

International Rights Violations and Media Coverage:

The Case for Adversarial Impartiality

Abstract

I argue that the best way for journalists to enable their audience to determine the truth about international rights questions and to grant the parties' claims a fair hearing is by adhering to strict impartiality – i.e., by producing coverage that does not reflect the journalist's personal views on the rights question. I then argue that the best way for journalists to provide strictly impartial coverage is by utilizing a legal trial, and more specifically an adversarial trial as a model for impartial presentation. Unlike the traditional Just-the-Facts model, the adversarial model explicitly requires the journalist to challenge the narratives of the parties and to cover the relevant normative controversies. It solves the problem of partiality in content choice by asking the journalist to take up the perspective of a principled zealous advocate for both sides of the international rights question.

Keywords: Impartiality, objectivity, journalism ethics, international conflicts, global justice

Serious violations of rights are occurring perennially in an international context where no efficacious court of law exists to determine what happened and to administer justice. Yet the victims of such violations are not wholly at the mercy of the global constellation of interests and power. The court of global public opinion provides an informal forum where the parties' claims can be heard and where the merits of these claims can sometimes affect the ultimate outcome. Given the role the media plays in shaping the opinion of this "court," the way in which journalists cover stories involving alleged international rights violations has a great deal of political and moral significance. Yet this topic has not received scholarly attention commensurate with its importance.

Many scholars believe that news coverage should enable the audience to determine the truth and should provide a fair hearing for the perspectives of the different parties.¹ Yet there is no agreement on how these goals should be accomplished when it comes to coverage of international

rights questions. The role of the norm of impartiality is a particular source of controversy.² Some scholars question whether coverage of international rights question should display impartiality at all.³ Even among supporters of impartiality, there is a fierce debate over what impartiality means and how it should be pursued.⁴

In this article, I defend two central normative claims. First, media coverage of international rights questions should display *strict impartiality* by not reflecting, as far as possible, the journalist's personal views on the right answer to international rights questions. Second, the best way for a journalist to produce strictly impartial coverage of international rights questions is not by adopting the perspective of a passive recorder of facts, an open-minded investigator, or a fair-minded presenter of both sides' positions. Instead, I argue the journalist ought to be guided by (a version of) the model of impartiality utilized by the adversarial legal system. This model asks the journalist to alternate between the perspectives of principled zealous advocates/challengers for both sides of the debate over whether and to what extent rights have been violated in the international arena.

My argument is divided into six sections. In the first section, I explain what I mean by "international rights questions." In the second section, I define the requirement of strict impartiality and defend it against four alternatives: a journalism of attachment, investigative journalism, the marketplace of media perspectives, and analytical journalism. In the third section, I consider how journalists should produce strictly impartial coverage, beginning with a discussion of the Just-the-Facts model and its shortcomings. In the fourth section, I consider and ultimately dismiss Ward's "pragmatic objectivity" model. In the fifth section, I develop and defend a model of adversarial journalistic impartiality. I respond to objections to this model in the sixth section. I then conclude and consider directions for future research.

1. International Rights Questions

Let me begin by clarifying what I mean by “international rights questions.” By “international,” I mean rights questions that involve two parties who are not subject to a common, legitimate political authority.⁵ By “rights question,” I mean the question of *whether and to what extent some party’s rights have been violated*. The kinds of alleged rights violations I am concerned with here include not only the violations of fundamental human rights, but also blockades, territorial expropriation, etc.

I should emphasize straightaway that coverage of international rights questions properly constitutes only *one component* of journalists’ broader coverage of international conflicts. In addition to covering rights questions, journalists should help their audience understand the roots of such conflicts and their likely outcomes. Journalists may also have a duty to contribute to a peaceful resolution of international conflicts by reporting on possible solutions to the underlying grievances.⁶ However, given the potential role of the media in influencing foreign policy with regards to basic international rights,⁷ coverage of international rights questions clearly has a special moral significance. I therefore assume here that such coverage ought to be one *key* component of the journalist’s broader coverage of international conflicts.

2. Truth, Fairness, and Strict Impartiality

For the purposes of this paper, I take it as given that journalists have two central duties with regards to coverage of international rights questions. The first is a duty to enable their audience to determine the truth about the alleged international rights violations.⁸ This is, first and foremost, a duty to the parties in the conflict. If the audience reaches an incorrect conclusion, they may support policies that unjustly punish an innocent party or that fail to protect a party whose basic rights are being violated. But it is also a duty to the audience. After all, the audience generally turns to the

news to learn the truth about what is happening in the world, including whether and to what extent rights violations are occurring internationally. Knowing the truth about rights violations not only satisfies the audience members' curiosity. It also enables them to support foreign policies that are wiser and more just, thus contributing to a flourishing democracy.

The second important journalistic duty is to give the claims of the parties in the conflict a fair hearing. In part, this plays an instrumental role in enabling the audience to determine the truth. But a fair hearing also expresses an important type of respect for the parties the journalist is covering, giving them an opportunity to be heard in the international public sphere without unfair distortion. Moreover, just as the legitimacy of punishment in a legal trial depends on whether both sides have been given a fair hearing, so too the legitimacy of foreign interventions in an international conflict may well depend on whether the intervening policy-makers (and the voters that hold them accountable) have heard the parties' claims presented fairly.

How should journalists fulfill these two obligations? It almost goes without saying that a journalist's coverage should, as far as possible, be free of faulty thinking,⁹ as well as racism, sexism, bias against particular religious, national, or ethnic groups, a beholdingsness to certain parties in the story, an overwhelming desire for recognition, etc.¹⁰ I also take it as uncontroversial that news organizations have *pro tanto* obligations to avoid organizational biases such as slanting or simplifying stories to maintain audience interest or to please sponsors.¹¹

The more controversial question is this: What role should the journalist's personal views on the international rights question play in her news coverage? In this section, I argue that coverage *should not reflect the reporters', editors', or news organization owners' views about the right answer to the international rights question*. This requirement, which I refer to as *strict impartiality*, is enshrined in the "Ethical Guidelines" of the *Los Angeles Times*, which state that, "A fair-minded reader of *Times* news coverage should not be able to discern the private opinions of those who contributed to that coverage, or to infer that the newspaper is promoting any agenda."¹²

Now, I do not claim that strict impartiality is appropriate for all news organizations or stories. Instead, I will focus here on defending strict impartiality only for the international rights question coverage of those news organizations that claim to be impartial.¹³

Strict impartiality is warranted in this context for at least four reasons. First, the journalist can be wrong about the guilt and innocence of different parties, and in fact her judgment may be subject to special biases. Second, in the international context, other institutions that would normally fairly and impartially evaluate whether rights have been violated (e.g., courts of law) are absent, significantly increasing the importance of impartial coverage by journalists. Third, media audiences cannot generally be counted upon to actively seek out alternative perspectives from different news sources, thus impartial coverage from any one news source is particularly important. Finally, strict impartiality raises the likelihood of the audience in aggregate reaching the right conclusion by preserving the independence of each audience member's judgment. I develop each of these arguments in response to the main challenges that have been leveled against strict impartiality.

2.1 A Journalism of Attachment?

The first challenge to strict impartiality comes from those who, like Martin Bell, advocate a "journalism of attachment."¹⁴ On Bell's view, strict impartiality is unacceptable because it requires the journalist to impermissibly "stand neutrally between good and evil, the victim and the oppressor."¹⁵ Bell argues that, when the journalist is convinced that one party is guilty, she has a duty to tell what she sees as the truth about what is happening in a conflict to her news audience, even when her view of the truth is controversial. The requirement of balance must, on Bell's view, itself be balanced against the journalist's duty as a human being to stand up against evil.

However, the main problem with Bell's view is that the journalist *can be wrong* about the guilt and innocence of the different parties.¹⁶ Bell writes as though good and evil, victim and

oppressor are clearly discernable and uncontroversial categories. But in many international conflicts, reasonable people will disagree over which party falls into which category. A journalist who abandons impartiality in favor of propounding her view of the truth could commit a grave injustice by biasing the presentation of the facts and arguments against an innocent party or by allowing a guilty party to continue to act with impunity.

