

PROMOTING JOURNALISM AS METHOD

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ABSTRACT

The marketplace of ideas has been a centerpiece of free speech jurisprudence for a century. According to the marketplace theory, the vigorous competition of ideas, free from government interference, is the surest path to truth. As our metaphorical marketplace has moved online, the competition has never been so heated. We should be drowning in truth. Yet, in reality, truth has perhaps never been more elusive.

As we struggle to promote democratic debate and surface truth in our chaotic networked public sphere, we are understandably drawn to familiar frames and tools. These include the source of the marketplace of ideas theory—the First Amendment—as well the institutional press, once a key gatekeeper of that marketplace. Yet, both the institutional press and the First Amendment have limitations that hamper their ability to spark transformative change. Instead, this Article proposes that we look to journalism.

Journalism is not the press or a journalist. Rather, it is a method and a practice—an evolving system for gathering, curating, and conveying information. Among its aims are accuracy and truth, the checking of power, and the creation of spaces for criticism and compromise.

Seeding and propagating journalism could have numerous benefits. It could help to provide some of the norms desperately needed for our new information environment. It might inject democratic values into an information ecology that is driven by profit-seeking. It could create friction where speed and scale now reign. Finally, it could help

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reinvigorate and even repopulate an institutional press in desperate need of reinforcement.

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INTRODUCTION

The marketplace of ideas has been a centerpiece of free speech jurisprudence for a century.¹ According to the marketplace theory, the vigorous competition of ideas, free from government interference, is the surest path to truth.² As our metaphorical marketplace has shifted into online spaces, the competition has never been so vigorous or included so many ideas.³ We should be drowning in truth—or so says the

1. See *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting) (stating that “the best test of truth is the power of the thought to get itself accepted in the competition of the market”); Pamela S. Karlan, *Politics By Other Means*, 85 VA. L. REV. 1697, 1697 (1999) (“In the marketplace of ideas, the idea of the marketplace of ideas enjoys a dominant market share.”); Tim Wu, *Beyond First Amendment Lochnerism: A Political Process Approach*, KNIGHT FIRST AMEND. INST. (Aug. 21, 2019), <https://knightcolumbia.org/content/beyond-first-amendment-lochnerism-a-political-process-approach> (writing that the marketplace of ideas metaphor put forth by Holmes is an encapsulation of what remains the “most powerful justification for First Amendment review: the protection of political debate and the democratic process”).

2. See *Abrams*, 250 U.S. at 630; *Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 760, 763–64 (1976) (invoking the marketplace of ideas and the need for the “free flow” of information to strike down a state law prohibiting advertisement of prescription drug prices).

3. See Tim Wu, *Is the First Amendment Obsolete?*, KNIGHT FIRST AMEND. INST. (Sept. 1, 2017), <https://knightcolumbia.org/content/tim-wu-first-amendment-obsolete> (“[T]oday, speakers are more like moths—their supply is apparently endless. The massive decline in barriers to

marketplace theory. But, in reality, truth has perhaps never been more elusive.

Instead, our online gathering places are often noisy and ominous.⁴ Our new public squares are privately controlled.⁵ They are governed by technology platforms whose profits depend on the extraction and use of our personal data.⁶ Platforms moderate these spaces using algorithms whose intricacies are opaque but whose aims are well known: compelling us to sink as much of our time and information into the platforms as possible.⁷ To keep our eyes on our screens, algorithms “personalize” these flows and push us into informational silos that tend to confirm rather than challenge our values and beliefs.⁸ The stickiness of content is valued above

publishing makes information abundant, especially when speakers congregate on brightly lit matters of public controversy.”) [hereinafter *Is the First Amendment Obsolete?*].

4. See, e.g., Annalee Newitz, *A Better Internet is Waiting for Us*, N.Y. TIMES (Nov. 30, 2019), <https://www.nytimes.com/interactive/2019/11/30/opinion/social-media-future.html?searchResultPosition=2> (“Social media is broken. It has poisoned the way we communicate with each other and undermined the democratic process.”).

5. See, e.g., Mike Ananny, *Tech Platforms Are Where Public Life Is Increasingly Constructed, and Their Motivations Are Far From Neutral*, NIEMAN LAB (Oct. 10, 2019, 12:27 PM), <https://www.niemanlab.org/2019/10/tech-platforms-are-where-public-life-is-increasingly-constructed-and-their-motivations-are-far-from-neutral/> (“[T]hese systems of communication — these systems of self-governance that make publics — increasingly live within privately controlled infrastructures . . . These infrastructures are often called platforms.”) [hereinafter Ananny I].

6. SHOSHANA ZUBOFF, *THE AGE OF SURVEILLANCE CAPITALISM* 10 (2019) (describing the way platforms and other actors in the surveillance capitalist economy “lure users into their extractive operations in which our personal experiences are scraped and packaged as means to others’ ends”); Zeynep Tufekci, *Facebook’s Surveillance Machine*, N.Y. TIMES (Mar. 19, 2018), <https://www.nytimes.com/2018/03/19/opinion/facebook-cambridge-analytica.html> (“Facebook makes money, in other words, by profiling us and then selling our attention to advertisers, political actors and others. These are Facebook’s true customers, whom it works hard to please.”).

7. See generally Jack Nicas, *How YouTube Drives People to the Internet’s Darkest Corners*, WALL ST. J. (Feb. 7, 2018, 1:04 PM), <https://www.wsj.com/articles/how-youtube-drives-viewers-to-the-internets-darkest-corners-1518020478> (noting that one platform, YouTube, “engineered its algorithm several years ago to make the site ‘sticky’ — to recommend videos that keep users staying to watch still more”); FRANK PASQUALE, *THE BLACK BOX SOCIETY: THE SECRET ALGORITHMS THAT CONTROL MONEY AND INFORMATION* (2016) (describing the black-box nature of algorithms).

8. See Pablo Boczkowski, *Has Election 2016 Been a Turning Point for the Influence of the News Media?*, NIEMAN LAB (Nov. 8, 2016, 11:46 AM), <http://www.niemanlab.org/2016/11/has-election-2016-been-a-turning-point-for-the-influence-of-the-news-media/> (“In addition, the commercial priorities of a company like Facebook shapes the algorithmic logic of its News Feed: The

all else.⁹ News, hot takes, pet videos, screeds, baby pics, advertisements, op-eds, propaganda, and outright lies, flow together in an endless “feed” calculated to addict rather than nourish.¹⁰

As we struggle to promote democratic debate and surface truth in our chaotic networked public sphere,¹¹ it is exceedingly difficult to know where to start. We are understandably drawn to familiar frames and tools. These include the source of the marketplace of ideas theory—the First Amendment—as well as the institutional press, once a key gatekeeper of that marketplace.¹² Some among us might hope to see the press metaphorically rise up, cloaked in the First Amendment, and assist in sweeping away information pollution, setting the agenda for discussion, and refereeing the debate. After all, the press, in its role as a First Amendment institution, helped to

happier we are, the more likely the ads shown to us will be effective, so the algorithm prioritizes information items that are consistent with our viewpoints.”); Mark Zuckerberg, FACEBOOK (Jan. 11, 2018), <https://www.facebook.com/zuck/posts/10104413015393571> (discussing how Facebook would prioritize posts’ from a user’s friends and family over those from “businesses, brands, and media” because the latter might not be as good for users’ “well-being”).

9. See *Once Considered a Boon to Democracy, Social Media Have Started to Look Like Its Nemesis*, ECONOMIST, (Nov. 4, 2017), <https://www.economist.com/briefing/2017/11/04/once-considered-a-boon-to-democracy-social-media-have-started-to-look-like-its-nemesis> (“It is the overall paying of attention, not the specific information, that matters.”).

10. See ZUBOFF, *supra* note 6, at 506–07 (describing how Google and Facebook “subject[] journalistic ‘content’ to the same categories of equivalence that dominate surveillance capitalism’s other landscapes”); Kyle Langvardt, *Regulating Habit-Forming Technology*, 88 FORDHAM L. REV. 129, 148 (2019) (“There are reasons to suspect that the old marketplace of ideas is undergoing renovation as a state-of-the-art casino.”).

11. I use the term “networked public sphere” in numerous spots in this essay. I borrow a definition from information and technology scholar Zeynep Tufekci who writes that she uses it “as a shorthand for this complex interaction of publics, online and offline, all intertwined, multiple, connected, and complex, but also transnational and global.” See ZEYNEP TUFEKCI, *TWITTER AND TEAR GAS: THE POWER AND FRAGILITY OF NETWORKED PROTEST* 6 (2017) [hereinafter *TWITTER AND TEAR GAS*]. I appreciate Tufekci’s definition in its recognition of the blending of online and offline spaces. At points in this Essay, however, I do mean to speak specifically of online or offline spaces, and, at those points, I try to make clear which space I am referencing.

