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Press Law Debate in Kenya: Ethics as Political Power

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Journalists in many African countries have long been caught between differing ideals in their relationship between press and government. Two models vie for dominance—the western, libertarian and development journalism models. This article uses Walzer’s (1983) theory of distributive justice to illuminate the ethical significance of this debate. At issue is political power. A case study of the 1996 proposed press law in Kenya illustrates the ethical arguments mounted for each press model and how the arguments are marshaled not necessarily for moral purposes but to gain political advantage. Finally, a viable third alternative avoids a false dilemma between the libertarian and development journalism models. Communitarianism preserves the independence from government so central to the libertarian model while providing a basis for activist journalism.

The 1990s have seen fundamental change in the governments of Africa. During this time Kenya was among the countries moving by fits and starts toward broad-based democracy. In the process, the press found itself in new relationships with the government. Since independence, the press had generally supported the ruling party, the Kenya African National Union (KANU) and the presidencies of Mzee Jomo Kenyatta and Daniel Arap Moi. But multiparty democracy placed new demands and apparently new responsibilities on the press, and the relationship between government and press became strained.

On January 15, 1996, Attorney General Amos Wako published a proposed press law for Parliamentary consideration in March. The law comprised two bills: Press Council of Kenya Bill and Kenya Mass Media Commission Bill. The legislation came partly in response to journalists' calls for professional regulation. The Moi government was only too happy to oblige the call for regulation. Just nine days later, after a brief but noisy debate, and under pressure from foreign aid donors, the government withdrew the bills.
This article looks at how ethical principles and normative press models were marshaled by opposing sides during the debate. Both the government and the press made ethical claims regarding the role of the press in society. The definition of the role of the press would in turn tip the balance of power toward the press or the government. So although high-minded principles were declared, a political struggle was being played out behind the scenes.

Ethics and Cross-Cultural Criticism

In an era of cultural relativism, a article written by an American about ethics in Africa needs at least brief justification. With the array of cultures and different—even contradictory—ethical rules they contain, relativists are apt to say that ethics is the domain of the individual or community or, at most, the domain of the culture. Thus, critique from outside a particular culture (and hence ethical framework) is illegitimate.

I would argue that this sort of relativism is misguided. At its roots, ethics seeks to speak to universal principles that apply across time and culture. One need not believe in the Kantian categorical imperative to come to this conclusion—even a relativist like Fletcher holds to the universality of ethics. In his model, agape is "categorically good" (Fletcher, 1966, p. 26). Although the particulars of ethical decisions will vary from context to context, certain overriding principles drive ethical decision making. I am not arguing here for a sort of natural law, although that rationale might be advanced for cross-cultural ethical criticist. Instead, along with communitarian ethicists, I am merely arguing that the essence of humanity supersedes culture, and on this essence ethics is built (Christians, Ferre, & Fackler, 1993). That is why Brandt, (1959) pointed out that all societies have ethical standards, rules for conduct that reflect the group's views of what is preferred.

Furthermore, merely holding ethical beliefs does not make them correct—our opinions may be wrong (Brandt, 1959). A culture may accept chattel slavery, for instance, but overriding principles of human dignity would demonstrate it is wrong—despite the cultural stance. Therefore, the search for overarching principles is legitimate, and we may speak prophetically, albeit humbly, to other ethics in other cultures. Of course, the opposite flow of criticism is inherent in this claim as well.

In sum, as Christians and colleagues (1993) expressed it: "There are moral universals, but only a handful of them. Plenty of room remains for tolerance, respect, even admiration of cultural differences" (p. 59).
Press Models: Interpretations of Ethical Values

Hachten (1992) pointed out that "all press systems reflect the values of the political and economic systems of the nations within which they operate" (p. 16). As such, media systems operate within given ethical frameworks. In other words, press systems speak to the role the press ought to play in society.