In fact, there are good reasons to think that the journalist's judgment may be subject to special biases. First, journalists have some choice over which areas of the world they cover, and this choice may sometimes be made on the basis of a *philia* for one of the parties in a conflict or a pre-existing, less-than-fully-informed conviction about an under-recognized injustice. Even more importantly, when covering an international conflict, a journalist is herself often a witness to some alleged rights violation from an inherently limited perspective. For the same reasons a witness to an alleged crime in a legal context is not trusted to serve as an adjudicator, so too the journalist's judgments on the international rights question that she is covering are suspect. Thus, while the journalist may in general be more educated, reflective, and knowledgeable than the typical audience member, these special sources of bias suggest that her judgment on international rights questions may, in some cases at least, be less reliable than the typical audience member's judgment. These special sources of bias provide strong reasons for insisting that the journalist avoid reporting one-sided conclusions about the answers to international rights questions.

2.2 Investigative Journalism?

Some might suggest that coverage of international rights questions should be governed by the norms of investigative journalism. Investigative journalists will sometimes violate strict impartiality by producing coverage in which it is fairly clear that the journalist believes that some party is guilty of a rights violation. This partiality is sometimes justified as a corrective to a broader imbalance of power in society.¹⁷

I do not wish to deny that the norms of investigative journalism might be justified in certain domestic contexts. However, I argue that the norms of investigative journalism should not be applied to international rights questions because the safeguards that check the excesses of this type of journalism are often far less reliable in the international context. First, unlike the domestic target of the investigative journalist, a foreign party that is unfairly portrayed as a rights-violator may not have easy access to the public forums in the journalist's home country. Second, unlike domestic targets of investigative journalism, the alleged international rights violator may also have limited or no ability to sue the journalist and her organization if her coverage veers into the realm of libel.¹⁸ Most importantly, since the parties in the international context generally do not have the benefit of an impartial, efficacious trial, there is far greater moral importance to ensuring that the parties' arguments and claims are presented in a fair manner by journalists. Thus, even if less-than-strictly-impartial investigative journalism is appropriate in certain domestic contexts, it seems unacceptably dangerous when it comes to coverage of international rights questions.

2.3 A Marketplace of Media Perspectives?

A third challenge to strict impartiality comes from advocates of a marketplace of media perspectives.¹⁹ Proponents of the marketplace of ideas might question whether impartial news coverage by *each news organization* is really necessary to enable the audience to discern the truth and to give the parties' claims a fair hearing. After all, in a marketplace of ideas, the audience is free to seek coverage from journalists with a variety of viewpoints. Though *each* journalist's news coverage may fail to be strictly impartial (or even moderately balanced), the *overall* news coverage in the media environment could achieve the necessary level of balance and diversity of viewpoints.

While this argument might have some merit in theory, it is inadequate in practice. First, there is no guarantee that the perspective of every party in an international conflict will be fairly presented

in every country's media market. Sometimes, there will be no prominent journalists in a particular country who are sympathetic to one of the parties in an international conflict. And international parties who are initially viewed unsympathetically may face significant difficulties directly accessing the country's public forums themselves. Thus, in some cases, the marketplace of media perspectives may result in relatively one-sided coverage of the international rights question, even in a country's media environment taken as a whole.

But even if every perspective is represented in a particular country, it is utopian to expect the majority of news consumers to actively seek out a variety of viewpoints. Though some individuals do pay attention to several news sources, many individuals fail to pay attention in any deep way to even a single news source, let alone seeking out multiple media perspectives.²⁰ Seeking out different perspectives requires time and cognitive effort. In addition, news consumers often have a preference for coverage that confirms their pre-existing views.²¹ So a system which relies on the audience "shopping around" in the marketplace of media perspectives is likely to lead to an ossification of the audience's pre-existing opinions about international rights questions and is unlikely to expose the average audience member to a fair account of both parties' claims.²² Thus, if we are interested in enabling the audience to determine the truth and in giving the parties' claims a fair hearing, it seems unrealistic to simply rely on the marketplace of ideas.

2.4 Analytical Journalism?

The final challenge to strict impartiality comes from proponents of analytical journalism. These proponents (e.g., Mitchell Stephens) question the usefulness of the separation between news and analysis. They argue that news coverage should explicitly include the journalist's considered judgment about the answer to international rights questions.²³

This is in many ways the most powerful challenge to strict impartiality. After all, it seems plausible that the audience could benefit from the considered judgment of the journalist (a person

who has spent a great deal of time becoming informed about and reflecting on the international rights question). Moreover, a well-executed analytical journalism piece could give the parties' claims a fair hearing while giving the audience the resources to challenge the journalist's conclusion.

There are, however, several problems with this alternative to strict impartiality. First, the journalist's presentation of her own views on the rights question may undermine her ability to present the facts and arguments on both sides fairly. The journalist may feel psychological pressure to spend more time justifying her conclusions, and, given the limited media space, this may come at the expense of a fully fair presentation of the facts and arguments on the other side.

Second, as I argued above, the journalist's judgment may be subject to special biases. It is certainly possible that these biases could, in certain cases, make the journalist's judgment of the correct answer to the international rights question less reliable than the judgments of her audience.

But even if the journalist's judgment is more reliable than *the typical* audience member's judgment, the truth might nevertheless be best served by strict impartiality because of the importance of preserving the *independence* of *each* audience member's judgment. As the Condorcet Jury Theorem demonstrates, if there are many individuals making a judgment, each individual is more likely than not to be right, individuals' mistakes are not biased in a particular direction, the judgments are independent, and the ultimate outcome depends on the majority of the independent judgments, then the likelihood of the right outcome can be quite high.²⁴ The journalist's sharing of her judgment with the audience may compromise the independence condition,²⁵ especially since the journalist is often (rightly) perceived to have special expertise. Thus, even if the journalist is more likely to be right than the *typical* audience member, she may not be more likely to be right than the audience members *in aggregate* when the independence of their judgment is preserved. This, I think, provides the strongest argument for insisting that news coverage of international rights question should display strict impartiality.

3. The Problems with Just-the-Facts

Let me turn, then, to the second central question that I wish to consider in this paper: How should the journalist produce strictly impartial coverage? The traditional model of impartiality that guides journalists (at least in English-speaking countries) is sometimes called the Just-the-Facts model. In the simplest version of this model,²⁶ the journalist is asked to act as an undistorted “mirror on nature.”²⁷ As Stephen Ward writes, according to this model, “The report is impartial if and only if it is a factual and accurate recording of an event. It reports only the facts, and eliminates comment, interpretation, and speculation by the reporter.”²⁸

The model can be seen as having two components. The first is the Five W’s and one H (5-Ws for short). This is the “who, what, where, when, why, and how” of the story.²⁹ These facts should be presented in order of importance and go from the more general to the more detailed.³⁰ The second component is what I refer to as alternative narratives (what Brent Cunningham refers to as “the ‘he said’ and ‘she said’ [of the story].”³¹) The alternative narratives component asks the journalist to report each party’s perspective on the issue, often in its own words.

In order to see how the Just-the-Facts model works, consider the following short piece, which appeared on the CNN website on May 27th, 2010:

State media: Lebanon fires on Israeli warplanes³²

From **Amir Ahmed**, CNN

STORY HIGHLIGHTS

- Lebanon fires on Israeli warplanes, state media reports
- Lebanon regularly reports airspace violations by Israel
- The Israeli military does not comment on activity or rumors of activity, a spokeswoman says

(CNN) -- The Lebanese army fired anti-aircraft guns on Israeli warplanes Wednesday after what it said were repeated violations of Lebanese airspace, state media reported.

According to the National News Agency of Lebanon, the army opened fire after Israeli planes entered Lebanese airspace for a third time over a two-hour period in what would be a violation of U.N. Security Council Resolution 1701.