12. See Nabihah Syed, *2018 Salant Lecture on Freedom of the Press*, HARV. KENNEDY SCH.: SHORENSTEIN CTR. ON MEDIA, POL., AND PUB. POL’Y (Jan. 10, 2019, 4:37 PM), <https://shorensteincenter.org/nabiha-syed-2018-salant-lecture-freedom-press/> (describing, from a standpoint of Supreme Court jurisprudence, the role of press as gatekeeper).

structure our democratic discourse for the whole of the twentieth century.¹³

Yet, to improve our twenty-first century information environment, to promote truth and accuracy, and to create more productive and equitable spaces for discussion and compromise, we cannot focus solely on the institutional press and the First Amendment. Each has limitations that hamper its ability to spark transformative change.

With respect to the institutional press, it is broken in some of the same ways that our information landscape is. It is dominated by a handful of loud voices and absent in swaths of the country now called “news deserts.”¹⁴ It lacks diversity in its ranks.¹⁵ And even though it often performs heroically, it too is struggling to define itself and find its bearings during a period of upheaval.¹⁶

Moreover, even if the institutional press were poised to help transform our networked public sphere, it is unlikely that the First Amendment would give it any significant boost in doing so. First Amendment doctrine is that the press has no greater

13. See Deen Freelon, *The Filter Map: Media and the Pursuit of Truth and Legitimacy*, KNIGHT FOUND. 4 (2018), https://kf-site-production.s3.amazonaws.com/media_elements/files/000/000/162/original/Topos_KF_White-Paper_Freelon_V4.pdf (“In the pre-digital era, most people formed most of their political opinions based on content produced by a small collection of tightly-controlled media outlets.”); TIMOTHY E. COOK, *Freeing the Presses: An Introductory Essay*, in *FREEING THE PRESSES* 1, 3 (Timothy E. Cook ed., 2005) (discussing the press’s role as a facilitator of the marketplace of ideas).

14. See PENELOPE MUSE ABERNATHY, UNC HUSSMAN SCH. OF JOURNALISM & MEDIA, *THE EXPANDING NEWS DESERT* 5 (2018); see generally Gregory J. Martin and Joshua McCrain, *Local News and National Politics*, 113 *AM. POL. SCI. REV.* 372 (2019) (describing harmful effects of increased media consolidation and national focus).

15. See Elizabeth Grieco, *Newsroom Employees Are Less Diverse Than U.S. Workers Overall*, PEW RES. CTR. (Nov. 2, 2018), <https://www.pewresearch.org/fact-tank/2018/11/02/newsroom-employees-are-less-diverse-than-u-s-workers-overall/> (reporting that 77% of newsroom employees are “non-Hispanic whites” as compared with 65% across the workforce) [hereinafter Grieco I].

16. See Rasmus Kleis Nielsen, *Vanguards and Rearguards in the Fight for the Future of Journalism*, RASMUSKLEISNIELSEN (Oct. 1, 2019), <https://rasmuskleisnielsen.net/2019/10/01/vanguards-and-rearguards-in-the-fight-for-the-future-of-journalism>.

rights than any other speaker.¹⁷ To the extent that the Supreme Court has seemed to defer to the press, it did so in the mid-twentieth century—a period that was, relative to today, a golden age. Press coffers were growing, and the public held the press in higher esteem.¹⁸ The Supreme Court has not so much provided an aspirational vision for the press as it has recognized the press that already is.

And so rather than default to the Constitution or an institution as primary tools for improving our networked public sphere and ensuring, among other things, that truth gets airing, we need to look elsewhere, too. We need to look to journalism.

Journalism is not the press or a journalist. Rather, it is a method and a practice, and a system for gathering, curating, and conveying information.¹⁹ Among its aims are accuracy and truth, the checking of power, and the creation of spaces for criticism and compromise.²⁰ Journalism realizes these aims through the use of certain tools. These include verification using multiple sources, interviewing those with first-hand knowledge, and correcting errors. It is a method that has been

17. See *Branzburg v. Hayes*, 408 U.S. 665, 704 (1972) (“Freedom of the press is a ‘fundamental personal right’ which is not confined to newspapers and periodicals.” (internal citations omitted)).

18. See Ryan Chittum, *Newspaper Industry Ad Revenue at 1965 Levels*, COLUM. JOURNALISM REV. (Aug. 19, 2009), https://archives.cjr.org/the_audit/newspaper_industry_ad_revenue.php (showing increasing newspaper industry ad revenue in the last half of the twentieth century); Megan Brenan, *Americans’ Trust in Mass Media Edges Down to 41%*, GALLUP (Sept. 26, 2019), <https://news.gallup.com/poll/267047/americans-trust-mass-media-edges-%20down.aspx> (noting that trust in the “mass media” was at 68% when Gallup first measured it in 1972 as opposed to 41% in 2019).

19. See Ricardo Gandour, *Study: Decline of Traditional Media Feeds Polarization*, COLUM. JOURNALISM REV. (Sept. 19, 2016), http://www.cjr.org/analysis/media_polarization_journalism.php.

20. See BILL KOVACH & TOM ROSENSTIEL, *THE ELEMENTS OF JOURNALISM: WHAT NEWSPEOPLE SHOULD KNOW AND THE PUBLIC SHOULD EXPECT* 9 (3d ed. 2014).

developing in earnest in the United States for, at the very least, a century.²¹ And it is continually being reshaped and refined.²²

Seeding and propagating journalism, although certainly not in and of itself a solution to disinformation or the failures of the marketplace of ideas, would serve a two-fold purpose.²³ First, it could help to provide some of the norms desperately needed for our new information environment. It might help to inject democratic values into an information ecology that is driven by profit-seeking. It could create friction where speed and scale now reign. Second, it could help to reinforce, reinvigorate, and even repopulate the institutional press such that it could better serve as a structural check on and needed counterweight to government power.

Ultimately, the First Amendment has the capacity to be a mighty and essential protector of a free press. We should continue to consider how. Yet, we should also question whether the First Amendment occupies too much of our collective imagination. The way that information travels (and doesn't) in our networked public sphere—and how news and truth figure into this dynamic—present challenges that require us to broaden our lens. Beyond focusing on things, people, and institutions (i.e., the First Amendment, the press, and

21. See Erin C. Carroll, *Platforms and the Fall of the Fourth Estate: Looking Beyond the First Amendment to Preference the Press*, 79 MD. L. REV. (forthcoming 2020) (manuscript 12–13) (on file with Maryland Law Review) (describing the twentieth century development of the press into an institution with common norms and values).

22. See, e.g., Susan Benkelman, *Getting It Right: Strategies for Truth-Telling in a Time of Misinformation and Polarization*, AM. PRESS INST. (Dec. 11, 2019), <https://www.americanpressinstitute.org/publications/reports/strategy-studies/truth-telling-in-a-time-of-misinformation-and-polarization/> (“The new ethics governing journalists’ work have been evolving over the past couple of decades.”); KOVACH & ROSENSTIEL, *supra* note 20, at 7 (“[J]ournalism has always been a living thing. Every generation, building on what came before, has created it anew.”).

23. Of course, the shortcomings of the marketplace metaphor are not solely due to technological shifts. The metaphor has numerous shortcomings even when applied to offline communications. These include an assumption that ideas are competing on equal footing. See G. Michael Parsons, *Fighting for Attention: Democracy, Free Speech, and the Marketplace of Ideas*, 104 MINN. L. REV. (forthcoming 2020) (manuscript at 3) (on file with Minnesota Law Review) (describing the shortcomings of the marketplace metaphor).

journalists), we should consider methods, practices, and systems. We should look to journalism.

I. THE “HELLSCAPE” OF OUR NETWORKED PUBLIC SPHERE

To make sense of our networked public sphere, many are turning to metaphors that describe places far vaster and more foreboding than an imagined marketplace. Some liken it to a polluted or toxic ecosystem.²⁴ Others, even more darkly refer to the social media aspect of our online environment as a “hellscape.”²⁵

To better understand this shift from marketplace to hellscape, one can start by looking at the shift in the overseers of these spaces. In the twentieth century, the institutional press was a key gatekeeper of our public square.²⁶ The press unilaterally decided what qualified as news, and in doing so, the press helped to confer “public legitimacy” and shaped the boundaries of debate.²⁷

In this century, technology platforms, especially Facebook and Google, have ousted the press and become overlords of our information ecosystem.²⁸ These platforms curate and prioritize the information that we find and consume on them.²⁹ Now, in our search results and “News Feeds,” news swims in a sea of

24. See CLAIRE WARDLE, FIRST DRAFT, *Fake News. It's Complicated*, MEDIUM (Feb. 16, 2017), <https://medium.com/1st-draft/fake-news-its-complicated-d0f773766c79> (describing a polluted ecosystem); Whitney Phillips, *The Toxins We Carry*, COLUM. JOURNALISM REV. (Fall 2019), https://www.cjr.org/special_report/truth-pollution-disinformation.php [hereinafter Phillips I].

