if the contribution could be interpreted as an endorsement of the concern. If in doubt consult your head or department.

Freebies

1. Staff should not use their position to obtain private benefit for themselves or others.
2. The Guardian and its staff will not allow any payment, gift or other advantage to undermine accuracy, fairness or independence. Any attempts to induce favourable editorial treatment through the offer of gifts or favours should be reported to the editor. Where relevant the Guardian will disclose these payments, gifts or other advantages.
3. We should make it clear when an airline, hotel or other interest has borne the cost of transporting or accommodating a journalist. Acceptance of any such offer is conditional on the Guardian being free to assign and report or not report any resulting story as it sees fit.
4. Except in some areas of travel writing it should never need to be the case that the journalist's partner, family or friends are included in any free arrangement. When a partner, family member or friend accompanies the journalist on a trip, the additional costs should generally be paid for by the journalist or person accompanying the journalist.
5. Staff should not be influenced by commercial considerations — including the interests of advertisers — in the preparation of material for the paper.
6. Gifts other than those of an insignificant value (say, less than £25) should be politely returned or may be entered for the annual raffle of such items for charity, "the sleaze raffle".

Guardian connections Staff members should not use their positions at the Guardian to seek any benefit or advantage in personal business, financial or commercial transactions not afforded to the public generally. Staff should not use Guardian stationery in connection with non-Guardian matters or cite a connection with the paper to resolve consumer grievances, get quicker service or seek discount or deals.

Outside engagements or duties The Guardian accepts the journalist's right to a private life and the right to take part in civic society. However, staff should inform their immediate editor if, in their capacity as an employee of the Guardian, they intend to:

1. Give evidence to any court.
2. Chair public forums or seminars arranged by professional conference organisers or commercial organisations.
3. Undertake any outside employment likely to conflict with their professional duties at the Guardian.
4. Chair public or political forums or appear on platforms.
5. Make representations or give evidence to any official body in connection with material that has been published in the Guardian.

Relationships Staff members should not write about, photograph or make news judgments about any



individual related by blood or marriage or with whom the staff member has a close personal, financial or romantic relationship. A staff member who is placed in a circumstance in which the potential for this kind of conflict exists should advise his or her department head.

3. Appendices

Appendix 3.1 Press Complaints Commission Code of Practice

The Press Complaints Commission <http://www.pcc.org.uk> is charged with enforcing the following Code of Practice [PDF 684kb], which was framed by the newspaper and periodical industry and was ratified by the PCC on August 7 2006.

THE CODE

All members of the press have a duty to maintain the highest professional standards. This Code sets the benchmark for those ethical standards, protecting both the rights of the individual and the public's right to know. It is the cornerstone of the system of self-regulation to which the industry has made a binding commitment.

It is essential that an agreed code be honoured not only to the letter but in the full spirit. It should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it constitutes an unnecessary interference with freedom of expression or prevents publication in the public interest.

It is the responsibility of editors and publishers to implement the Code and they should take care to ensure it is observed rigorously by all editorial staff and external contributors, including non-journalists, in printed and online versions of publications. Editors should co-operate swiftly with the PCC in the resolution of complaints. Any publication judged to have breached the Code must print the adjudication in full and with due prominence, including headline reference to the PCC.

1 Accuracy

- i. The Press must take care not to publish inaccurate, misleading or distorted information, including pictures.
- ii. A significant inaccuracy, misleading statement or distortion once recognised must be corrected, promptly and with due prominence, and - where appropriate - an apology published.
- iii. The Press, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact.
- iv. A publication must report fairly and accurately the outcome of an action for defamation to which it has been a party, unless an agreed settlement states otherwise, or an agreed statement is published.

2 Opportunity to reply

A fair opportunity for reply to inaccuracies must be given when reasonably called for.

3 *Privacy

- i. Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications. Editors will be expected to justify intrusions into any individual's private life without consent.
- ii. It is unacceptable to photograph individuals in private places without their consent.

Note: Private places are public or private property where there is a reasonable expectation of privacy.