"The Israel Defense Forces does not comment on Israeli Air Force activity or rumors regarding it," an IDF spokeswoman said.

Airspace violations by Israel have been reported since a cease fire was established following five weeks of fighting between Israel and Hezbollah in the summer of 2006. The Israeli military attacked after Lebanese-based Hezbollah militants kidnapped two Israeli soldiers during a cross-border raid.

Under Resolution 1701, Israel is not supposed to conduct military operations over or in Lebanon. Israel has accused Hezbollah of smuggling arms into southern Lebanon, also in violation of the resolution.

This short article is a good example of the Just-the-Facts model at work. The 5-Ws include the parties involved (Lebanon and Israel), the Lebanese firing of anti-aircraft guns on Israeli warplanes, the location (Lebanon's air space), the day of the incident, the background of the war, and some of the provisions of resolution 1701. The alternative narratives are as follows: Lebanon claims that Israel is violating its airspace in violation of Resolution 1701. Israel has refused to officially comment on this incident. But in the past it has claimed that Hezbollah is smuggling arms into Southern Lebanon (also in violation of Resolution 1701).

This article illustrates some of the advantages of the Just-the-Facts model. In a relatively short space, the journalist following this model is able to convey much of what is important about the incident (the 5-Ws). Moreover, both parties have a chance to provide their perspective on the incident (the alternative narratives). Most importantly, the journalist is not explicitly taking sides. It is difficult for a fair-minded reader to determine what the journalist's own personal views are about who is in the right.

However, there are also several well-known problems with the Just-the-Facts model which can be seen in the piece above, and here I will focus on the four most important.³³ The first problem is that this model discourages *evaluation* of the parties' conflicting claims. These claims are often both deeply contested and central to the rights question. Yet the journalist following the Just-the-Facts model rarely gives the audience the information needed to challenge the alternative narratives of the parties.³⁴ After all, it is unclear how the journalist can present evidence that effectively paints one party as a liar without displaying partiality.³⁵ Yet at the same time, it is unrealistic to expect the audience members themselves to gather the evidence needed to evaluate the parties' claims. The journalist's failure to evaluate the parties' claims severely undermines the ability of the audience to determine the truth about rights questions.³⁶

Consider the CNN article above. The reader learns that the Lebanese are claiming that Israeli warplanes are violating their airspace. But since Israel officially refuses to acknowledge that these flights are occurring, the journalist does not provide evidence that confirms or disputes this claim. Similarly, the reader learns that the Israelis are claiming that Hezbollah is smuggling weapons into Southern Lebanon. Yet the journalist does not discuss the likelihood that such smuggling is actually occurring. The truth of the Israeli and Lebanese claims is critical to answering the rights question, yet the audience is not provided with the resources needed to evaluate these claims.

The second problem with the Just-the-Facts model is that it does not provide sufficient space for exposing the audience to the underlying *normative* controversies that are quite often at the heart

of international rights questions. While a journalist might, for example, report what international law says in a certain situation, it is unclear how the journalist who is following the Just-the-Facts model can allow the audience to evaluate the *justice* of such a law. As Carrie Figdor points out, since normative claims are not subject to empirical verification in the same way as positive claims are, they should not be included in the journalist's coverage under the Just-the-Facts model.³⁷

Now, it is true that the parties themselves sometimes include normative claims in their statements to the press, and this provides the audience with some exposure to the normative issues at stake. But the parties themselves do not always make the strongest arguments possible. Sometimes they may even choose not to comment at all.

For example, in the CNN article above, Israel refuses to discuss the incident, leaving the critical self-defense justification for Israel's actions underdeveloped. Admittedly, the audience does learn that Israel has accused Hezbollah of smuggling weapons into Southern Lebanon in the past. And an intelligent, informed reader might connect the Israeli flights to the need to monitor the Hezbollah's weapon movements. But the reader may also come away from the article with the impression that the Israeli justification for its incursions is that violations of Resolution 1701 on the Lebanese side justify Israel's own violations (a relatively weak argument).

A third problem with the Just-the-Fact model is that it is unclear how a journalist can impartially choose *which* facts to report and how to frame the story.³⁸ There are obviously too many facts to include in any story. Moreover, there is rarely space to include all of the different parties' statements. Thus, the journalist must make *a choice* about which facts and statements to include. Yet it is not at all clear how the journalist following the Just-the-Facts can *impartially* choose which facts and statements to include in her coverage.

Journalists are often told to choose facts based on their "importance." But the judgment of the importance of a fact, at least at the margin, seems to heavily *depend on the journalist's personal views on the international rights question*.³⁹ If the journalist believes that Lebanon is justified in

firing at the Israeli warplanes, then, from the journalist's perspective, the fact that the Israeli planes have not attacked any Lebanese targets since the end of the war might not seem particularly important. Instead, what might well seem more important is the frequency of the flights, the fact that some occur at low altitudes, and the extent of the destruction that Israel has visited on Lebanon in the past.⁴⁰ So while the Just-the-Facts model appears to be a model of strictly impartial reporting, as many scholars have recognized, it in fact routinely leads to violations of strict impartiality when it comes to the choice of the facts and the framing of the story.

Admittedly, the journalist's selective choice of facts is a less obvious violation of impartiality than explicit editorializing. But the subtlety of this partiality, while sometimes placing constraints on its extent, also makes it far more pernicious. This type of partiality can lead the audience to believe that they are receiving impartial coverage. Moreover, because the notion of "importance" is so subjective and poorly-defined, coverage must be very skewed indeed before the claim of impartiality can be convincingly substantiated and differentiated from a mere reasonable disagreement about relative importance of facts.

The final problem with the Just-the-Facts model is that it is quite dry. Interesting writing often requires the use of colorful, emotive language. But such language can betray a particular perspective on the issue (e.g., by describing a particular party's action with words that have negative connotations).⁴¹ A proponent of the Just-the-Facts model might be willing to accept the occasional dullness as the price of impartial reporting. But the problems this dullness poses go beyond a less enjoyable experience for the readers and lower profit margins for the news organization. The deeper worry is that boring Just-the-Facts journalism will lead news consumers to abandon impartial sources for more interesting, less balanced coverage of international rights questions or to remain ignorant about the alleged international rights violation altogether.

One solution to all of these problems is to abandon the requirement of strict impartiality. But, as I have already argued, partial coverage generates its own set of problems. Instead, I believe

that we ought to search for a better model of impartial news coverage of international rights questions. I now turn to considering some possibilities.

4. The Inquisitorial Trial as a Model: Pragmatic Objectivity

The legal system seems like a promising place for alternative models of impartiality for coverage of international rights questions.⁴² After all, a central goal of the legal theorist is to design a trial that will allow adjudicators (in many cases, ordinary men and women) to accurately decide whether and to what extent rights have been violated while also respecting the parties' rights to a fair hearing.⁴³ This is quite similar to the goals of the theorist laying down guidelines for media coverage of international rights questions.

Of course, there are also important differences between the journalistic and legal contexts. For example, in the journalistic context, the applicable law is often far more contested, the facts are generally much more complex and difficult to ascertain, the constraints on how much information can be presented are far more severe, and there is no straightforward mechanism to enforce the judgment of the adjudicators. However, I am not suggesting that journalists use legal trials as models for coverage in a rigid, exact fashion. Instead, my claim is that the *general approach* that trials take to achieving an impartial and fair examination of rights questions can potentially be adapted to the media context. I freely concede that any such adaptation will have to take into account the journalist's particular medium as well as the special constraints (e.g., deadlines, media space, etc.) that journalists face.

Two broad types of trials are currently in use in much of the world: adversarial and inquisitorial. In this section, my aim is to evaluate whether the inquisitorial trial might serve as a good model for journalistic impartiality.