25. See Newitz, *supra* note 4.

26. See Whitney Phillips, *The Oxygen of Amplification: Better Practices for Reporting on Extremists, Antagonists, and Manipulators Online*, DATA & SOC'Y RES. INST., pt. 2, at 5 (2018) (describing the shift away from press as gatekeeper) [hereinafter Phillips II].

27. See MICHAEL SCHUDSON, *THE SOCIOLOGY OF NEWS* 21 (2011) (“When the media offer the public an item of news, they confer on it public legitimacy.”) [hereinafter SCHUDSON I]; Erin C. Carroll, *Making News: Balancing Newsworthiness and Privacy in the Age of Algorithms*, 106 GEO. L.J. 69, 84–86 (2017) (describing how newsworthiness determinations are increasingly made not only by journalists, but by platform employees and algorithms).

28. See Emily Bell & Taylor Owen, *The Platform Press: How Silicon Valley Reengineered Journalism*, TOW (Mar. 29, 2017), https://www.cjr.org/tow_center_reports/platform-press-how-silicon-valley-reengineered-journalism.php/.

29. *Id.* (“Social media and search companies are not purely neutral platforms, but in fact edit, or ‘curate,’ the information they present.”).

“content” that includes things like advertising, hot takes from colleagues, photos from friends and family, and an increasing amount of disinformation.³⁰

As platforms play the gatekeeping role, they are guided by norms that in many ways diverge from those that journalists have long embraced. The institutional press has traditionally viewed itself as promoting democratic self-governance through the production of a public good, the news.³¹ In contrast, platforms’ primary aim is to amass capital, which they do primarily through extracting users’ personal information.³²

From this fundamental difference between press and platform orientation flows other differences. Among them are that platforms prioritize speed and scale. (See Mark Zuckerberg’s now-famous motto: Move fast and break things.³³) In contrast, the work of the press—especially investigative reporting—is often slow.³⁴ It may not scale, and despite its relative importance, it may not keep readers glued to their screens.

It is not surprising then that the algorithms platforms use to curate and prioritize content more closely align with their values than with journalistic ones. Although those algorithms are opaque, we are all too aware of their effects. Among these are filter bubbles and polarization.³⁵ In addition, the loudest

30. See ZUBOFF, *supra* note 6, at 506–07 (discussing the way in which platforms make all content look equal creating an environment ripe for disinformation).

31. See KOVACH & ROSENSTIEL, *supra* note 20, at 17, 20–21.

32. See ZUBOFF, *supra* note 6, at 10.

33. See JONATHAN TAPLIN, *MOVE FAST AND BREAK THINGS: HOW FACEBOOK, GOOGLE, AND AMAZON CORNERED CULTURE AND UNDERMINED DEMOCRACY* (2017) (quoting Mark Zuckerberg on the unnumbered page before the Contents as saying, “Move fast and break things. Unless you are breaking stuff, you aren’t moving fast enough”).

34. James T. Hamilton, *Subsidizing the Watchdog: What Would It Cost to Support Investigative Journalism at a Large Metropolitan Daily Newspaper?*, DUKE CONF. ON NONPROFIT MEDIA 3–4 (May 2009), www2.sanford.duke.edu/nonprofitmedia/documents/dwchamiltonfinal.pdf (demonstrating that investigative reporting is a time-consuming process).

35. See ELI PARISER, *THE FILTER BUBBLE* 9–12 (2011) (describing the filter bubble phenomenon and noting that “[o]ur media is a perfect reflection of our interests and desires”). As sociologist Michael Schudson has pointed out, democracies require methods of “direct[ing] attention to disagreeable facts.” MICHAEL SCHUDSON, *WHY DEMOCRACIES NEED AN UNLOVABLE PRESS* 9

voices on platforms often get the most traction regardless of the accuracy or quality of their messages. This is what journalist Lam Thuy Vo refers to as the “tyranny of the loudest.”³⁶ Lies tend to travel farther and faster online than the truth.³⁷ In fact, as it turns out, disinformation can be highly profitable for platforms that have little business incentive to attack it.³⁸

Disinformation not only clouds truth (or blacks it out entirely), it has other pernicious, even deadly, consequences both online and off. It undermines trust in the press and institutions.³⁹ It is a threat to the integrity of elections.⁴⁰ It has deleterious effects on democratic governance.⁴¹ Facebook has even been accused of being a tool for inciting ethnic cleansing

(2008). Platforms, on the other hand, may want to avoid showing users content that they find disagreeable or objectionable.

36. Lam Thuy Vo, *Breaking Free From the Tyranny of the Loudest*, NIEMAN LAB, <https://www.niemanlab.org/2017/12/breaking-free-from-the-tyranny-of-the-loudest/> (last visited Mar. 8, 2020)

(“The social web is optimized to capture engagement mostly in extremes, in what is measurable through our clicks, rants and emotional reactions online. . . . Enter the tyranny of the loudest.”).

37. See Soroush Vosoughi et al., *The Spread of True and False News Online*, SCIENCE (Mar. 9, 2018), <https://science.sciencemag.org/content/359/6380/1146> (finding that on Twitter, “falsehood diffused significantly farther, faster, deeper, and more broadly than the truth in all categories of information”).

38. See Emily Bell, *We Can’t Fight Fake News Without Saving Local Journalism*, GUARDIAN (Dec. 15, 2019), <https://www.theguardian.com/media/2019/dec/15/we-cant-fight-fake-news-without-saving-local-journalism> (“Careful lessons on how to parse disinformation are themselves sitting on a dung heap of dubious advertising and problematic content which is—unlike the journalism—highly profitable for third-party companies.”).

39. UNESCO, JOURNALISM, “FAKE NEWS,” AND DISINFORMATION: HANDBOOK FOR JOURNALISM EDUCATION AND TRAINING 18 (Cherilyn Ireton & Julie Posetti, eds., 2018), https://en.unesco.org/sites/default/files/journalism_fake_news_disinformation_print_friendly_0.pdf (“When journalism becomes a vector for disinformation, this further reduces public trust and promotes the cynical view that there is no distinction between different narratives within journalism on the one hand, and narratives of disinformation on the other.”).

40. See generally KATHLEEN HALL JAMIESON, CYBER-WAR: HOW RUSSIAN HACKERS AND TROLLS HELPED ELECT A PRESIDENT 153–214 (arguing that Russian manipulation and disinformation helped elect President Donald J. Trump).

41. See generally PEOPLE AND POWER, *Disinformation and Democracy*, AL JAZEERA (Feb. 1, 2018, 10:39 AM), <https://www.aljazeera.com/programmes/peopleandpower/2018/02/disinformation-democracy-180201060250730.html> (describing the threats disinformation poses to democracy).

in Myanmar.⁴² The ill effects of disinformation are ongoing, some say worsening, and extremely difficult to know how to contain.⁴³

II. THE SHORTCOMINGS OF THE USUAL SUSPECTS

As we survey our polluted information ecosystem and consider how to clear a path so that truth can emerge, we are reflexively and understandably drawn to what is familiar. During many of our lifetimes, the institutional press and the First Amendment—including the marketplace of ideas metaphor—helped us to organize and understand our public square.⁴⁴ Yet, the more we discover and experience the way that information travels online, the more evident it becomes that our laws and institutions are ill-equipped to serve us in the ways they did when all speech was offline.⁴⁵ As a result, in thinking about combatting disinformation and inequity in our discourse, we cannot limit our focus to the institutional press and the First Amendment. The power of both is great, but it is not boundless. This section addresses why reliance on the institutional press and Constitution alone would be misguided.

A. A Hobbled Institutional Press

A free press is essential to democracy. It serves as a watchdog over government and private sources of power. It is an educator

42. Paul Mozur, *A Genocide Incited on Facebook, With Posts From Myanmar's Military*, N.Y. TIMES (Oct. 15, 2018), <https://www.nytimes.com/2018/10/15/technology/myanmar-facebook-genocide.html>.

43. See Matthew Ingram, *Disinformation Still Running Rampant on Facebook, Study Says*, COLUM. J. REV. (Nov. 7, 2019), https://www.cjr.org/the_media_today/disinformation-facebook.php (citing a study indicating that the disinformation on Facebook is increasing).

44. See Mary Anne Franks, *The Free Speech Black Hole: Can the Internet Escape the Gravitational Pull of the First Amendment?*, KNIGHT FIRST AMEND. INST. (Aug. 21, 2019), <https://knightcolumbia.org/content/the-free-speech-black-hole-can-the-internet-escape-the-gravitational-pull-of-the-first-amendment> (describing the First Amendment as having a “contemporary magnetism”).