One of the earliest and most influential descriptions of normative journalism models was Siebert, Peterson, and Schramm's (1956) *Four Theories of the Press*. This book identified four press models: authoritarian, libertarian, social responsibility, and communist. In the 40 years since the book was written, political structures have changed, and so have the press models. Hachten (1992) updated the models for the 1990s and included five models: authoritarian, western, communist, revolutionary, and developmental. The first three correspond to the authoritarian, libertarian, and communist models of Siebert et al. Revolutionary journalism is geared to specific political goals, especially to undermining existing power structures. Developmental journalism draws from the social responsibility theory but adds a variety of concerns expressed by developing nations, such as the balance of news flow. Development journalism is envisioned as a proactive model in which the press is consciously contributing to nation-building.

All of these models of journalism deal primarily with the relationship between the press and the state. Walzer's (1983) theory of distributive justice helps explain why this relationship is so important. In politics, the dominant good—the currency of the domain—is power. Issues of politics, then, concern the exchange and distribution of power. The dominant good of journalism is information, and the issues surround who has access and who can produce information. Because information is also power, the dominant goods of politics and journalism overlap.

According to Walzer (1983), tyranny exists when the dominant good of one domain is used to gain the benefits of another domain. In other words, tyranny exists when politicians use political power to limit the flow of information through the press or to force the press to carry information that benefits only the state. Of course, the opposite tyranny is also possible, though far less common—the press could interfere with the political process by manipulating information to achieve political ends. This potential for tyranny—either by the state or by the press—explains why the relationship of government and press is so crucial to society.

Competing Press Models

In much of Africa—as in many developing nations generally—two press models have competed for dominance. One is the classic western, libertarian model; the second is
development journalism (Zaffiro, 1991). Although these two have common elements, they also contain contradictions that seemingly cannot both be served by the press. Nevertheless, public journalism and communitarian journalism provide alternatives to the dualism of liberalism versus development journalism.

American press freedom (the libertarian model) is the ideal of many journalists in Africa. Media personnel across the continent have called for freedom of the press to be included in national constitutions and in the African Chatter on Human Rights (Ronning, 1994). In Kenya, law professor G. K Rukwato even quoted the American Constitution when noting Kenya's lack of a constitutional guarantee of freedom of the press (Magayu & Kabatesi, 1993). Whatever its failings the independence of the American press system is still held as the worldwide ideal.

The classic statement of the libertarian model was written by Mill (1859/1985) in On Liberty. One of the most strident contemporary advocates is Merrill (1974), particularly in his book The Imperative of Freedom: A Philosophy of Journalist Autonomy. Essentially, the libertarian model sets up an unfettered press as the guarantor of democracy. By protecting the press from government interference, the ability of the press to extend the power of information is maximized. To use Walzer's (1983) model, in the overlap between the domains of press and government, the press is given dominance.

The development model sees the press as an active player in nation building. Its best analog in western thinking is probably communitarian journalism or public journalism. Christians et al. (1993), for instance, cited the writing of Paul Ansah of the University of Ghana as an argument for development journalism that finds a direct parallel in communitarianism—that press freedom ought to belong to the people, not just to the publishers and editors. This model goes beyond giving the press freedom from government and in return expects the press to contribute to the functioning of the community. Rosen (1993) summarized the logic of public journalism this way:

If journalism can be described as a purposeful activity, then its ultimate purpose is to enhance democracy...... What democracy also demands is an active, engaged citizenry, willing to join in public debate and participate in civil affairs....... Part of journalism's purpose, then, is to encourage civil participation. (p. 3)
The common element among development journalism, communitarianism, and public journalism, then, is a proactive approach on the part of the press. Classic liberalism suggests that the press merely be unfettered-in a laissez faire environment, the press will naturally provide the information needed for a functional democracy. By contrast, development journalism, communitarianism, and public journalism give the press specific responsibilities that it ought to carry out. They differ on the nature of responsibilities and on who the object of the responsibilities should be.