4 *Harassment

- i. Journalists must not engage in intimidation, harassment or persistent pursuit.
- ii. They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on their property when asked to leave and must not follow them.
- iii. Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.

5 **Intrusion into grief or shock**

i. In cases involving personal grief or shock, enquiries and approaches must be made with sympathy and discretion and publication handled sensitively. This should not restrict the right to report legal proceedings, such as inquests.

*ii. When reporting suicide, care should be taken to avoid excessive detail about the method used.

6 ***Children**

i. Young people should be free to complete their time at school without unnecessary intrusion.

ii. A child under 16 must not be interviewed or photographed on issues involving their own or another child's welfare unless a custodial parent or similarly responsible adult consents.

iii. Pupils must not be approached or photographed at school without the permission of the school authorities.

iv. Minors must not be paid for material involving children's welfare, nor parents or guardians for material about their children or wards, unless it is clearly in the child's interest.

v. Editors must not use the fame, notoriety or position of a parent or guardian as sole justification for publishing details of a child's private life.

7 ***Children in sex cases**

1. The press must not, even if legally free to do so, identify children under 16 who are victims or witnesses in cases involving sex offences.

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 ***Hospitals**

i. Journalists must identify them-selves and obtain permission from a responsible executive before entering non-public areas of hospitals or similar institutions to pursue enquiries.

ii. The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospitals or similar institutions.

9 ***Reporting of Crime**

i. Relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story.

ii. Particular regard should be paid to the potentially vulnerable position of children who witness, or are victims of, crime. This should not restrict the right to report legal proceedings.

10 ***Clandestine devices and subterfuge**

i. The press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile telephone calls, messages or emails; or by the unauthorised removal of documents or photographs.

ii. Engaging in misrepresentation or subterfuge, can generally be justified only in the public interest and then only when the material cannot be obtained by other means.

11 **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 they are legally free to do so.

12 **Discrimination**

i. The press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability.

ii. Details of an individual's race, colour, religion, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.

13 **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.

14 **Confidential sources**

Journalists have a moral obligation to protect confidential sources of information.

15 **Witness payments in criminal trials**

i. No payment or offer of payment to a witness - or any person who may reasonably be expected to be called as a witness - should be made in any case once proceedings are active as defined by the Contempt of Court Act 1981.

This prohibition lasts until the suspect has been freed unconditionally by police without charge or bail or the proceedings are otherwise discontinued; or has entered a guilty plea to the court; or, in the event of a not guilty plea, the court has announced its verdict.

*ii. Where proceedings are not yet active but are likely and foreseeable, editors must not make or offer payment to any person who may reasonably be expected to be called as a witness, unless the information concerned ought demonstrably to be published in the public interest and there is an over-riding need to make or promise payment for this to be done; and all reasonable steps have been taken to ensure no financial dealings influence the evidence those witnesses give. In no circumstances should such payment be conditional on the outcome of a trial.

*iii. Any payment or offer of payment made to a person later cited to give evidence in proceedings must be disclosed to the prosecution and defence. The witness must be advised of this requirement.

16 ***Payment to criminals**

i. Payment or offers of payment for stories, pictures or information, which seek to exploit a particular crime or to glorify or glamorise crime in general, must not be made directly or via agents to convicted or confessed criminals or to their associates - who may include family, friends and colleagues.

ii. Editors invoking the public interest to justify payment or offers would need to demonstrate that there was good reason to believe the public interest would be served. If, despite payment, no public interest emerged, then the material should not be published.

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, but is not confined to:
 - i. Detecting or exposing crime or serious impropriety;
 - ii. Protecting public health and safety;
 - iii. Preventing the public from being misled by an action or statement of an individual or organisation.
2. There is a public interest in freedom of expression itself.
3. Whenever the public interest is invoked, the PCC will require editors to demonstrate fully how the public interest was served.
4. The PCC will consider the extent to which material is already in the public domain, or will become so.
5. In cases involving children under 16, editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child.