45. See Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 HARV. L. REV. 1598, 1602–03 (2018) (arguing that “analogy under purely First Amendment doctrine should be largely abandoned”); *Is the First Amendment Obsolete?*, *supra* note 3 (discussing the shortcomings of the First Amendment to address new speech harms).

of and proxy for the public.⁴⁶ It helps us make sense of the world around us by telling us stories about ourselves and our communities.⁴⁷ As some scholars have argued, the press is a maker of publics.⁴⁸

Today, the press still fulfills all of these roles to an important degree, but it is not performing them as robustly as it did in earlier decades.⁴⁹ Its financial model upended by technological shifts, the institutional press is suffering from some of the same harmful dynamics as our information environment more generally.⁵⁰

For example, as our networked public squares are prone to domination by a handful of loud voices, the same is true of the institutional press.⁵¹ The institutional press is increasingly composed of coastal, nationally-focused outlets.⁵² Meanwhile, in the past fifteen years, more than 2,000 local newspapers have

46. See RonNell Andersen Jones & Lisa Grow Sun, *Enemy Construction and the Press*, 49 ARIZ. ST. L.J. 1301, 1304 (Winter 2017) (noting the press's watchdog, educator, and proxy functions).

47. See SCHUDSON I, *supra* note 27, at 60–62 (describing Benedict Anderson's theory of news and "imagined communities").

48. See, e.g., MIKE ANANNY, NETWORKED PRESS FREEDOM: CREATING INFRASTRUCTURES FOR A PUBLIC RIGHT TO HEAR 185 (2018) (describing the power of the press to create conditions under which people become publics) [hereinafter ANANNY II].

49. Newsroom employment dropped by 25% between 2008 and 2018. Therefore, the press simply cannot perform at the same level it has in years past. Elizabeth Grieco, *U.S. Newsroom Employment Has Dropped by a Quarter Since 2008, With Greatest Decline at Newspapers*, PEW RES. CTR. (July 9, 2019), <https://www.pewresearch.org/fact-tank/2019/07/09/u-s-newsroom-employment-has-dropped-by-a-quarter-since-2008/> [hereinafter Grieco II]; see also *The Layoff Tracker*, COLUM. JOURNALISM REV. (Dec. 17, 2019), <https://www.cjr.org/analysis/journalism-layoff-tracker.php>.

50. See Daniel Funke, *What's Behind the Recent Media Bloodbath? The Dominance of Google and Facebook*, POYNTER (June 14, 2017), <https://www.poynter.org/news/whats-behind-recent-media-bloodbath-dominance-google-and-facebook> (describing the financial troubles of the press).

51. Andrew McGill, *U.S. Media's Real Elitism Problem*, ATLANTIC (Nov. 19, 2016), <https://www.theatlantic.com/politics/archive/2016/11/fixing-americas-nearsighted-press-corps/508088/> ("To a modest degree, journalists have become increasingly sequestered on the East and West coasts, to the detriment of newsrooms in the interior of the country.").

52. See Clara Hendrickson, *How the Gannett/GateHouse Merger Could Deepen America's Local News Crisis*, BROOKINGS (Nov. 18, 2019), <https://www.brookings.edu/blog/fixgov/2019/11/18/how-the-gannett-gatehouse-merger-could-deepen-americas-local-news-crisis/> ("While digital media ventures in large, coastal cities may be adding jobs, their growth is not large enough to offset the steep job losses that have plagued the nation's newspapers.").

shuttered.⁵³ Perversely, the handful of national news outlets that are profitable may actually be benefitting from the demise of local ones.⁵⁴ Speaking in a 2017 interview, *New York Times* CEO Mark Thompson said, “I think over the next five years it’s possible the competitive landscape will actually get in some ways more attractive for *The New York Times*, because I’m afraid I see a lot of casualties over the next few years because of the economics of the industry.”⁵⁵ He added that “the survivors could enjoy a kind of last-men-and-women-standing sort of benefit for a bit.”⁵⁶ Thus, this consolidation of power might be self-perpetuating.

Beyond power asymmetries, the challenges faced by the institutional press mirror those of our informational environment in other ways. In both spheres, diverse voices are often sidelined.⁵⁷ In both, advertising revenue is still essential, and so the need for eyeballs and clicks creates incentives often antithetical to truth and thoughtful deliberation.⁵⁸

Moreover, the institutional press is struggling to define itself and its role in this period of economic and technological

53. Margaret Sullivan, *The Death Knell for Local Newspapers? It’s Perilously Close*, WASH. POST (Nov. 22, 2019), https://www.washingtonpost.com/lifestyle/style/the-death-knell-for-local-newspapers-its-perilously-close/2019/11/21/e82bafbc-ff12-11e9-9518-1e76abc088b6_story.html.

54. Ken Doctor, *Newsonomics: The New York Times’ Mark Thompson on Regulating Facebook, Global Ambition, and When to Stop the Presses (Forever)*, NEIMAN LAB (Nov. 13, 2017, 11:24 AM), <http://www.niemanlab.org/2017/11/newsonomics-the-new-york-times-mark-thompson-on-regulating-facebook-global-ambition-and-when-to-stop-the-presses-forever/>.

55. *Id.*

56. *Id.*

57. See generally Grieco I, *supra* note 15 (discussing how newsroom employees are more likely to be white and male); Hugh Muir, *We Need More Diverse Voices In the Media—Including Those From Deprived Backgrounds*, GUARDIAN (May 18, 2015, 3:00 PM), <https://www.theguardian.com/uk-news/2015/may/18/we-need-more-diverse-voices-in-the-media-including-those-from-deprived-backgrounds> (noting that the media needs people that “fit the diversity criteria of race and sex and gender, but also those whose difference is rooted in circumstance, deprivation and class”).

58. See Jake Swearingen, *Can Google Be More Than An Advertising Company?*, N.Y. MAG. (Feb. 5, 2019), <http://nymag.com/intelligencer/2019/02/google-earnings-show-it-needs-to-be-more-than-an-ad-company.html> (indicating that Google “remains, at heart, a display advertising business”); Ananny I, *supra* note 5 (noting that technology platforms “shapeshift constantly ... but they are *always* like advertising firms”); Phillips II, *supra* note 26, pt. 2 at 10 (noting that “the business of the news hinges on clicks and likes”).

upheaval. Is it solely the legacy media, including newspapers, television, and radio? Is it a networked press that includes legacy media as well as platforms, algorithms, and software engineers?⁵⁹ Is it something else? These are matters of contest and debate. Rasmus Kleis Nielsen, the director of Reuters Institute for the Study of Journalism at the University of Oxford, has described a rift between a “vanguard” and a “rearguard” in the profession and the industry. “[W]hile the first group is fighting for various visions of an uncertain future, the second group is defending a defunct past that—while it had much to offer—will in many ways no longer serve.”⁶⁰

B. A Neglected Press Clause

The institutional press then, for a host of reasons, is not functioning at the height of its powers. It is retrenched and reorganizing. And despite the doctrinal power of the First Amendment, as well as its power in our public, journalistic, and legal imaginations, the First Amendment is unlikely to serve as an elevator to lift the press up—especially in the short term.⁶¹

The first and most basic explanation of why is precedent. The Supreme Court has steadfastly refused to invest the First Amendment’s Press Clause with any meaning, much less rely on it to preference the press.⁶² Although in opinions from the 1960s and 70s the Supreme Court regularly lauded the press, it has leaned on the Speech Clause and not the Press Clause to resolve cases.⁶³ The Press Clause has been all but ignored. “If the Speech Clause is the Court’s favorite child,” media law

59. The “networked press” is a term used by communications scholar Mike Ananny who describes its members as including “journalists, software engineers, algorithms, relational databases, social media platforms, and quantified audiences.” ANANNY II, *supra* note 48, at 4.

60. Nielsen, *supra* note 16.

61. See Syed, *supra* note 12 (noting that the First Amendment “exists as a doctrine, but it also exists as something that captures public imagination”).

62. See Sonja R. West, *Awakening the Press Clause*, 58 UCLA L. REV. 1025, 1027–28 (2011) (“[A] majority of the Court has, in essence, dismissed the [press] clause as a constitutional redundancy.”) [hereinafter West I].

63. See *id.* at 1028.

scholar Sonja R. West has written, “the Press Clause has been the neglected one.”⁶⁴ Similarly, media law scholar RonNell Andersen Jones has described the Press Clause as a “largely empty vessel.”⁶⁵ In case after case the Court has stated that the press is no different from any other speaker and that it merits no special protections.⁶⁶ In fact, in its most recent pronouncement on the issue (a decade ago), Justice Antonin Scalia went so far as to dismiss the argument that the press might receive special constitutional protection as “passing strange.”⁶⁷

The accolades that the Court has given to the press about things like providing an “indispensable service . . . in a free society” and “assur[ing] the maintenance of our political system and an open society” have had symbolic importance.⁶⁸ Yet, as Andersen Jones has also pointed out, they are also merely dicta.⁶⁹

For many defenders of the press, this doctrinal state of affairs is misguided as a matter of interpretation and policy. After all, the law abhors redundancy, and if the Press Clause has no meaning of its own, it is a particularly conspicuous one. Moreover, the press plays roles not routinely fulfilled by other speakers.⁷⁰ As Justice Potter Stewart argued in a speech at Yale Law School in the aftermath of the Watergate scandal, the framers’ goal in including the Press Clause in the First Amendment was “to create a fourth institution outside the

64. Sonja R. West, *Press Exceptionalism*, 127 HARV. L. REV. 2434, 2439 (2014) [hereinafter West II].

65. RonNell Andersen Jones, *The Dangers of Press Clause Dicta*, 48 GA. L. REV. 705, 707 (2014) [hereinafter Jones I].

66. See *id.* at 709–15; *Branzburg v. Hayes*, 408 U.S. 665, 704 (1972).

67. *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 390 n.6. (2010) (Scalia, J., concurring).