The inquisitorial trial is conducted by a judge whose primary aim is to guide the presentation of facts, witnesses, and arguments in the way that is most likely to directly reveal the truth. The judge *is not bound by the parties' positions*.⁴⁴ That is, she need not make the same choices about issue framing or evidence presentation that the parties' lawyers would make if they were given the opportunity to do so. However, the inquisitorial trial achieves a kind of impartiality by relying on the judge's lack of bias, her open-mindedness, and her commitment to be fair to the perspectives of the parties.

It is not implausible to think that the model of impartiality used by the inquisitorial trial could be applied in the journalistic context. And, in fact, something very much in this vein has already been proposed by Stephen Ward under the label of "pragmatic objectivity."⁴⁵ Like the inquisitorial judge, a journalist adhering to pragmatic objectivity aims at directly revealing the truth to the adjudicators (although she does not share her own conclusions explicitly with her audience). Also like the inquisitorial judge, the journalist following the strictures of pragmatic objectivity achieves a kind of impartiality by adopting a stance of rationality, openness to other perspectives, a commitment to disinterested pursuit of the truth, and intellectual integrity.⁴⁶ Moreover, she constantly tests her beliefs against empirical realities and the rest of her considered judgments and remains committed to being fair in representing the claims of the parties that she is covering.⁴⁷

The pragmatic objectivity model is attractive because it mitigates two of the problems that I highlighted with the Just-the-Facts model. First, a journalist adhering to pragmatic objectivity is explicitly charged with *challenging* the parties' claims. Such challenges go beyond merely asking different parties tough questions (something which many journalists already do). Instead, such challenges often entail presenting evidence that *directly contradicts* the different sides' claims (when such evidence is available).

This model of impartiality is also an improvement over Just-the-Facts in that it does require the journalist to shy away from normative issues. The journalist adhering to pragmatic objectivity

can address normative arguments in her coverage, and can also include *value judgments* as long as they are sufficiently supported by evidence.⁴⁸

Yet the pragmatic objectivity model fails to sufficiently address the other two shortcomings of the Just-the-Facts model. First (and most importantly), the journalist following the precepts of pragmatic objectivity does not achieve *strict* impartiality. Two journalists who both follow the precepts of pragmatic objectivity but who hold opposing views on some international rights question will, I claim, produce markedly different coverage of the same story. Admittedly, pragmatic objectivity calls upon the journalist to try to partially transcend her epistemic commitments and to be fair to the different parties' claims. And so there will likely be significant overlap in these two journalists' coverage. However, ultimately a journalist pursuing pragmatic objectivity is committed to presenting the content *that is most conducive to directly revealing the truth*. And, as I argued in the context of the Just-the-Facts model, the judgment of which content is most conducive to this end *depends on the journalist's own considered view on the truth of the matter* (i.e., whether rights violations have in fact occurred). The journalist who believes that Lebanon has a right to fire anti-aircraft guns at the Israeli warplanes will focus on somewhat different facts and arguments in her coverage than the journalist who believes that Lebanon acted unjustly, even if both faithfully follow Ward's model of pragmatic objectivity.

Admittedly, the pragmatic objectivity model's violations of strict impartiality are more "out in the open" than those generated by the Just-the-Facts model. There is no pretense that the journalist is merely a passive recorder of facts or mirror onto nature. However, this does not eliminate the core problems that come with the failure of strict impartiality such as the magnification of the effects of the journalist's special biases and the vitiation of the independence of each audience member's judgment.

The second problem with pragmatic objectivity is that it does not go far enough to solve the problem of audience interest. Although the challenges of the parties' claims and the inclusion of

some evaluative language may be more interesting than a dry Just-the-Facts presentation, there are still fairly stringent limits on how far the journalist can go. On Ward's view, the pragmatically objective journalist can use evaluative language when *it is supported by the evidence*.⁴⁹ However, there will often be reasonable disagreement regarding whether the facts support a particular evaluative stance. In such a situation both the presiding judge in the inquisitorial trial and the journalist following the strictures of pragmatic objectivity will have to be somewhat circumspect in the use of colorful rhetoric and emotive, gripping language.

Despite these problems, the inquisitorial approach is used in legal systems around the world. We might therefore wonder whether these problems are really so bad after all.

However, note that in the legal context, there are mechanisms that are meant to mitigate these problems – mechanisms that are not present in the journalistic context and which would be difficult to introduce. First, there are a variety of institutional checks on the presiding judge's ability to present the case in a skewed manner. These include the well-defined nature of the legal question, attorneys who can pose their own questions if they feel that the judge has failed to sufficiently examine a certain issue, the possibility of a formal appeal of the judge's decision, and far fewer time and space constraints that can be used as excuses for leaving important avenues of inquiry unexplored.⁵⁰ Second, the problem of audience interest is also less important in the inquisitorial trial. Though the inquisitorial trial itself may not be gripping, the adjudicators are a "captive audience" and know that they will be asked to deliberate about the proceedings (and therefore have a special incentive to pay attention).⁵¹ Since these mitigating factors are absent in the journalistic context, even those who believe that the inquisitorial system works well in the legal context might agree that a model of *inquisitorial* journalistic impartiality has significant shortcomings, at least in the context of coverage of international rights questions. It therefore seems worthwhile to consider alternatives.

5. The Adversarial Trial as a Model

I argue in this section that a model of impartiality based on the *adversarial* legal trial can address these shortcomings. An adversarial trial achieves an impartial presentation of facts and arguments by staging a contest between two opposing sides each of which aims to zealously defend competing claims given certain (neutrally-enforced) constraints.⁵² I argue that this approach to impartiality, which is different from the passive fact recorder approach and from the inquiry-for-truth approach discussed above, provides an attractive model for impartial coverage of international rights questions.

Some readers may find the use of an adversarial legal trial as a model for journalistic impartiality to be initially implausible. After all, as Goodpaster points out, “Neither scientists, engineers, historians nor scholars from any other discipline use bipolar adversary trials to determine facts. Following the space shuttle explosion, for example, no one proposed that the investigating Presidential Commission adopt the procedures of adversary civil or criminal trials.”⁵³ Goodpaster’s point is that staging a contest between two one-sided, zealously argued views is not always (and perhaps even not generally) the best way to enable some set of adjudicators to reach the correct conclusion.

There are at least two responses to this criticism. First, remember that the truth is not the only thing that matters. The journalist also has a duty to the parties she is covering to present their claims fairly. As Goodpaster concedes, a concern with both *truth and fairness* is a stronger justification for the use of an adversarial approach than a concern for truth alone.⁵⁴ Second (and more importantly), the adversarial *journalistic* model can be adapted to address some of the key shortcomings of the adversarial legal model. I turn now to discussing the similarities and the differences between the two models and how the differences help address the problems with the legal adversarial approach.

5.1 The Journalistic and Legal Adversarial Models: Similarities and Differences

Let me begin with the key similarity between the two models: Like the legal adversarial model, the journalistic adversarial model asks the journalist to take on the role of a *zealous advocate*. The journalist is asked to present factual claims, decide which experts to interview, frame the story, and present arguments zealously (i.e., *in a way that a partisan of that side of the argument would endorse*). The journalist is also asked to *zealously challenge* the factual claims, normative arguments, expert testimony, etc. that support the other side of the argument. This emphasis on challenges differentiates the adversarial model from the fairly uncritical “he said, she said” coverage of a story that is all too often presented in the media.

However, the journalistic adversarial model is also different from the legal adversarial model in three important ways. First, unlike lawyers in the adversarial legal system, the journalist is not asked to advocate *for only one side*. Instead, the journalistic adversarial model requires each journalist or team of journalists to *alternate between* the perspectives of zealous advocates/challengers for *both sides* of the international rights question. That is, the journalist or journalistic team covering a particular international rights question effectively subsumes the roles of *both* lawyers.

There are two important reasons for this difference. First, few media organizations can afford to have two teams of journalists working on each international rights question and few have the media space for two pieces on each rights question. Second, and more importantly, having one journalist or team of journalists subsume the role of both lawyers avoids the danger that a less experienced or skilled team of journalists will be assigned to one side of an international rights question. This avoids the unevenness in advocacy that all too often plagues adversarial legal trials.