Appendix 3.2: CP Scott's essay published in the Manchester Guardian on the centenary of the paper's first issue

CP Scott, Editor, Thursday May 5, 1921

A hundred years is a long time; it is a long time even in the life of a newspaper, and to look back on it is to take in not only a vast development in the thing itself, but a great slice in the life of the nation, in the progress and adjustment of the world.

In the general development the newspaper, as an institution, has played its part, and no small part, and the particular newspaper with which I personally am concerned has also played its part, it is to be hoped, not without some usefulness. I have had my share in it for a little more than fifty years; I have been its responsible editor for only a few months short of its last half-century; I remember vividly its fiftieth birthday; I now have the happiness to share in the celebration of its hundredth. I can therefore speak of it with a certain intimacy of acquaintance. I have myself been part of it and entered into its inner courts. That is perhaps a reason why, on this occasion, I should write in my own name, as in some sort a spectator, rather than in the name of the paper as a member of its working staff.

In all living things there must be a certain unity, a principle of vitality and growth. It is so with a newspaper, and the more complete and clear this unity the more vigorous and fruitful the growth. I ask myself what the paper stood for when first I knew it, what it has stood for since and stands for now. A newspaper has two sides to it. It is a business, like any other, and has to pay in the material sense in order to live. But it is much more than a business; it is an institution; it reflects and it influences the life of a whole community; it may affect even wider destinies. It is, in its way, an instrument of government. It plays on the minds and consciences of men. It may educate, stimulate, assist, or it may do the opposite. It has, therefore, a moral as well as a material existence, and its character and influence are in the main determined by the balance of these two forces. It may make profit or power its first object, or it may conceive itself as fulfilling a higher and more exacting function.

I think I may honestly say that, from the day of its foundation, there has not been much doubt as to which way the balance tipped as far as regards the conduct of the paper whose fine tradition I inherited and which I have had the honour to serve through all my working life. Had it not been so, personally, I could not have served it. Character is a subtle affair, and has many shades and sides to it. It is not a thing to be much talked about, but rather to be felt. It is the slow deposit of past actions and ideals. It is for each man his most precious possession, and so it is for that latest growth of time the newspaper. Fundamentally it implies honesty, cleanness, courage, fairness, a sense of duty to the reader and the community. A newspaper is of necessity something of a monopoly, and its first duty is to shun the temptations of monopoly. Its primary office is the gathering of news. At the peril of its soul it must see that the supply is not tainted. Neither in what it gives, nor in what it does not give, nor in the mode of presentation must the unclouded face of truth suffer wrong. Comment is free, but facts are sacred. "Propaganda," so called, by this means is hateful. The voice of opponents no less than that of friends has a right to be heard. Comment also is justly subject to a self-imposed restraint. It is well to be frank; it is even better to be fair. This is an ideal. Achievement in such matters is hardly given to man. We can but try, ask pardon for shortcomings, and there leave the matter.

But, granted a sufficiency of grace, to what further conquests may we look, what purpose serve, what task envisage? It is a large question, and cannot be fully answered. We are faced with a new and enormous power and a growing one. Whither is the young giant tending? What gifts does he bring? How will he exercise his privilege and powers? What influence will he exercise on the minds of men and on our public life? It cannot be pretended that an assured and entirely satisfactory answer can be given to such questions. Experience is in some respects disquieting. The development has not been all in the direction which we should most desire.

One of the virtues, perhaps almost the chief virtue, of a newspaper is its independence. Whatever its position or character, at least it should have a soul of its own. But the tendency of newspapers, as of other businesses, in these days is towards amalgamation. In proportion, as the function of a newspaper has developed and its organisation expanded, so have its costs increased. The smaller newspapers have had a hard struggle; many of them have disappeared. In their place we have great organisations controlling a whole series of publications of various kinds and even of differing or opposing politics. The process may be inevitable, but clearly there are drawbacks. As organisation grows personality may tend to disappear. It is much to control one newspaper well; it is perhaps beyond the reach of any man, or any body of men, to control half a dozen with equal success. It is possible to exaggerate the danger, for the public is not undiscerning. It recognises the authentic voices of conscience and conviction when it finds them, and it has a shrewd intuition of what to accept and what to discount.