68. See Jones I, *supra* note 65, at 712 (citing *Time, Inc. v. Hill*, 385 U.S. 374, 389 (1967)).

69. See *id.* at 707 (“The Court’s opinions in cases involving the media . . . regularly include language about the constitutional or democratic character, duty, value, or role of the press—language that could be, but ultimately is not, significant to the constitutional conclusion reached.”).

70. See West I, *supra* note 62, at 1032 (arguing that we “should recognize the unique role of the press—as compared to individual speakers”).

Government as an additional check on the three official branches.”⁷¹ Justice Stewart viewed the Press Clause as a structural provision designed to protect an institutional press—a Fourth Estate—that could serve as a watchdog over the three branches of government.⁷²

Such an argument in favor of constitutional preferences for the press is especially compelling of late. The financial strain on the press is immense and both verbal and physical attacks on it and its members are vicious, even deadly.⁷³ The press is in need of significant support. In fact, writing nearly twenty years ago, media law scholar David Anderson—a skeptic of an invigorated Press Clause—described a legal and political situation eerily like the one we find ourselves in now as one in which the Press Clause might be a savior.⁷⁴ The Press Clause might serve as “an important potential weapon” to protect the press in the face of “a concerted government campaign to intimidate or control it” or in a situation in which non-constitutional protections for the press fail.⁷⁵ As President Donald J. Trump continues his attacks on the press as the “enemy of the people” and purveyors of “fake news,” and as his White House yanks press passes and refuses to engage with the press, we edge closer to this reality.⁷⁶ Good arguments exist

71. Potter Stewart, “*Or of the Press*,” 26 HASTINGS L.J. 631, 634 (1975).

72. *See id.*

73. *See* David Smith, *Fox Host Lambasts Trump over ‘Most Sustained Assault on Press Freedom in U.S. History,’* GUARDIAN (Dec. 11, 2019, 10:22 PM), <https://www.theguardian.com/media/2019/dec/12/fox-host-lambasts-trump-over-most-sustained-assault-on-press-freedom-in-us-history>; Chase Cook et al., *Five Capital Gazette Employees Dead After Shooting*, CAP. GAZETTE (June 28, 2018, 10:00 PM), <https://www.capitalgazette.com/maryland/annapolis/ac-cn-capital-shooting-deaths-0629-story.html>.

74. *See* David A. Anderson, *Freedom of the Press*, 80 TEX. L. REV. 429, 522–25 (2002).

75. *Id.* at 523–24 (“What would be needed in such a scenario would be a constitutional concept capable of recognizing and addressing the coordinated threat to the press. Press Clause jurisprudence at this moment has no such rubric, but the Press Clause might offer a more promising platform for developing one than the Speech Clause. What that would require would depend on the nature of the concerted threat, the vulnerabilities of the press at the time, and the politics of the situation.”).

76. *See* Tamara Keith, *‘Treason,’ ‘Spy,’ ‘Coup’: As Impeachment Talk Intensifies, So Does Trump’s Rhetoric*, NPR (Oct. 5, 2019, 5:00 AM), <https://www.npr.org/2019/10/05/767224186/treason-spy-coup-as-impeachment-talk-intensifies-so-does-trump-s-rhetoric>; Quint Forgy, *White House*

that now is the moment to look to the Press Clause to give the press a constitutional leg-up.

And yet, even beyond unhelpful precedent, obstacles remain in giving heft to the Press Clause. Some of these obstacles are practical. The financially-strapped institutional press is not vindicating its rights as often or as robustly in any court, much less the nation's highest one.⁷⁷ Moreover, even if a petition for certiorari in a press-rights case reached the Supreme Court, chances are slim that the Court would grant it. It has not heard a significant press case in more than a decade.⁷⁸ This is not for lack of disputes.⁷⁹ The Court has denied certiorari in press cases.⁸⁰

But putting aside precedent and the Court's seeming distaste for press disputes, a more fundamental impediment to a transformational interpretation of the Press Clause may be the state of First Amendment jurisprudence. On the whole, in cases involving the press or not, that jurisprudence has often been more responsive than proactive. Writing with respect to free speech, First Amendment scholar Leslie Kendrick has argued that rather than serve as an engine of change, the "First Amendment has mostly stayed within the bounds of what

Press Secretary Says Daily Briefings Aren't Coming Back Anytime Soon, POLITICO (Sept. 23, 2019, 8:51 AM), <https://www.politico.com/story/2019/09/23/stephanie-grisham-white-house-press-briefings-1507288>; Matthew Ingram, *White House Revokes Press Passes for Dozens of Journalists*, COLUM. JOURNALISM REV. (May 9, 2019), https://www.cjr.org/the_media_today/white-house-press-passes.php.

77. See RonNell Andersen Jones, *Litigation, Legislation, and Democracy in a Post-Newspaper America*, 68 WASH. & LEE L. REV. 557, 559 (2011).

78. See RonNell Andersen Jones & Sonja R. West, *Don't Expect the First Amendment to Protect the Media*, N.Y. TIMES (Jan. 25, 2017), <https://www.nytimes.com/2017/01/25/opinion/dont-expect-the-first-amendment-to-protect-the-media.html> ("The Supreme Court has not decided a major press case in more than a decade, in part because it has declined to do so, and in part because media companies, inferring the court's relative lack of interest, have decided not to waste their resources pressing cases.").

79. See RonNell Andersen Jones, *What the Supreme Court Thinks of the Press and Why It Matters*, 66 ALA. L. REV. 253, 261 (2014).

80. *Id.* ("The early 2000s, for example, saw an explosion of very high-profile confidential source and reporter's privilege episodes arguably unparalleled even by the media law events of the Glory Days. But the Court denied certiorari each time the issue came before it.").

larger political preferences made possible.”⁸¹ This is true even though, as Kendrick pointed out, “freedom of speech is a normatively capacious concept.”⁸² So, for example, Kendrick has argued, “[s]imply and intractably, the way to have a more progressive First Amendment is to have a more progressive society, not vice versa.”⁸³

Kendrick’s arguments about freedom of speech apply equally to freedom of the press. To the extent that the Court lauded the press in its opinions, it did so in an era in which the press was thriving: the 1960s and 70s. These decades were ones in which the press had a monopoly on the actual printing presses and used the profits it reaped to fund investigative reporting. This was a period in which the press demonstrated that it was an especially adept educator, watchdog, and proxy. It revealed government secrets about the war in Vietnam and helped to take down a president.⁸⁴ In its opinions, the Court recognized this heyday and froze it in jurisprudential amber.⁸⁵ Its recognition of the press’s power reinforced that power but did not generate it. As has been revealed with the passage of time, the Supreme Court’s adulation cannot buoy the press in perpetuity.

So although the Press Clause holds enormous promise, especially for those of us who want to protect the press, it is unlikely to serve as a catalyst for its reinvigoration. That is, the Court cannot singlehandedly will the press to be more robust, diverse, or financially self-sustaining.

Instead, extra-constitutional groundwork must be laid for strengthening the press. We need to collectively focus on

81. Leslie Kendrick, *Another First Amendment*, 118 COLUM. L. REV. 2095, 2114 (2018).

82. *Id.* at 2097.

83. *Id.*

84. See KOVACH & ROSENSTIEL, *supra* note 20, at 177–78; SCHUDSON I, *supra* note 27, at 81–82.

85. See Jones I, *supra* note 65, at 711–14 (describing “media-praising” language from several 1960s opinions); *N.Y. Times Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J., concurring) (“In my view, far from deserving condemnation for their courageous reporting, the New York Times, the Washington Post, and other newspapers should be commended for serving the purpose that the Founding Fathers saw so clearly.”).

creating and funding the press that we want and need. Then, perhaps, we can push the Supreme Court, through the First Amendment, to recognize it, validate it, and provide it with protection. As one part of this effort, we can promote journalism as a method.

III. JOURNALISM AS ANTIDOTE

The values and tools of journalism as a method developed during another American informational crisis. In the aftermath of World War I, there was a desire to distinguish journalism both from propaganda as well as the burgeoning fields of advertising and public relations.⁸⁶ That is, crystallizing the tenets of journalism as a method began as a way to differentiate false from true information and to differentiate information motivated by profit from information delivered in the public interest.

The historical parallels to today are not hard to draw. As it did a century ago, journalism can help to serve as an antidote. This section will expand on what is meant by journalism as a method. It will describe where it is being used already as a means of combatting disinformation and begin to explore how journalism can be deployed more widely.