The second key difference between the legal and journalistic adversarial models is this: unlike lawyers, journalists following the journalistic adversarial model must also play *other roles* besides those of zealous advocate for both sides. For example, the journalist must take on the role of

an open-minded investigator in gathering the appropriate evidence about the alleged international rights violation. Moreover, the journalist must at times take on the role of a neutral judge in determining what evidence meets minimal standards of reliability and which experts meet satisfactory standards for expertise.

These additional roles admittedly make the journalist's task even more difficult than that of the lawyers. But it is unfortunately unrealistic to assign these roles to any other actor given the time and budget constraints of media organizations (though the editor might certainly play some of these roles in certain cases). Since journalists must take the roles of gathering and evaluating evidence in the other major models of impartiality, I will not explore these non-advocate roles in any detail here.

5.2 Mercenary vs. Principled Zealous Advocacy

I wish to focus instead on the journalist's role as a zealous advocate and on the third and most important difference between the legal and journalistic adversarial models - the nature of zealous advocacy that the model asks of the journalist versus the lawyer. I argue in this section that, rather than assuming the perspective of a *mercenary* zealous advocate (a perspective adopted by many lawyers), a journalist following the adversarial journalistic model should instead adopt the perspective of a *principled* zealous advocate.

As legal scholars have long recognized, most adversarial trials are not contests between two principled debaters.⁵⁵ Instead, lawyers often take actions that are inimical to the adversarial quest for truth, including appealing to the jury's prejudices and stereotypes (when that is helpful), using rhetorical tricks and argumentative fallacies to sway the jury, and unfairly disrupting the other side's case (e.g., with well-timed, spurious objections).⁵⁶ In fact, many (but by no means all) legal scholars have condoned such actions, calling on the lawyer to act as a *no-holds-barred agent of her client*, doing anything (except what is legally prohibited) in order to win the case.⁵⁷ In other words, lawyers are often asked to act as *mercenary* zealous advocates.

I take no position here in the debate among legal scholars over whether lawyers should behave in this way. My aim is to argue that the journalist should *not* adopt the perspective of a mercenary zealous advocate. Instead, the journalist should adopt the perspective of a *principled* zealous advocate.

What does it mean to be a *principled* zealous advocate? Several critics of mercenary zealous advocacy have developed conceptions of principled zealous advocacy in the legal context, each of which could plausibly be adapted to the journalistic context.⁵⁸ And it is unfortunately beyond the scope of this paper to consider all of these different conceptions in order to develop and defend a *full and detailed* account of principled zealous advocacy for journalists. Instead, I will focus on one crucial difference between the two forms of advocacy: While the mercenary advocate will use *whatever means necessary* (within legal constraints) to persuade the adjudicators, the principled zealous advocate is committed to persuasion using *only* the force of the stronger argument. In practice, this means that the journalist, unlike the lawyer, should not appeal to the prejudices of the audience in order to gain an advantage. She should also forbear from exploiting argumentative fallacies, rhetorical tricks, or obfuscation in advancing the argument for a particular side or in undermining the other side's argument.⁵⁹

Once principled zealous advocacy is distinguished from mercenary zealous advocacy (even in this fairly minimal way), the arguments in its favor are clear. As many scholars have pointed out, the mercenary aspects of the lawyer's role (e.g., the tricks, the appeals to prejudice, etc.) undermine the adversarial quest for truth and are unfair to the different parties.⁶⁰ And since I have assumed that truth and fairness to the parties are the most important values at stake in coverage of international rights questions, it seems straightforward to hold that principled zealous advocacy is better than mercenary zealous advocacy.

But if a principled adversarial approach is so clearly superior, why are lawyers nevertheless asked (by some thinkers at least) to act as mercenary zealous advocates? And if there are good

reasons to have lawyers behave in this way, might these reasons not also apply to journalists?

I concede that there are indeed good reasons to ask lawyers to act as mercenary rather than principled zealous advocates. However, I argue in the rest of this section that these reasons do not apply to journalists with nearly the same force.

Asking lawyers to act as mercenary zealous advocates has sometimes been justified as a way of providing an additional level of protection to individuals against abuses of power by the much more powerful state.⁶¹ On this view, the unfair rhetorical tricks and unscrupulous tactics of the defense lawyer, though admittedly not ideal, create a more balanced overall playing field in the courtroom.

However, this additional protection does not seem as necessary in the journalistic context. Admittedly, there are sometimes significant asymmetries of power between the parties in international conflicts. Yet very rarely will differences in power between the parties come close to the differences in power between one individual and the state. More importantly, even if one party in the conflict is much more powerful, what is relevant here is the ability of the different parties to unduly influence the adjudication process. And it seems highly unlikely that a party in some international conflict, even if it is much more powerful, could have the same undue, asymmetric influence over the “court” of global public opinion that a state could have over a court of law in its own jurisdiction.

A second reason for asking the lawyer to act as an agent of her client is accessibility. Parties in adversarial trials often find themselves unable to advocate effectively on their own behalf, in part due to the procedural complexity of the legal system. Since this complexity (e.g. rules of evidence) is useful, and since training everyone to navigate this complexity would be enormously expensive, permitting lawyers to act as the agents of their clients (i.e., as mercenary zealous advocates) may be an unfortunate but ultimately justified compromise between the legal system’s truth-tracking potential and its accessibility.

However, in the journalistic context, the international parties do not face formal barriers of procedural complexity in advocating their own cases in the court of global public opinion. And since the parties do not face these barriers, there is less reason for asking journalists to take on the role of mercenary zealous advocates.

A third reason for asking lawyers to act as mercenary zealous advocates has to do with the strong monetary and professional incentives that lawyers have to act this way. Insisting that lawyers limit their zeal on behalf of their clients to “principled” arguments might be utopian and might well entail significant professional hardship for those lawyers who heed this call (given that some of their professional competitors will not). Moreover, if one lawyer is a principled zealous advocate while the other is a mercenary zealous advocate, this might seriously skew the case towards the less scrupulous side.

However, these concerns are not nearly as salient in the journalistic case. First, the connections of self-interest between the journalist and the parties she covers are not nearly as strong as the analogous connections between the lawyer and her client. After all, the journalist is not paid by the parties she is covering. Thus, there is nothing quixotic about expecting a journalist to serve as a *principled* zealous advocate for a position rather than a mercenary zealous advocate. Moreover, since the same journalistic team is covering both sides of the debate, there is little worry about a morally corrupt agent gaining an advantage.

Given that the reasons for asking the journalist as mercenary zealous advocates are not particularly strong while the potential harm to audience’s ability to determine the truth of this mercenary approach is significant, it seems reasonable to ask the journalist following the *journalistic* adversarial model to rely only on the strength of the best possible argument in her zealous advocacy.

5.3 The Adversarial Model in Practice

Having described the broad outlines of the journalistic adversarial model, it may be useful at this point to illustrate how this model might work in practice. To this end, I have rewritten the CNN article above to be more in line with the adversarial model's recommendations:⁶²

State media: Lebanon fires on Israeli warplane

(Adversarial Model Version)

STORY HIGHLIGHTS

- Lebanon fires on Israeli warplanes, state media reports
- Lebanon argues that warplane incursions violate its sovereignty, UN resolution
- Israelis argue that incursions are in self-defense, firing on its planes unjustified

-- The Lebanese army fired anti-aircraft guns on Israeli warplanes Wednesday after what it said were repeated violations of Lebanese airspace, state media reported.

According to the National News Agency of Lebanon, the army opened fire after Israeli planes entered Lebanese airspace for a third time over a two-hour period.

Airspace violations by Israel have been reported since a ceasefire was established following five weeks of fighting between Israel and Hezbollah in the summer of 2006. The Israeli military attacked after Lebanese-based Hezbollah militants kidnapped two Israeli soldiers during a cross-border raid.