This is a matter which in the end must settle itself, and those who cherish the older ideal of a newspaper need not be dismayed. They have only to make their papers good enough in order to win, as well as to merit, success, and the resources of a newspaper are not wholly measured in pounds, shillings, and pence. Of course the thing can only be done by competence all round, and by that spirit of co-operation right through the working staff which only a common ideal can inspire.

There are people who think you can run a newspaper about as easily as you can poke a fire, and that knowledge, training, and aptitude are superfluous endowments. There have even been experiments on this assumption, and they have not met with success. There must be competence, to start with, on the business side, just as there must be in any large undertaking, but it is a mistake to suppose that the business side of a paper should dominate, as sometimes happens, not without distressing consequences.

A newspaper, to be of value, should be a unity, and every part of it should equally understand and respond to the purposes and ideals which animate it. Between its two sides there should be a happy marriage, and editor and business manager should march hand in hand, the first, be it well understood, just an inch or two in advance. Of the staff much the same thing may be said. They should be a friendly company. They need not, of course, agree on every point, but they should share in the general purpose and inheritance. A paper is built up upon their common and successive labours, and their work should never be task work, never merely dictated. They should be like a racing boat's crew, pulling well together, each man doing his best because he likes it, and with a common and glorious goal.

That is the path of self-respect and pleasure; it is also the path of success. And what a work it is! How multiform, how responsive to every need and every incident of life! What illimitable possibilities of achievement and of excellence! People talk of "journalese" as though a journalist were of necessity a pretentious and sloppy writer; he may be, on the contrary, and very often is, one of the best in the world. At least he should not be content to be much less. And then the developments. Every year, almost every day, may see growth and fresh accomplishments, and with a paper that is really alive, it not only may, but does. Let anyone take a file of this paper, or for that matter any one of half a dozen other papers, and compare its whole make-up and leading features today with what they were five years ago, ten years ago, twenty years ago, and he will realise how large has been the growth, how considerable the achievement. And this is what makes the work of a newspaper worthy and interesting. It has so many sides, it touches life at so many points, at every one there is such possibility on improvement and excellence. To the man, whatever his place on the paper, whether on the editorial or business, or even what may be regarded as the mechanical side — this also vitally important in its place — nothing should satisfy short of the best, and the best must always seem a little ahead of the actual. It is here that ability counts and that character counts, and it is on these that a newspaper, like every great undertaking, if it is to be worthy of its power and duty, must rely.

Appendix 3.3. Areas of interest and companies held by GMG

Guardian Media Group comprises four operating divisions: Guardian News and Media (GNM), GMG Regional Media, GMG Radio and Trader Media Group.

GNM publishes the *Guardian*, the *Observer*, *Guardian Weekly*, *Guardian Monthly*, *Money Observer* and *Public*. It is the electronic publisher of *Guardian Unlimited* and the online educational content provider *Learnthings*.

GMG Regional Media publishes the *Manchester Evening News*, the *Reading Evening Post* and a number of weekly newspapers, mainly across Greater Manchester and the South of England, as well as co-publishing (with Associated Newspapers) the free daily *Metro* in Manchester. Television interests include *Channel M*.

GMG Radio operates regional and local stations across the UK under the *Real Radio*, *Smooth Radio*, *Century FM* and *Rock Radio* brands, as well as a number of websites including *jazzfm.com*. It also has stakes in *MXR*, a holder of regional digital multiplex licences, and in the news services provider *Digital News Network*.

Trader Media Group (jointly owned with Apax Partners, with GMG the majority shareholder) publishes the *Auto Trader* magazine and website, as well as a number of other classified advertising titles. It has centres across the UK and subsidiaries in the Netherlands, Italy and South Africa.

Other interests include a quarter share in online classified business *Fish4* and joint ownership with Telegraph Media Group of *Trafford Park Printers* and *Paper Purchase Management*.