The goal of public journalism, as Rosen suggested, is to foster democracy. Thus its area of concern is relatively narrow. It has society, however defined, as the locus of responsibility and seeks to provide a forum in which various views can be heard and debated. Of the three proactive models, public journalism is closest to classic liberalism. Where it differs is that it not only suggests that the press may provide a forum for political debate, it requires the press to do so. The fundamental drawback of public journalism for Africa, however, is its limited focus on politics. The problems facing Africa demand much more than a mere debate, but public journalism provides little guidance for journalists working outside political arenas.

Communitarian journalism takes a broader view of the role of the press, moving beyond merely government politics and thus in some ways closer to development journalism. It has the local community as the object of responsibility, which gives it a more defined source of authority than public journalism while maintaining independence from the government. Communitarians argue that the press is responsible to the people, not necessarily the state. To the extent, then, that the state as a democratic institution embodies the interests of the society, it deserves the support of the press; when the state abuses its power, the good of the community can serve as grounds for criticism by the press.

Development journalism tends to see the press as a partner with the government in promoting programs aimed at nation-building (Nordenstreng & Topuz, 1989). Using Walzer’s (1983) model, in the overlap between press and government, the government frequently is given dominance and is the entity to whom the press is responsible. Even though the goal of communitarian journalism—and especially public or civic journalism—is to provide space for public debate in democracy, the goal of development journalism is economic development. Thus even though public journalism as formulated by Rosen (1993) seeks to be staunchly independent of the government, development journalism finds the line between the two fuzzy at best.

American journalists may find the attraction of development journalism puzzling. But several powerful resonances in African history and culture make it appealing—and difficult to argue against. First is the history of the media in Africa. In most countries, the media—especially broadcast but in many cases print as well—were started by the colonial rulers. In anglophone Africa, for instance, the British set up media systems
based on their own British Broadcasting Corporation (BBC; Zaffiro, 1982). The BBC is a semipublic corporation funded by, but not directly controlled by, the government. While the BBC today operates more or less independently of the British government, in Africa the model set the stage for a close alliance between state and press.

A second resonance also derives from colonialism. The European powers divided Africa geographically with no concern for the people living in the newly colonized areas. In almost every case, this led to lumping together disparate ethnic groups. Kenya, for instance, includes 52 people groups (Unreached Peoples of Kenya, 1982). One of the goals of the early national governments, then, was to foster nationalism or national consciousness, rather than ethnicity, as a unifying factor (Bourgault, 1995). In participating in this effort, the media became direct allies of the government. In Kenya close cooperation between government and the institutionally independent newspapers continued at least until the late 1980s (Magayu & Kabatesi, 19931).

A third key resonance occurs between the development journalism Model and African culture. Clearly, to speak of "African culture" as a unity is almost ludicrous. But Moemeka (1989) of the University of Lagos argued that certain common themes can be found. He identified five characteristics of African culture that have profound implications for communication: the supremacy of the community over the individual, the utility of the individual, the sanctity of authority, respect for old age, and religion as a way of life. Given the supremacy of the community, the attraction of African journalists to communitarian press models is not at all surprising. Moemeka’s category of the utility of the individual points to an emphasis on cooperation among members of the community, relationships in which everyone is expected to contribute to but also to receive the benefits of the community. The sanctity of authority and, closely related, respect for old age may also explain why the press Africa has at times been reluctant to criticize the government and has engaged in self-censorship. And finally, religion plays a key role in African journalism, as suggested by this: statement from a seminar at the University of Nairobi:

It is difficult, perhaps impossible yes, to justify one’s mission or goal in life without a religious tint to it. To be able to justify ethical practice solely on philosophical grounds, we go back to the absolute premise--God. It is therefore from a deep religious conviction that any confusion in this noble vocation can be transcended .... The journalist should be vigilant and faithful as the prophets of old. May God bless the noble vocation. (Magayu & Kabatesi, 1993, pp. 12, 15)
To the western journalist, such God-talk seems strange indeed. And yet African culture is spiritual at its core, and to miss that characteristic would be to miss a vital influence on the press.