Defenders of Lebanon's actions argue that Lebanon is safeguarding its sovereignty against unjustified, arrogant Israeli incursions that unacceptably disrupt daily life, engender anger

and fear among Lebanese residents, and are also in flagrant violation of U.N. Security Council Resolution 1701.

An Israel Defense Forces spokeswoman has refused to comment on the alleged incursions. But eyewitnesses confirmed flights in Lebanese airspace are occurring, and Israeli sources have privately acknowledged that the Israel Air Force is indeed conducting operations in Southern Lebanon.

Defenders of Israel's actions argue that the flights, which have been conducting surveillance only, are needed to monitor the rearmament of Hezbollah in Southern Lebanon - a rearmament that is also a blatant violation of Resolution 1701 and which they contend Lebanon is not doing enough to prevent. On the Israeli view, the firing of anti-aircraft guns was an unjustified and unacceptable interference in Israel's exercise of its right to self-defense.

Experts widely acknowledge that Hezbollah's rearmament is indeed taking place, though there is disagreement over its extent.

Defenders of Lebanon's actions counter that the frequency and altitude of Israeli incursions are out of line with reconnaissance objectives, though Israel's defenders dispute this, and military experts are divided on this issue.

Having rewritten the article, I now wish to compare it to the original, beginning with the similarities. First, the headline has remained the same. Since there is only one headline and since it must be short, we cannot apply the adversarial approach to this important part of the article. Instead, as in the Just-the-Facts model, the headline should focus on the facts, and should be a headline that neither side could reasonably object to.

Second, the central, uncontroversial facts and the background of the story have remained the same. In a longer piece, perhaps the journalist would frame the story and lay out the basic facts and background twice (once from the perspective of each side). However, given length constraints for this article, it seems warranted to begin with a set of uncontroversial facts that are chosen and presented in such a way that no zealous advocate for either side could reasonably object.

However, there are also important differences in the two versions of the article. First, the rewritten article places much greater emphasis on *normative* claims. The arguments about Lebanese sovereignty, the claims of the Lebanese population against disruption of daily life, and Israel's self-defense claims are made explicit in the rewritten version. These claims are also included in the initial bullets used to summarize the central points of the article. This greater focus on these issues is not merely a matter of style. The adversarial model explicitly calls on the journalist to focus on the main normative claims relevant for evaluating the international rights question.

Second, the revised article *evaluates and challenges* the parties' claims. This is another explicit requirement of the adversarial model. For example, evidence is presented confirming the Lebanese claim that Israeli violations of its airspace are occurring. Moreover, claims by Israel's defenders that the flights are justified by the need for reconnaissance are challenged by facts about the frequency of the flights and the opinion of at least some military experts who believe that the frequency and altitude of the flights are not in line with purely reconnaissance objectives.

Third, the rewritten article arguably does a better job capturing the audience's attention. Instead of only condoning the use neutral language, the adversarial model condones the use of evaluative language when laying out *both* sides of the rights question (e.g., "*flagrant* violation," "*arrogant* incursion," etc.). Moreover, the adversarial model generates audience interest by pitting

zealously defended and challenged narratives and arguments against each other, creating dramatic conflict and tension.⁶³

Most importantly, the rewritten article is arguably more impartial than the original. The reason is this: Rather than asking the journalist to present the content she believes is most important, the adversarial model calls on the journalist to present facts and arguments that *intelligent, principled, and zealous advocates for both sides of the rights question would find most important* for enabling the audience to determine the truth. This criterion for content choice is, at least in theory, independent of the journalist's own view on whether and to what extent rights have been violated. Just as a good lawyers in the adversarial legal system should be able to present approximately the same case regardless of their opinion of the guilt or innocence of their client, so too, journalists who disagree about the answer to the international rights question should be able to identify and present roughly the same coverage of the incident by following the journalistic adversarial model. As various articles on the Israeli flights over Lebanon demonstrate, this kind of consistency is clearly absent among journalists ostensibly following other models of impartiality.⁶⁴

To sum up, like the model of pragmatic objectivity, the adversarial model requires journalists to challenge the parties' claims and to explore the normative dimensions of international rights questions. However, unlike the model of pragmatic objectivity, the adversarial model offers a better solution to the problem of audience interest and, most importantly, the problem of partiality in content choice. It thus provides an attractive alternative to both the Just-the-Facts model and to the pragmatic objectivity model when it comes to impartial coverage of international rights questions.

6. Responding to Objections

Before concluding, I would like to respond to three important objections to the journalistic adversarial model.

6.1 Two Sides?

The first objection is this: the adversarial model only represents two sides. Yet in an international conflict, there are often multiple sides each with multiple perspectives and narratives. The adversarial model thus seems overly simplistic.

While I concede that the adversarial model may be a simplistic way to cover international conflicts more generally, my claim here is that it is the best way to structure coverage of the more narrow international rights questions. Since these questions fall along a *single dimension* (i.e., the extent to which there has been a rights violation), finding the right answer is a task that lends itself to a battle between two opposing, zealously presented arguments.

Note that there are multiple perspectives in a murder trial as well. Yet the fundamental task of the jury is not to understand everything that happened. Rather, it is to settle a fairly narrow and circumscribed question of whether an unjustified killing has occurred, and if so, to what extent was the killer culpable. For this purpose, the adversarial model seems sufficient.

6.2 Psychological Feasibility?

A second objection to the adversarial model has to do with the psychological feasibility of this model's prescriptions for journalists. Some would argue that it is overly demanding to ask journalists to alternate between taking up the perspective of zealous advocates *for both sides* of the international rights question. One problem is that it is difficult to take up the perspective of a zealous advocate for a position that one finds misguided or even morally repugnant. A second problem is that *switching* from the perspective of a zealous advocate for one side to a zealous advocate for the other also seems quite challenging.

There are three responses to this objection. First, the example of lawyers suggests that the adversarial model does not ask too much psychologically. A good lawyer will have to put herself in

the shoes of a zealous advocate for her client, whatever she may think of her client and his guilt or innocence. In addition, in order to be a good lawyer, she will have to put herself in the shoes of a zealous advocate *for the other side* in order to anticipate which arguments the other side will make. If we expect lawyers to be able to do this as part of our justice system, I see little reason why journalists cannot be expected to do the same. Indeed, since the journalistic adversarial model asks the journalist to be a principled rather than a mercenary zealous advocate, its psychological requirements are not onerous.

Second, unlike the lawyer, the journalist will often be able to talk to individuals on both sides of the international rights question. Thus, if she is having difficulty imagining what an advocate for a particular side might say about a particular incident because she does not find the position compelling, she can often simply ask intelligent advocates for the two sides to share their views and arguments.

Finally, note that the psychological requirements of the *other* models of impartiality also seem quite difficult to live up to. When making any choice about what content to include under the Just-the-Facts and pragmatic objectivity models, the journalist must constantly strive to balance her pursuit of presenting the content she thinks most conducive to enabling the audience to determine the truth with the requirement of being fair to both sides. This is a very ambiguous and difficult task, and it is by no means clear that it is any easier psychologically than the task of alternating between being a zealous advocate for both sides of the argument.

6.3 Time and Media Space Constraints?

Journalists are under very strict deadlines. They also have demanding media space constraints. Yet the adversarial model seems to ask more of journalists than the traditional Just-the-Facts model. For example, the rewritten article is significantly longer than the original. There is no getting around the fact that evaluating the parties' claims requires time, and introducing the relevant

normative arguments (even briefly) takes media space. Given the various constraints facing the journalist, a third objection is that asking more of the journalist in this way may simply be unrealistic.

I have two responses to this objection. First, as I argued above, in the absence of an efficacious international judicial body that can fairly determine the guilt or innocence of the different parties and impose its judgment, the journalist's responsibility to ensure that the public has been exposed to the arguments and positions needed to determine the truth about the international rights violation allegations has special moral importance. Therefore, coverage of international rights questions should sometimes be given additional journalistic resources or media space relative to other stories.