Appendix 6: Message from the *Irish Times* editor to readers

Some 343,000 readers enter into a contract with the journalists of this newspaper every day. The overriding duty of Irish Times journalists is to those readers. They buy the newspaper on the understanding that they will be offered the best journalism in Ireland: reports that are honest, accurate and comprehensive; and analysis that is informed, fair and based on the facts.

Irish Times journalists face a challenging task every day to live up to the standards set for ourselves and our readers. The Irish Times Trust and its Articles of Association give the newspaper a special status among newspapers of the world by protecting its editorial content from commercial and other unhealthy sectional interests. We are the only independent newspaper in Ireland.

The reputation of The Irish Times is based, first and foremost, on being the chronicler of the news of the day. That is our primary role. We aim to present the facts after we have established them, having heard both sides of the story.

The Irish Times is also the authoritative and independent commentator and analyst on important events in the affairs of Ireland - North and South - Britain, the European Union, the United States and, where feasible, pivotal news spots in the world. We set a special store on the timely posting of Irish Times journalists abroad to present a distinctly Irish perspective to readers - as in the case of the war in Iraq.

The Irish Times is the national forum for the thinkers and doers in Irish society. We offer a platform for critical, constructive and divergent comment in the different spheres of business, politics and public affairs generally.

We have moved in recent years from being the newspaper of record to the newspaper of reference.

Most important of all, The Irish Times occupies a special position as a pacemaker for change in the society which it serves. We aim to lead and shape public opinion to a greater degree than of our competitors because we have both the natural authority and the means, through our interested and receptive readership, to do so. We are prepared to champion specific causes, as we have always done, while recognising that these causes have changed over the last decade.

We believe that readers have a right to expect that they will read something in The Irish Times every day that they have not read or heard elsewhere.

Irish Times journalists employ a *modus operandi* to help uphold standards in the newspaper. The truth is presented having made every reasonable effort to establish it on the basis of verifiable fact and reliable sources. During the reporting and editing process, every story is measured against taste, preference and inclination in an effort to eliminate any trace of partisanship.

We may present our readers with unpalatable realities on occasions, but we do not employ shock tactics for their own sake.

We never go to publication without seeking both sides of the story. And if, in spite of our best efforts, we cannot get one side's version, we make it clear in our report that we have made every reasonable effort to secure that information.

We do not use subterfuge to gain access to people or places. We present ourselves as Irish Times journalists.

We are conscious of our power and responsibility when we deal with issues or events that touch upon the private lives of individuals. We try to act sensitively at times of stress and trauma, and we do not exploit the vulnerability of individuals.

We are scrupulous to quote our sources accurately, but we do not accede to requests from them to vet copy before publication. We will never compromise or reveal a source which has confided in us. We hold fast to this principle whether we face jail or fine or any other pressure.

We are acutely aware that the readers of The Irish Times are as unique, in some ways, as the newspaper that serves them. They identify with the paper but they do not want to be taken for granted. They want to be informed and then make up their own minds. Fact is sacred, and comment is free. We clearly separate one from the other. Our readers want access to the raw facts themselves and then they like to accept, or reject, our analysis of what they mean.

Above all else, we commit ourselves to accuracy. If we fail the test of accuracy, we are failing the most essential test of our profession. We recognise, of course, that journalism

in a daily newspaper operates in a deadline-driven environment in which mistakes can, and will, happen. When we get it wrong, we say so. Since 1989, readers can make contact with their representative in the Editor's Office to act on their behalf-seeking corrections or clarifications or explaining why none is warranted, as appropriate.

We welcome readers' views - be it to the Letters to the Editor page, through email, fax, postal or telephoned response. The Irish Times's [irishtimes.com](http://www.irishtimes.com) website is the online vehicle for readers to have recourse to a genuine hearing for their satisfaction/dissatisfaction with the newspaper's performance.

We hope that readers enjoy the newspaper every day at least half as much as we, Irish Times journalists, enjoy writing and producing it.