A. Defining Journalism

Legislators, judges, and scholars have famously struggled to define “the press.”⁸⁷ Columbia University President Lee C. Bollinger has called the problem “seem[ingly] intractable.”⁸⁸ But not everyone agrees. “The problems posed by defining ‘the press,’” Sonja R. West has written, “are not qualitatively different than the problems posed by defining terms found in

86. See ANANNY II, *supra* note 48, at 71, 75; SCHUDSON I, *supra* note 27, at 76.

87. See RonNell Andersen Jones, *Rethinking Reporter's Privilege*, 111 MICH. L. REV. 1221, 1241 (2013) (noting that “gallons of ink” have been spilled over the issue with respect to determining who is entitled to the reporter’s privilege).

88. See West II, *supra* note 64, at 2453 (citing LEE C. BOLLINGER, UNINHIBITED, ROBUST, AND WIDE-OPEN: A FREE PRESS FOR A NEW CENTURY 53 (2010)).

other provisions of the Constitution.”⁸⁹ A definition can emerge, West argued, from a “process that unfolds over time.”⁹⁰

Similarly, the essence of “journalism” is not easy to pin down, but it can be done. Journalists themselves are making the effort. Take National Public Radio, for example. In its Ethics Handbook, the public broadcaster calls journalism “a daily process of painting an ever truer picture of the world.”⁹¹ This definition is notable for a few reasons. It focuses on journalism not as a thing or a product but as an action—a method, a body of practices, a “process.”⁹² Plus, the definition makes clear that it is a process that is repeated, seemingly in perpetuity. This suggests both evolution and refinement of journalistic practices. The definition also gets at a central aim of the journalistic process—truth.

There is more to journalism, of course. Truth is not the only value at its core. And NPR’s definition does not elaborate on methods or practices of journalism. For a broader understanding, we could look at NPR’s Ethics Handbook in its entirety and the codes of ethics for other journalistic organizations, such as the Society of Professional Journalists.⁹³ We might also look to the newsroom policies for any number of news outlets.⁹⁴

A great single source, however, is *The Elements of Journalism* by former *New York Times* Washington Bureau chief Bill Kovach and executive director of the American Press Institute Tom Rosenstiel.⁹⁵ It is particularly useful and authoritative in part because it is the product of interviews, forums, meetings, and

89. *Id.*

90. *Id.*

91. *These Are the Standards of Our Journalism*, NPR, <https://www.npr.org/ethics> (last visited Feb. 28, 2020).

92. *See id.*

93. *See SPJ Code of Ethics*, SOC’Y PROF. JOURNALISTS, <https://www.spj.org/ethicscode.asp> (last updated Sept. 6, 2014, 4:49 PM).

94. *See, e.g., Ethics*, AM. SOC’Y NEWSPAPER EDITORS, <https://members.newsleaders.org/resources-ethics> (last visited Feb. 28, 2020) (linking to ethics codes for dozens of news organizations).

95. *See KOVACH & ROSENSTIEL*, *supra* note 20.

surveys, involving thousands of participants.⁹⁶ In the book's preface, the authors note that their original intention in writing the book "was to identify common principles shared by people who called themselves journalists working in different mediums and traditions."⁹⁷ As this description indicates, the book is primarily about principles, but in describing those principles, it also describes practices by which those principles are realized.⁹⁸

Journalism, the authors write, is the means to providing "independent, reliable, accurate and comprehensive information that citizens require in order to make sense of the world around them."⁹⁹ They add that "[a] journalism that provides something other than that subverts democratic culture."¹⁰⁰ To exercise this weighty charge, Kovach and Rosenstiel set out a series of journalistic values by which journalists, on the whole, abide.¹⁰¹

Here, I want to touch on just a few of these values. The first is that journalism insists on accuracy and strives for truth.¹⁰² Second, is that journalism is a monitor of power.¹⁰³ And third, is that journalism is about the creation of spaces for public criticism and compromise.¹⁰⁴ As noted, journalism is also the method of achieving these values. Let me suggest how—in a more concrete way—with respect to each.

In terms of accuracy and truth, journalism is what Kovach and Rosenstiel describe as "a discipline of verification."¹⁰⁵ It

96. *See id.* at 6–7.

97. *Id.* at ix.

98. *See, e.g., id.* at 113–36 (describing various methods and tools for verification).

99. *Id.* at 4.

100. *Id.*

101. *See id.* at 9 (setting out the authors' ten elements of journalism).

102. *Id.* at 9, 55 ("[J]ournalistic truth' means more than mere accuracy. It is a sorting-out process that takes place between the initial story and the interaction among the public, newsmakers, and journalists.").

103. *Id.* at 9, 169–92 (discussing the history and purpose of journalists' role as a watchdog).

104. *Id.* at 9, 193–210.

105. *See id.* at 9. Kovach and Rosenstiel actually separate into two separate "elements of journalism" the following: "Journalism's first obligation is to the truth" and "[J]ournalism's

calls for locating sources with first-hand knowledge—multiple ones, when possible.¹⁰⁶ It requires being transparent with the journalistic audience about the identity and potential biases of those sources.¹⁰⁷ It values examining issues and events from different angles.¹⁰⁸ It involves editing—and so, layers of humans putting eyes on something to verify it. It calls for placing the value of accuracy ahead of the imperative of speed.¹⁰⁹ The Code of Ethics for the Society of Professional Journalists makes this explicit when it says “Remember that neither speed nor format excuses inaccuracy.”¹¹⁰ Journalism also demands issuing corrections when a mistake has been made.¹¹¹ In fact, the ethics guidelines of the *Los Angeles Times* not only indicate the newspaper’s journalists will “quickly and forthrightly correct the record,” but adds that “[r]eaders and staff members who bring mistakes to our attention deserve our gratitude.”¹¹²

In terms of serving as a check on power, journalism calls for questioning the conventional wisdom, going beyond press releases and conferences.¹¹³ This work has often been called investigative or watchdog reporting. Journalism is about unearthing knowledge that has been hidden, often

essence is a discipline of verification.” *Id.* Yet, the two are related in that verification helps get journalists to truth.

106. *Id.* at 98 (“Practices such as seeking multiple witnesses to an event, disclosing as much as possible about sources, and asking many sides for comment are, in effect, tools for the discipline of verification, which is the essential process of arriving as nearly as possible at the truth of the matter at hand.”).

107. *See id.*

108. *See id.*

109. *See id.* at 129–32.

110. *See SPJ Code of Ethics, supra* note 93.

111. *See, e.g.,* Craig Silverman, *How To Correct Website and Social Media Errors Effectively*, AM. PRESS INST. (Sept. 24, 2014), <https://www.americanpressinstitute.org/publications/reports/strategy-studies/digital-corrections/>.

112. *L.A. Times Updates Newsroom Ethics Guidelines*, L.A. TIMES (June 18, 2014, 3:00 PM), <https://www.latimes.com/local/readers-rep/la-rr-la-times-updates-newsroom-ethics-guidelines-20140618-story.html>.

113. *See KOVACH & ROSENSTIEL, supra* note 20, at 176 (“It may involve tactics similar to police work, such as basic shoe-leather reporting, public records searches, use of informants, and even, in special circumstances, undercover work or surreptitious monitoring of activities.”).

intentionally. This may be a slow process of persistent questioning and triangulating various pieces of information.¹¹⁴

And in terms of the creation of spaces for discussion and even compromise, journalism calls for reaching out to those who are criticized in a story for their comment.¹¹⁵ It calls for initiating human contact, for interviewing and discussion. It calls for person-to-person interaction in the creation of the news. It calls for a refusal to be drawn only to the loudest voices or ones that might be most attractive to advertisers.¹¹⁶ It even calls for community-building. The News and Editorial Mission and Vision statement of the *Roanoke Times* describes this effort. It states: “We are residents of this community. Its civic health matters to us as citizens . . . [T]he more we participate in community activities, the better understanding we will have of the needs, aspirations, and everyday lives of the people we portray.”¹¹⁷

Journalism is also not static. Its methods evolve in response to a host of factors, including law, technology, and audience. For example, the very process of what and whether to publish—the exercise of editorial discretion—is changing as journalists gain a greater understanding of the informational ecosystem in which they are operating, the way in which journalism can be weaponized in it, and the potential downstream effects of news coverage.¹¹⁸ For example, journalists are more widely and

114. *Id.* at 191 (“More often than not, revelation comes not from a single document suddenly found, but from discoveries slowly earned—winning the trust of sources, noticing a fragment of information, recognizing its possibilities, triangulating that with fragments from other information, fitting the pieces together, and establishing proof to a level that will satisfy lawyers.”).

115. See, e.g., *Journalistic Guidelines*, PBS FRONTLINE, <https://www.pbs.org/wgbh/frontline/about-us/journalistic-guidelines/> (last visited Mar. 5, 2020) (“Specifically, fairness means that producers will . . . give individuals or entities who are the subject of attack the opportunity to respond to those attacks.”).