Second, note that the adversarial model does not necessarily dictate a particular article length or particular content. Fundamentally, the model merely provides an *approach to impartiality*. Just as the traditional Just-the-Facts model can be used in an article that is a few paragraphs long or an article that is several pages long, so too can the adversarial approach be adapted (in principle at least) to the constraints facing the journalist (though discussing how exactly this can be done for different forms of media is beyond the scope of this paper).

Conclusion

The world currently lacks a reliable, legitimate, and efficacious system for adjudicating allegations of rights violations in the international context. Often, the victims' best hope for an outcome that is principled (rather than based on the international balance of power) rests on conscientious, well-informed global public opinion. Therefore, the way in which news organizations cover alleged international rights violations is not only a matter of media ethics. It is also a key concern of global justice.

I have argued that news coverage of international rights questions should be *strictly* impartial. That is, this coverage should not reflect the journalist's own views about whether and to what extent rights have been violated. A journalism of attachment, investigative journalism, a marketplace of media perspectives, and analytical journalism all fail to guarantee the arguments on the different sides of international rights questions a fair hearing. Moreover, these forms of journalism expose the audience to the journalist's special biases and personal opinions, thus undermining the independence of each audience member's judgment on the international rights questions, potentially making it less likely that the right conclusion will be reached.

Yet the Just-the-Facts reporting that has traditionally been synonymous with impartiality is, as many scholars have recognized, problematic as well. It often fails to challenge the parties' narratives and raise the relevant normative arguments. It is prone to subtle partiality in framing and in the choice and ordering of facts. And it can often be boring.

I have argued that legal systems provide promising alternative models of impartiality, particularly in the context of coverage of international rights questions. Although Ward's model of pragmatic objectivity (which is quite similar to the model of impartiality used by the inquisitorial legal system) solves some of the problems with the Just-the-Facts model, it still leaves coverage of international rights questions too dependent on the journalist's personal views. I have argued instead for an adversarial model of impartiality. This model asks the journalist to be impartial not by simply sticking to the facts or by being an open-minded investigator of the truth but rather by adopting the perspectives of a principled zealous advocate for both sides of a particular international rights question.

Many topics remain for future research. More remains to be said about the precise requirements of principled zealous advocacy. Moreover, I have said fairly little regarding the practical application of the model, and in particular, how this model's recommendations would vary for different types of media. I have also not considered here whether this adversarial model of

impartiality could be applied beyond the context of international rights questions (e.g., to coverage of domestic political debates).⁶⁵

Nevertheless, my goal here has been to motivate further inquiry into these important questions by introducing and defending an adversarial model for strictly impartial media coverage of international rights questions. This model, inspired by the adversarial legal system, aims to be fair to the different parties while best enabling members of the court of global public opinion to determine for themselves whether (and to what extent) international rights violations have occurred.

¹ See, for example, Stephen Ward, *The Invention of Journalism Ethics: The Path to Objectivity and Beyond*, vol. 38 (Montreal: McGill Queens Univ Press, 2004), pp. 285-92.

² I use the word “impartiality” here rather than the word “objectivity.” I take the core idea that both words aim to capture is that coverage should in some sense be independent of the journalist’s own views and epistemic commitments. As I hope will become clear, aiming at objectivity (i.e., aiming to transcend one’s own subjective viewpoint) is not the only possible way to achieve impartial coverage.

³ See, for example, Martin Bell, “The Truth Is Our Currency,” *Harvard International Journal of Press and Politics* 3 (1998): 102-09.

⁴ See, for example, Carrie Figdor, “Is Objective News Possible?,” in *Journalism Ethics: A Philosophical Approach*, ed. Christopher Meyers (New York: Oxford University Press, 2010). See also Stephen Ward, “Truth and Objectivity,” in *The Handbook of Mass Media Ethics*, ed. Lee Wilkins and Clifford Christians (New York: Routledge, 2009).

⁵ Note that under this definition, intra-state conflicts can also fall under the framework provided here if the legitimacy of the state’s authority to adjudicate the conflict is sufficiently in question.

⁶ J. Gatlung, “Peace Journalism - a Challenge,” in *Journalism and the New World Order: Studying War and the Media* (Goteborg: Nordcom, 2002).

⁷ Page and Shapiro find that public opinion has a significant influence on both domestic and foreign policy. See Benjamin Page and Robert Shapiro, “Effects of Public Opinion on Policy,” *The American Political Science Review*

77, no. 1 (1983): 175-90. Moreover, there is evidence that the media can significantly shape public opinion. For a review of the evidence, see M.A. Baum and P.B.K. Potter, "The Relationships between Mass Media, Public Opinion, and Foreign Policy: Toward a Theoretical Synthesis," *Annu. Rev. Polit. Sci.* 11 (2008): 39-65. Moreover, as Martin Bell claims, "Even diplomats have been occasionally been moved because of [news coverage] to take some action that they would not otherwise have taken." Bell, "The Truth Is Our Currency," at p. 102.

⁸ For an instructive discussion of "the truth" in the context of journalistic inquiry, see Ward, *The Invention of Journalism Ethics: The Path to Objectivity and Beyond*, pp. 264-72. Note that I focus here not on the journalist telling the truth but on the journalist enabling the audience to discern the truth. The journalist reporting what she views as the truth is only one way (and not the only way) that the journalist can enable the audience to determine the truth.

⁹ Elliot D. Cohen, "Forms of News Bias," in *Journalism Ethics*, ed. Deni Elliot and Elliot D. Cohen (Santa Barbara, California: ABC-CLIO, 1997).

¹⁰ These are similar to the standards of non-bias and independence that Stephen Ward characterizes as part of the traditional approach to objectivity. See Ward, "Truth and Objectivity," 142.

¹¹ Cohen, "Forms of News Bias."

¹² *L.A. Times Ethics Guidelines*, (2007 [cited May 20, 2013]; available from <http://latimesblogs.latimes.com/readers/2007/07/los-angeles-tim.html>).

¹³ As many scholars have recognized, there is a place within democracy for news organizations that explicitly have a particular ideological point of view. See Mike W. Martin, "Journalistic Objectivity," in *Journalism Ethics*, ed. Elliot D. Cohen and Deni Elliot (Santa Barbara: ABC-CLIO, 1997), 55. The model presented in this paper does not necessarily apply to organizations that *explicitly* reject impartiality as a value.

¹⁴ Bell, "The Truth Is Our Currency."

¹⁵ *Ibid.*, 102.

¹⁶ Ward also makes this criticism of Bell. See Ward, *The Invention of Journalism Ethics*, 313

¹⁷ See Hugo de Burgh, "Introduction: A Higher Kind of Loyalty," in *Investigative Journalism : Context and Practice*, ed. Hugo de Burgh (London: Routledge, 2000).

¹⁸ As Moore argues, the ability to sue the journalist and her news organization provides important protection against the investigative journalist's zeal. See Gill Moore, "The English Legal Framework for Investigative Journalism," in *Investigative Journalism : Context and Practice*, ed. Hugo de Burgh (London: Routledge, 2000).

¹⁹ For a brief review of some of the proponents of the marketplace of ideas, see Matthew Gentzkow and Jesse Shapiro, "Competition for Truth in the Market for News," *Journal of Economic Perspectives* 22, no. 2 (2008): 133-54 at p. 133.

²⁰ According to the PEW Research Center, in the United States, the average amount of time spent daily with all news sources on all topics is 66 minutes. Approximately 20% of individuals spend no time with the news at all on an average day. See "Pew Research Center Biennial News Consumption Survey," (Pew Research Center for the People & the Press, 2008), 7-9. Without a drastic increase in the amount of time spent attending to news, the assumption that a large number of individuals will pay sufficient attention to multiple news sources on a significant number of stories seems unrealistic.

²¹ See Chapter 8 of Werner Severin and James Tankard, *Communication Theories : Origins, Methods, and Uses in the Mass Media*, 3rd ed. (White Plains, N.Y.: Longman, 1992).