**Press Law in Kenya: A Case Study**

The competition between libertarian and development models of the press sets the context for a case study involving the proposed press law in Kenya. In the decades after independence in 1963, the institutionally independent Kenyan press actively supported the national government (Magayu & Kabatesi, 1993). In many developing countries, however, development journalism ideals were co-opted by the government as an excuse to limit the freedom of the press to criticize (Shah, 1994). Kenya was no exception. Ochieng (1992), a leading Kenyan journalist, wrote that Kenyan newspapers engaged in self-censorship and saw their independence as freedom from international interests rather than freedom from the domestic national government.

Magayu (Magayu & Kabatesi, 1993), director of the School of Journalism at the University of Nairobi, wrote:

> Even when it was quite clear that the country was headed for a holocaust following the systematic destruction of the Parliament, national institutions, the economy, and the educational system, the media continued performing mutely on a tightrope where the art of self-censorship and sycophancy became the hallmark of Kenyan journalism. Media organizations had become mere wheels to churn out "news" and "information" mouthed by leaders, scarcely showing the motivation behind the events they covered or taking up-front and decisive positions on important national issues. (p. iv)

Interestingly, Magayu's (Magayu & Kabatesi, 1993) description parallels events that brought the objectivity model of journalism into question, specifically Senator Joseph McCarthy's manipulation of the American press in the early 1950s (Roscho, 1975).

The rise of multiparty democracy and increasingly repressive rule by Moi government made the alliance between press and government increasingly untenable. The break between state and press was finally marked by the 1989 banning of *The Nation*--Kenya's largest newspaper--from covering Parliamentary proceedings (Magayu & Kabatesi, 1993).

No longer allied to the government, the press found itself vulnerable. Within the industry, pressure formed for a professional organization to "monitor observance and adherence to ethics, discipline members, and look at journalistic training and the crucial issue of
interference with editorial policy by owners of media organizations and the state" ("Lack of Media Body Blamed for Poor Journalism," 1995, p. 32). Kadhi (1995), former managing editor of The Nation and a journalism instructor at University of Nairobi, argued that a key goal of such an organization would be to "force whoever is in power to accept the fact that journalism is the fourth estate which needs to be accorded freedom as the judiciary needs to be guaranteed independence and the Legislature supremacy while the Executive is not allowed to overstep its responsibility in running the affairs of the country" (p.14). A press organization, then, was seen as protection against the government.


Politically, the laws would have given the Moi government powerful leverage over the media during the general election scheduled for 1997 (Warigi, 1996). Interestingly, newspapers publish by the government were exempted from the bills. This clearly applied to the Kenyan Times, the official newspaper and the smallest of the three daily papers. In this political context, the furor over the press bills has not died down, even with their official withdrawal. Both journalists and government believe some sort of regulation remains unclear.

The bills, then, were officially intended "to promote freedom of the press, to ensure the establishment of the highest ethical standards, monitor the code of conduct of journalists and the media, and ensure the protection of the rights and privileges of journalists in the lawful performance of their duties" (Mudasia & Seko, 1996, p. 2). An important stated goal was to raise the status of journalists by subjecting them to professional standards, much as law or medicine. Status was the bait on the hook for journalists. Enforcing ethical behavior was the weapon to wield political power.
The actual function of the bills was so thinly disguised that journalists' immediate reaction was harsh and negative. In contrast to a controlled media environment, leading journalists put forward the American press model. Kadhi (1996), for instance, explicitly called for "a constitutional provision similar to the one in the U.S. which categorically states that Parliament 'shall make no law abridging the freedom of speech or of the Press'" (p. 10). He went on to recommend that this be combined with a Freedom of Information Act, directly akin to American law.