116. KOVACH & ROSENSTIEL, *supra* note 20, at 199 (“[T]his forum must be available to all parts of the community, not just those who are most vocal and thus most present in social media, or those who are demographically attractive to those selling goods and services.”).

117. *Professional Standards and Content Policies*, ROANOKE TIMES, https://www.roanoke.com/site/professional_standards.html (last updated July 21, 2015).

118. See Phillips I, *supra* note 24 (discussing the importance of reckoning with downstream effects of information pollution).

intentionally employing “strategic silence” and “strategic amplification.”¹¹⁹ These methods of deciding whether and what to publish call for a careful weighing of factors including news value and harms.¹²⁰ As just one example, it is becoming a journalistic norm not to broadcast the name of mass shooters but instead focus on the victims and the impact of their crimes.¹²¹ Journalism is also increasingly attuned to audience. For example, a movement dubbed “engagement journalism” calls for news being an “open, public conversation” rather than “a product created by journalists and delivered to an audience.”¹²² It places more emphasis than the journalism of decades past on listening to community members.¹²³

Of course, journalism has many skeptics (and worse). Some of these skeptics would vociferously argue that journalism is flawed and that it has failed—and failed quite spectacularly—at times. For example, journalism skeptics might argue that a major reason the United States entered the war in Iraq was a failure of journalists to accept without sufficient questioning the assertion that Iraq harbored weapons of mass destruction.¹²⁴ Journalism skeptics might also argue that the press and journalists actually became weapons in a Russian

119. See Joan Donovan & danah boyd, *Stop the Presses? Moving from Strategic Silence to Strategic Amplification in a Networked Media Ecosystem*, AM. BEHAV. SCIENTIST (Sept. 2019), <https://journals.sagepub.com/doi/abs/10.1177/0002764219878229> (defining strategic silence as the “use of editorial discretion for the public good” and strategic amplification as requiring news organizations and platforms to “develop and employ best practices for ensuring responsibility and accountability when producing news content and the algorithmic systems that help spread it”).

120. See *id.*; see also Phillips II, *supra* note 26, pt. 2 at pgs. 3–5 (describing factors to consider when deciding whether to amplify or silence information).

121. See Kelly McBride, *Not Naming Mass Shooters (Much) Is Now the Norm*, POYNTER (June 7, 2019), <https://www.poynter.org/ethics-trust/2019/not-naming-mass-shooters-much-is-now-the-norm/>.

122. Mónica Guzmán, *What Exactly Is Engagement and What Difference Does It Make?*, AM. PRESS INST. (May 2, 2016), <https://www.americanpressinstitute.org/publications/reports/strategy-studies/what-is-engagement/>; Jay Rosen (@jayrosen_nyu) TWITTER (Nov. 16, 2019, 12:05 PM), https://twitter.com/jayrosen_nyu/status/1195795048878792704.

123. See Rosen, *supra* note 122.

124. See TWITTER AND TEAR GAS, *supra* note 11, at 40.

disinformation campaign in advance of the 2016 election.¹²⁵ They might point out that in the lead-up to the election, reporters routinely failed to ask necessary questions and provide key context.

These critiques are valid. Yet, they are also not so much failures of journalism but failures of journalists to adhere to journalistic methods. Such failures have caused significant harm, but, to some degree, they are also inevitable. So, while yes, journalistic practices are necessarily imperfect and evolving, the humans implementing them will also err. Hopefully such errors will lead to reflection and further refinements to and advancements of the methods. These errors are not reasons to forsake journalism.

B. *Propagating Journalism*

Efforts to seed and propagate journalism can occur simultaneously in multiple online spaces.¹²⁶ They can occur in those spaces we traditionally think of as journalistic. Journalists themselves can highlight their processes to their audiences in the places where they regularly publish. They can also occur in journalism-adjacent organizations. That is, journalism can become more prevalent in nonprofit and civil-society spaces that might work with journalists or publishers. In addition, journalism can be adopted and flourish in online spaces that are not necessarily viewed as journalistic domains. In addition to discussing the promotion of journalism throughout our information ecosystem, this section will briefly address how we

125. See JAMIESON, *supra* note 40, at 13 (“This book is not just about what the Russians did but also about how the US media inadvertently helped them achieve their goals.”). This is not to say that either Tufekci or Hall Jamieson are necessarily journalism skeptics, only that a skeptic might make these arguments.

126. The suggestions I outline here to promote journalism as a method intentionally sidestep the fact that vast swaths of our online spaces are governed by a handful of technology platforms. One might reasonably argue that any effort to clean up these spaces is doomed without the buy-in of these platforms. I have argued elsewhere about ways that platforms should be incentivized to adopt journalistic norms and practices. See Carroll, *supra* note 21, at 35–40.

might do so in a way that makes connections between our offline and online spaces.¹²⁷

1. *Efforts focused on online spaces*

As a reaction to disinformation, falling levels of trust, and the interchangeability of content on the internet, journalists are already doubling-down on journalism and bringing attention to their methods.¹²⁸ Many have, in a concerted way, begun to highlight the “how” behind stories along with the traditional five journalistic “W”s: who, what, when, where, and why.¹²⁹ Publications are finding ways to tell the story behind the story and focusing on journalistic methods.¹³⁰ The *Washington Post* has developed a series of videos explaining what journalists do.¹³¹ And, of course, hyperlinks to primary sources have become routine.

As a signal of just how important journalists think transparency about method is, it has been awarded at the highest levels of the profession. In 2018, the *Washington Post* won the Pulitzer Prize for investigative reporting for “revealing

127. See Phillips I, *supra* note 24 (noting that the spread of information happens both online and off and that the problems are structural rather than “self-contained”).

128. See Michael Blanding, *Can “Extreme Transparency” Fight Fake News and Create More Trust With Readers?*, NIEMAN REP. (Mar. 23, 2018), <https://niemanreports.org/articles/can-extreme-transparency-fight-fake-news-and-create-more-trust-with-readers/>.

129. See, e.g., Libby Casey, *How Washington Post Journalists Broke the Story of Allegations Against Roy Moore*, WASH. POST (Dec. 8, 2017), <https://www.washingtonpost.com/news/the-fix/wp/2017/12/08/how-washington-post-journalists-broke-the-story-of-allegations-against-roy-moore/>; Luke Burns, *Additions to the Five Journalistic “W”s*, NEW YORKER (Jan. 31, 2017), <https://www.newyorker.com/humor/daily-shouts/additions-to-the-five-journalistic-ws> (noting the five journalistic questions).

130. See generally Olga Pierce & Marshall Allen, *How We Measured Surgical Complications*, PROPUBLICA (July 14, 2015), <https://www.propublica.org/article/surgeon-level-risk-short-methodology> (describing the methodology used behind an investigative article); David A. Fahrenthold, *David Fahrenthold Tells the Behind-the-Scenes Story of His Year Covering Trump*, WASH. POST (Dec. 29, 2016), https://www.washingtonpost.com/lifestyle/magazine/david-fahrenthold-tells-the-behind-the-scenes-story-of-his-year-covering-trump/2016/12/27/299047c4-b510-11e6-b8df-600bd9d38a02_story.html (describing the reporter’s investigation into Trump’s charity donations).

131. See *The Washington Post Launches “How to Be a Journalist” Video Series*, WASH. POST: PR BLOG (Dec. 8, 2017, 2:11 PM), <https://www.washingtonpost.com/pr/wp/2017/12/08/the-washington-post-launches-how-to-be-a-journalist-video-series/>.

a [Senate] candidate's alleged past sexual harassment of teenage girls and subsequent efforts to undermine the journalism that exposed it."¹³² As part of the winning package was a video of a *Post* reporter confronting a woman who the *Post* said falsely claimed she had been impregnated by the candidate when she was a teenager.¹³³ The *Post* reported that the woman appeared to be affiliated with an organization that, according to the *Post*, "uses false cover stories and covert video recordings in an attempt to embarrass its targets."¹³⁴ The video was a real-time window into how journalists use their methods (including interviewing, in-person meetings, and background research) to evade manipulation and disinformation.¹³⁵

Beyond journalists highlighting and defining their own practices, efforts can also be made to promote journalism outside of its usual homes in ways that can cultivate norms for our networked public sphere. Already, innovative efforts to use journalism as a method to tackle some of the problems with our information landscape are cropping up. An example is First Draft, a nonprofit that forges collaboration between journalists, technologists, and academics to combat disinformation.¹³⁶ Among the many things First Draft has done is to put together reports and how-to guides and trainings for tackling disinformation online.¹³⁷ These guides rely on journalistic methods and are often crafted by journalists.¹³⁸ First Draft is not a traditional news outlet, but it is doing journalism.

132. See *The 2018 Pulitzer Prize Winner in Investigative Reporting: Staff of the Washington Post*, PULITZER PRIZES, <https://www.pulitzer.org/winners/staff-80> (last visited Feb. 24, 2020).