²² Sunstein argues that this problem has become especially grave given the proliferation of niche news sources. See Cass Sunstein, *Republic.Com* (Princeton, NJ: Princeton University Press, 2006).

²³ See Mitchell Stephens, "Beyond News," *Columbia Journalism Review* 45, no. 5 (2007): 34-39.

²⁴ Paul Edelman, "On Legal Interpretations of the Condorcet Jury Theorem," *The Journal of Legal Studies* 31 (2002): 327-49.

²⁵ For a discussion of the importance of independence for the Condorcet Jury Theorem, see Cass Sunstein, *Why Societies Need Dissent* (Cambridge, MA: Harvard University Press, 2003), pp. 119-20.

²⁶ A more sophisticated version of this model of impartiality is championed by Carrie Figdor who advocates a kind of scientific journalism where the journalist only reports epistemically justified beliefs. See Carrie Figdor, "Objectivity in the News: Finding a Way Forward," *Journal of Mass Media Ethics* 25 (2010): 19-33 at pp. 19-33.

²⁷ Christopher Meyers, "Objectivity: Introduction," in *Journalism Ethics: A Philosophical Approach*, ed. Christopher Meyers (New York: Oxford University Press, 2010), 131-32.

²⁸ Ward, "Truth and Objectivity," 74.

²⁹ See Chapter 9 of James Stuvall, *Journalism: Who, What, Where, When, Why, and How* (Boston, MA: Allyn and Bacon, 2005).

³⁰ *Ibid.*, Ch. 10.

³¹ Brent Cunningham, "Re-Thinking Objectivity," *Columbia Journalism Review* 42, no. 2 (2003): 24-32 at p. 26.

³² Ahmed, Amir 'State Media: Lebanon Fires on Israeli warplanes' CNN, May 27 2010, <http://www.cnn.com/2010/WORLD/meast/05/27/lebanon.israel.planes/index.html?iref=allsearch>. Accessed May 20, 2013.

³³ Another problem that is often raised is that observations are value-laden, for a discussion see Figdor, "Is Objective News Possible?," 153-57.

³⁴ Cunningham, "Re-Thinking Objectivity," at p. 26.

³⁵ As Cunningham writes, "Objectivity makes us wary to argue with the president- or the governor, or the CEO..." *Ibid.*

³⁶ For an extensive discussion of this shortcoming in the domestic political context, see Chapter 7 of Kathleen Jamieson and Paul Waldman, *The Press Effect: Politicians, Journalists, and the Stories that Shape the Political World*. (New York, Oxford University Press, 2003)

³⁷ Figdor, "Objectivity in the News: Finding a Way Forward," at pp. 22-23.

³⁸ See, for example, Ward, *The Invention of Journalism Ethics*, 296

³⁹ Carrie Figdor proposes that there can be objective editorial judgments "based on reasons... that would lead any competent editor or reporter to make the same judgment." Figdor, "Objectivity in the News: Finding a Way Forward," at p. 22.. Figdor rightly argues that there are factors such as audience interest and basic relevance to the story that can be objectively assessed. However, once we move beyond basic relevance, the *importance* of a fact to the story still seems to depend on the question the journalist is asking and on the journalist's view of the right answer to the international rights question.

⁴⁰ For an example of an article that focuses on these facts and also excludes the Israeli surveillance justification, see Ireland, Louise (ed.), "Israeli warplanes fly over Lebanon, draw army fire," Reuters, December 29, 2009. <http://www.reuters.com/article/idUSTRE5BS1EI20091229>. Accessed May 20, 2013.

⁴¹ For a discussion of this problem, see Figdor, "Is Objective News Possible?," 161. For evidence of this type of partiality in the case of Fox News and MSNBC, see Nicholas Holtzman et al., "Exploring Media Bias with Semantic Analysis Tools: Validation of the Contrast Analysis of Semantic Similarity (Cass)," *Behav Res* 43 (2010): 193–200.

⁴² In fact, scholars have long recognized the connection between models of objectivity in the media and the legal system. See Michael Schudson, *Origins of the Ideal of Objectivity in the Professions: Studies in the History of American Journalism and American Law, 1830-1940* (London: Garland Publishing, 1990).

⁴³ See G. Goodpaster, "On the Theory of American Adversary Criminal Trial," *The Journal of Criminal Law and Criminology* 78, no. 1 (1987): 118-54.

⁴⁴ Edward Tomlinson, "Nonadversarial Justice: The French Experience," *Maryland Law Review* 42 (1983): 131-94 at p. 134.

⁴⁵ See Chapter Seven of Ward, *The Invention of Media Ethics*. In fact, Ward makes the analogy between journalists and judges explicit more than once. See *Ibid.*, 307, 315.

⁴⁶ *Ibid.*, 281-283

⁴⁷ Ward also discusses three values (accuracy, verification, and completeness) that are specific to journalistic pragmatic objectivity. See *Ibid.*, 299-300. However, these values also seem to have analogues in values that ought to guide inquisitorial judges.

⁴⁸ See *Ibid.*, 301-308.

⁴⁹ *Ibid.*, 306.

⁵⁰ Admittedly an editor can sometimes serve as a check on a journalist's partiality. Moreover, some of the journalist's audience will sometimes be put off by skewed coverage. However, all too often, both the editor and the audience will share the journalist's biases.

⁵¹ For a brief discussion of the incentive to pay attention knowing that one will be asked to deliberate, see Bruce Ackerman and James Fishkin, *Deliberation Day* (New Haven, CT: Yale University Press, 2004), pp. 52-53.

⁵² For a similar description of the adversarial system, see Goodpaster, "On the Theory of American Adversary Criminal Trial," at p. 120.

⁵³ *Ibid.*, 122.

⁵⁴ *Ibid.*, 127.

⁵⁵ See Marvin Frankel, "The Search for Truth: An Umpireal View," *U. Pa. L. Rev.* 123 (1974): 1031-59 at pp. 1035-41.

⁵⁶ For a description of some of the tricks that are taught to lawyers which are appropriate for mercenary zealous advocacy but not to principled zealous advocacy, see David Luban, *Lawyers and Justice : An Ethical Study* (Princeton, NJ: Princeton University Press, 1988), p. 70.

⁵⁷ For a description of this position, including an endorsement of it by the American Bar Association, see Elliot D. Cohen, "Pure Legal Advocates and Moral Agents: Two Concepts of a Lawyer in an Adversary System," in *Readings in the Philosophy of Law*, ed. John Arthur, William Shaw, and Amy Shapiro (Upper Saddle River, NJ: Pearson, 2010), 15-16.. However, Cohen himself (in the same piece) is one of the many legal ethicists who reject this prescription for lawyers' behavior.

⁵⁸ For an example of an account of principled zealous advocacy, see Cohen's discussion of a lawyer as moral agent in *ibid.*, 18-21.

⁵⁹ However, note that the principled zealous advocate is still required, at times, to defend claims and arguments that she finds deeply implausible. In doing so, the journalist is still acting in a principled way because she is playing a role in a broader system that is morally justified.

⁶⁰ See, for example, Chapter 5 of Luban, *Lawyers and Justice : An Ethical Study*.

⁶¹ Luban, *Lawyers and Justice : An Ethical Study*, p. 58.

⁶² I am not a journalist, and so the quality of journalistic writing may reflect that lack of experience. I also did not interview any experts (i.e., I simply assumed the opinions of the experts for the purposes of the article).

⁶³ As Langbein argues, the contest between opposing views is part of what makes the adversarial trial such great theater. J.H. Langbein, "The German Advantage in Civil Procedure," *The University of Chicago Law Review* 52, no. 4 (1985): 823-66 at p. 831.

⁶⁴ Compare, for example, Ireland, "Israeli warplanes fly over Lebanon, draw army fire," to Fisher-Ilan "Israeli planes under fire over Lebanon"

⁶⁵ The international aspect, uni-dimensionality, normative content, and special moral importance of international rights questions have all played a role in the argument for the adversarial model. It is thus an open question whether this model would be appropriate in other contexts.