The rationale for a free press was fairly typical--a free press is linked directly to the effective functioning of democracy. Constitutional lawyer Kivutha Kibwana again drew on the American model, citing "former American statesman Thomas Jefferson's words that if he was asked to make a choice between having a country with a government but without a Press or with a Press but no government, he would prefer the latter" (as cited in Mudasia & Mwai, 1996, p. 4). Not surprisingly, western media organizations and governments rallied to the side of journalists in Kenya, sending letters of protest to President Moi.

Perhaps the most interesting argument of the immediate debate came from the Law Society of Kenya. The society's chairman, Paul Wamae suggested—correctly—that foreign donors cut aid to Kenya in response to the government restricting press freedom. The key to understanding this argument is not capitalism--the argument appeals to the grounds of development journalism, national economic development (see Tanui, 1996). In effect, linking press freedom to economic development co-opts an important premise of the development journalism model.

Turnabout is fair play, of course. One of the most recent arguments in the debate over the press law came from Odero, a former editor of the Standard, Kenya's second largest daily paper. Odero is a member of the government's task force on the press law. The task force came into existence in 1993, but it had no function until it received the proposed press laws that created the current debate. In any event, the members of the task force were selected by the government and so may be expected to take relatively pro-KANU perspectives. In promoting an eventual press law, Odero suggested that "Kenyan journalists should emulate their American counterparts who took it as their duty to write positively about their motherland during the Gulf War" ("Former editor says journalism is full of quacks," 1996). American journalists might dispute Odero's interpretation of their Gulf War coverage, but Odero used it to link the American press to nationalism. In effect, he tried to co-opt the American model by linking it to the nationalism of development journalism. On January 26, 1996, President Moi ordered the press bills shelved indefinitely, in typical fashion, he blamed the debate on journalists who had criticized the bills "before reading their contents" (Mudasia, 1996, p. 1). And having won the current challenge to its freedom, the press duly reported the criticism without comment.
Conclusion

The Kenyan press bills rose out of ethical concerns that have not yet been resolved. The task force on the press law, set up in 1993, has been reactivated and the government continues toward some sort of regulation. The final outcome will probably be some kind of compromise between control and a completely libertarian model. The government clearly lost the first round in this debate, but it still holds power and will likely come away with some control over the press.

The entire case suggests the ethical model of Ross (1970), who suggested that acts may have both right-making and wrong-making characteristics. The ethically right decision, then, seeks to maximize the good, but recognizes that the right never simply abrogates the wrong. Thus neither side in the press law debate can claim to be right merely because on balance their model maximizes the benefit to society—that would be to lapse into straightforward utilitarianism. Instead, a middle ground will need to be found, one that maximizes the benefits of both the development and libertarian models while controlling the pitfalls of each. Two models present themselves: public journalism and communitarianism.

As suggested earlier, public journalism may provide too narrow a focus for the problems facing Africa. Political space is important, to be sure, but clearly the press needs to go beyond coverage of national and local government. A communitarian model, by contrast, provides the impetus for press involvement in projects such as AIDS education or teaching about soil erosion. A communitarian perspective allows the press to break out of the traditional molds of news and add information that is useful and relevant to the community. It encompasses the free and open political debate of public journalism, but extends its responsibilities to issues that may not be strictly political.

A second key to communitarianism is its appropriateness to African cultures. As Moemeka (1989) suggested, community plays a key role in many African societies—why not in journalism? The current proposals call for a press oversight committee including members of the press and the government— in varying numbers depending on which side is presenting the proposal. Communitarianism, however, would suggest that a key constituency has been left out—the reading or viewing community. Working in a communitarian framework, then, any oversight committee ought to include members with close ties to neither the press nor the government but to local organizations such as agricultural cooperatives or parent-teacher initiatives.

Communitarianism takes the problem away from merely being a clash between press and government and transforms it into a search for appropriate, productive means of setting out the rights and responsibilities of the journalist in terms of the community being served. It provides the freedom from government interference
necessary for open debate in a democracy, but it imposes a new order to create a press more responsive to the needs and desires of the people it serves.

References