Geraldine Kennedy, July 2003. (<http://www.irishtimes.com/about/message-from-the-editor.html>)



Appendix 7: Royal Charter of the BBC (part)

3. The BBC's public nature and its objects: (1) The BBC exists to serve the public interest. (2) The BBC's main object is the promotion of its Public Purposes. (3) In addition, the BBC may maintain, establish or acquire subsidiaries through which commercial activities may be undertaken to any extent permitted by a Framework Agreement. (The BBC's general powers enable it to maintain, establish or acquire subsidiaries for purposes sufficiently connected with its Public Purposes).

4. The Public Purposes: The Public Purposes of the BBC are as follows—(a) sustaining citizenship and civil society; (b) promoting education and learning; (c) stimulating creativity and cultural excellence; (d) representing the UK, its nations, regions and communities; (e) bringing the UK to the world and the world to the UK; (f) in promoting its other purposes, helping to deliver to the public the benefit of emerging communications technologies and services and, in addition, taking a leading role in the switchover to digital television.

5. How the BBC promotes its Public Purposes – the BBC's mission to inform, educate and entertain: (1) The BBC's main activities should be the promotion of its Public Purposes through the provision of output which consists of information, education and entertainment, supplied by means of—(a) television, radio and online services; (b) similar or related services which make output generally available and which may be in forms or by means of technologies which either have not previously been used by the BBC or which have yet to be developed. (2) The BBC may also carry out other activities which directly or indirectly promote the Public Purposes, but such activities should be peripheral, subordinate or ancillary to its main activities. Overall, such peripheral, subordinate or ancillary activities of the BBC should bear a proper sense of proportion to the BBC's main activities, and each of them should be appropriate to be carried on by the BBC alongside its main activities. (3) The means by which the BBC is, or is not, to promote its Public Purposes within the scope described in this Charter may be elaborated in a Framework Agreement.

6. The independence of the BBC (1) The BBC shall be independent in all matters concerning the content of its output, the times and manner in which this is supplied, and in the management of its affairs. (2) Paragraph (1) is subject to any provision made by or under this Charter or any Framework Agreement or otherwise by law.

Appendix 8: Australian Broadcasting Corporation charter

AUSTRALIAN BROADCASTING CORPORATION ACT 1983 - SECT 6

Charter of the Corporation

(1) The functions of the Corporation are:

(a) to provide within Australia innovative and comprehensive broadcasting services of a high standard as part of the Australian broadcasting system consisting of national, commercial and community sectors and, without limiting the generality of the foregoing, to provide:

(i) broadcasting programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community; and

(ii) broadcasting programs of an educational nature;

(b) to transmit to countries outside Australia broadcasting programs of news, current affairs, entertainment and cultural enrichment that will:

(i) encourage awareness of Australia and an international understanding of Australian attitudes on world affairs; and

(ii) enable Australian citizens living or travelling outside Australia to obtain information about Australian affairs and Australian attitudes on world affairs; and

(c) to encourage and promote the musical, dramatic and other performing arts in Australia.

(2) In the provision by the Corporation of its broadcasting services within Australia:

(a) the Corporation shall take account of:

(i) the broadcasting services provided by the commercial and community sectors of the Australian broadcasting system;

(ii) the standards from time to time determined by the Australian Broadcasting Authority in respect of broadcasting services;

(iii) the responsibility of the Corporation as the provider of an independent national broadcasting service to provide a balance between broadcasting programs of wide appeal and specialized broadcasting programs;

(iv) the multicultural character of the Australian community; and

(v) in connection with the provision of broadcasting programs of an educational nature—the responsibilities of the States in relation to education; and

(b) the Corporation shall take all such measures, being measures consistent with the obligations of the Corporation under paragraph (a), as, in the opinion of the Board, will be conducive to the full development by the Corporation of suitable broadcasting programs.

(3) The functions of the Corporation under subsection (1) and the duties imposed on the Corporation under subsection (2) constitute the Charter of the Corporation.

(4) Nothing in this section shall be taken to impose on the Corporation a duty that is enforceable by proceedings in a court.

Appendix 9: Australian SBS charter.