133. See *id.*; Beth Reinhard et al., *Woman's Effort to Infiltrate the Washington Post Dated Back Months*, WASH. POST (Nov. 29, 2017), https://www.washingtonpost.com/investigations/womans-effort-to-infiltrate-the-washington-post-dates-back-months/2017/11/29/ce95e01a-d51e-11e7-b62d-d9345ced896d_story.html.

134. Reinhard et al., *supra* note 133.

135. See WASH. POST, *Post Reporter Confronts Woman Who Made False Accusations Against Roy Moore*, YOUTUBE (Nov. 27, 2017), <https://www.youtube.com/watch?v=xecOW8Z7OEk>.

136. See *About*, FIRST DRAFT, <https://firstdraftnews.org/about/> (last visited Mar. 4, 2020).

137. See *Training*, FIRST DRAFT, <https://firstdraftnews.org/training/> (last visited Mar. 4, 2020).

138. See *id.* (listing training documents about topics like "monitoring + newsgathering," "verification," and "responsible reporting"); *About*, *supra* note 136 (listing several employees with titles of reporter and editor).

A particular benefit of First Draft's efforts is that it is global. First Draft has worked on preventing disinformation in elections in the United States, the United Kingdom, France, Brazil, and Nigeria.¹³⁹ This gets at an important reason why focusing on journalism rather than the American press or the First Amendment may make sense: our information ecology is global. The problems it faces do not heed national boundaries.

We also need to be open to journalism expanding into areas where we would not necessarily expect it to be. We could push for these methods to be adopted by some we would not necessarily think of as journalists in places that may not feel like spaces for news. Journalists are thinking creatively about this. In a piece published on Medium, journalist Christopher Wink wrote, "We need to fight to establish journalism DNA in places we never previously thought possible."¹⁴⁰ He compares journalism to "design thinking," which he described as a "belief that business and government and society are better served by a methodology that comes with an evolving set of norms and bounds and best practices."¹⁴¹ Wink is the CEO of Technically Media, which publishes Technical.ly and Generocity.org.¹⁴² The sites include news,¹⁴³ but they also include other features like a job board,¹⁴⁴ a hub for volunteering,¹⁴⁵ and descriptions of local business.¹⁴⁶

139. See *About*, *supra* note 136.

140. See Christopher Wink, "Journalism Thinking" Doesn't Need a Business Model. It Needs a Call to Arms, MEDIUM (Sept. 10, 2019), <https://medium.com/@christopherwink/journalism-thinking-doesn-t-need-a-business-model-it-needs-a-call-to-arms-c764797b5d99>.

141. *Id.*

142. *About Generocity*, GENEROCITY, <https://generocity.org/philly/about/> (last visited Mar. 15, 2020).

143. *Id.*; *About Technical.ly*, TECHNICAL.LY, <https://technical.ly/about/> (last visited Mar. 15, 2020).

144. See *Jobs*, GENEROCITY, <https://generocity.org/jobs/> (last visited Mar. 15, 2020); *Fresh Jobs Served Daily*, TECHNICAL.LY, <https://technical.ly/jobs/> (last visited Mar. 15, 2020).

145. See *Explore Events*, GENEROCITY, <https://generocity.org/philly/events/> (last visited Mar. 15, 2020); *Events*, TECHNICAL.LY, <https://technical.ly/events/> (last visited Mar. 15, 2020).

146. See *Directory*, GENEROCITY, <https://generocity.org/directory/> (last visited Mar. 15, 2020); *Get to Know the Locals. Meet the Companies Making Impact*, TECHNICAL.LY, https://technical.ly/companies/?utm_source=header&utm_medium=text (last visited Mar. 15, 2020).

2. *Efforts focused on offline spaces*

Central to the challenge of promoting journalism is money. The press is contracting. The economics of journalism are, to be generous, unfavorable.¹⁴⁷ It is unclear who would pay for journalism to spread. Some, including me, have called for greater public funding for the press.¹⁴⁸ Numerous other democracies fund their press at higher levels than the United States.¹⁴⁹

But to promote journalism, there is another option, one that avoids the concern that public funding of the institutional press might lead to censorship. This alternative is that instead of funding institutional press actors, we fund journalism as a method. One way to do this would be to invest in journalism education.

According to the Congressional Research Service, the federal government's investment in graduate medical education in 2015 was an estimated \$16 billion.¹⁵⁰ What if even a fraction of this amount was invested in journalism training so that graduates could then help tend to the health of our information environment? This could be done through graduate journalism programs (as it is now). But it could also be done in the undergraduate setting, in journalism, communications, or rhetoric programs. Journalism as a method also has overlap with parts of law and business curriculums and could conceivably be taught in such programs at both the undergraduate and graduate level. To create more of a pipeline,

147. See Doctor, *supra* note 54.

148. See, e.g., Victor Pickard, *Revisiting the Road Not Taken: A Social Democratic Vision of the Press*, in *WILL THE LAST REPORTER PLEASE TURN OUT THE LIGHTS: THE COLLAPSE OF JOURNALISM AND WHAT CAN BE DONE TO FIX IT* 174–84 (Robert W. McChesney and Victor Pickard eds., 2011) (arguing for state support of journalism); Carroll, *supra* note 21, at 40–41.

149. See Marlee Baldrige, *Water in a News Desert: New Jersey Is Spending \$5 Million to Fund Innovation in Local News*, NIEMAN LAB (July 3, 2018, 5:11 PM), <https://www.niemanlab.org/2018/07/water-in-a-news-desert-new-jersey-is-spending-5-million-to-fund-innovation-in-local-news/>.

150. ELAYNE J. HEISLER ET AL., CONG. RESEARCH SERV., R44376, FEDERAL SUPPORT FOR GRADUATE MEDICAL EDUCATION: AN OVERVIEW 2 (Dec. 27, 2018), <https://fas.org/sgp/crs/misc/R44376.pdf>.

government could also help to fund educational institutions to do this training.

And we might also consider providing tax breaks to those that hire graduates of journalism-focused programs. For example, I have argued elsewhere that a Work Opportunity Tax Credit could be granted to those who hire journalists.¹⁵¹ This credit has been used to incentivize companies to hire from groups that face barriers to employment such as veterans and previously incarcerated individuals.¹⁵² Given that from 2001 to 2016, more than half of the news industry jobs in the United States disappeared, it seems an argument could be made that journalists face employment barriers.¹⁵³

Training a significant cohort of actual humans who would go out into their communities and practice journalism is also essential because the work of promoting truth over disinformation cannot be purely an online endeavor. If journalism as a method is to have any positive impact on our networked public sphere, the method must be trusted. If it is not, anything it produces, whether true or not, will be ignored or worse—it might even help to entrench false beliefs. As Rasmus Kleis Nielsen has written, “[j]ournalism exists in the context of its audience. . . . That connection is in many cases hanging by a thread, and it is on us to retain, renew, and reinforce it.”¹⁵⁴ Although trust in the press is at a near low, it bears noting that local news sources remain relatively well trusted.¹⁵⁵ One can imagine that this has to do with actual, real-

151. See Carroll, *supra* note 21, at 38.

152. See 26 U.S.C. § 51 (2018).

153. See Sasha Lekach, *Fewer Than Half of Newspaper Jobs from 15 Years Ago Still Exist*, MASHABLE (Apr. 4, 2017), <https://mashable.com/2017/04/04/newspaper-publishers-jobs-decline-bls/#a9KxxBTdXsqF>.

154. Kleis Nielsen, *supra* note 16.

155. According to a 2019 Gallup poll, only 41 percent of Americans have a “great deal” or “fair amount” of trust in the mass media. See Brenan, *supra* note 18; Sullivan, *supra* note 53 (“[L]ocal news sources are relatively well-trusted.”); KNIGHT FOUNDATION ET AL., STATE OF PUBLIC TRUST IN LOCAL NEWS 2 (2019), https://kf-site-production.s3.amazonaws.com/media_elements/files/000/000/440/original/State_of_Public_Trust_in_Local_Media_final_.pdf.

world geography. A personal encounter with journalism may be precisely what is needed.

CONCLUSION

Communications scholar Mike Ananny has written, “How well we govern ourselves—learn about each other, discover shared concerns, encourage or sanction behavior—all of this governance depends on how well our communication systems work.”¹⁵⁶ Today, these systems are failing in significant ways. A marketplace of ideas is not operating in the online spaces governed by technology platforms. Far from creating the conditions that allow for debate and the surfacing of truth, platform incentives and structures facilitate polarization, make content fungible, and promote the spread of disinformation.

As we consider how to establish public spaces that truly allow for discussion, compromise, and the discovery of truth, we need to look to a broad range of tools. The institutional press and the First Amendment—although they have helped to set the bounds of and order our public squares in past decades—are not well equipped to do so in this moment.

Instead, we need to look for means that can strengthen those communications systems that allow us to get at truth and to self-govern. Journalism is just such a means. At its best, it is a tested and evolving method and practice for promoting debate, compromise, community, and truth. Suffused throughout our communication system, it can help to promote the new norms we so desperately need. We should look for ways to promote journalism widely.

156. Ananny I, *supra* note 5.