The SBS Charter, provided in the SBS Act, sets out the principal functions of SBS and a number of duties it has to fulfil. The Charter, contained in Section 6 of the Special Broadcasting Services Act 1991, states:

(1) The principal function of SBS is to provide multilingual and multicultural radio and television services that inform, educate and entertain all Australians and, in doing so, reflect Australia's multicultural society.

(2) SBS, in performing its principal function, must:

(a) contribute to meeting the communications needs of Australia's multicultural society, including ethnic, Aboriginal and Torres Strait Islander communities; and

(b) increase awareness of the contribution of a diversity of cultures to the continuing development of Australian society; and

(c) promote understanding and acceptance of the cultural, linguistic and ethnic diversity of the Australian people; and

(d) contribute to the retention and continuing development of language and other cultural skills; and

(e) as far as practicable, inform, educate and entertain Australians in their preferred languages; and

(f) make use of Australia's diverse creative resources; and

(g) contribute to the overall diversity of Australian television and radio services, particularly taking into account the contribution of the Australian Broadcasting Corporation and the community broadcasting sector; and

(h) contribute to extending the range of Australian television and radio services, and reflect the changing nature of Australian society, by presenting many points of view and using innovative forms of expression.

(www.sbs.com.au/aboutus/corporate/index/id/25/h/SBS-Charter)

Appendix 10: Radio New Zealand charter and principles

Charter-

(1) The functions of the public radio company shall be to provide innovative, comprehensive, and independent broadcasting services of a high standard and, without limiting the generality of the foregoing, to provide -

- (a) Programmes which contribute toward intellectual, scientific, cultural, spiritual, and ethical development, promote informed debate, and stimulate critical thought; and
- (b) A range of New Zealand programmes, including information, special interest, and entertainment programmes, and programmes which reflect New Zealand's cultural diversity, including Maori language and culture; and
- (c) Programmes which provide for varied interests and a full range of age groups within the community, including information, educational, special interest, and entertainment programmes; and
- (d) Programmes which encourage and promote the musical, dramatic, and other performing arts, including programmes featuring New Zealand and international composers, performers, and artists; and
- (e) A nationwide service providing programming of the highest quality to as many New Zealanders as possible, thereby engendering a sense of citizenship and national identity; and
- (f) Comprehensive, independent, impartial, and balanced national news services and current affairs, including items with a regional perspective; and
- (g) Comprehensive, independent, impartial, and balanced international news services and current affairs; and
- (h) An international radio service to the South Pacific (Radio New Zealand International), which may include a range of programmes in English and Pacific languages; and
- (i) Archiving of programmes which are likely to be of historical interest in New Zealand.

(2) In providing broadcasting services, the public radio company shall take account of -

- (a) Recognised standards of excellence; and
- (b) Its responsibility as the provider of an independent national broadcasting service to provide a balance between programmes

of wide appeal and programmes of interest to minority audiences; and

(c) The broadcasting services provided by other broadcasters; and

(d) Surveys, commissioned annually, of persons who are members of its current audiences to establish whether those members consider that the quality and quantity of its services are being maintained in accordance with subsection (1); and

(e) Surveys, commissioned from time to time, of persons who are not members of its current audiences.

(3) The public radio company must, as part of its annual report, inform the shareholding Ministers of-

(a) The objectives and results of the annual surveys of its current audiences under subsection (2)(d); and

(b) The objectives and results of any surveys of people not in its current audiences under subsection (2)(e); and

(c) The measures, if any, it has taken in response to those results.

Principles Of Operation-

(1) The public radio company shall, in fulfilling its Charter, exhibit a sense of social responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage those interests when able to do so.

(2) The public radio company shall, in fulfilling its Charter, operate in a financially responsible manner so that it maintains its financial viability.

(3) For the purposes of subsection (2) of this section, the public radio company is financially viable if-

(a) The activities of the company generate, on the basis of generally acceptable accounting principles, an adequate rate of return on shareholders' funds; and

(b) The company is operating as a successful going concern.

(www.radionz.co.nz/about/charter)

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