20

Journalism and Academia

Knowledge Institutions Buttressing Constitutional Democracy

Vicki C. Jackson

Knowledge institutions play a critical role in maintaining constitutional and democratic guardrails, encouraging the pursuit of reliable knowledge, providing the public with accurate information, and fostering informed debate about office-holders, candidates, and public policies. For this reason, authoritarian leaders often attack knowledge institutions (alongside other common targets like political opponents, and independent government bodies) in efforts to consolidate power, suppress dissenting voices, and control public narratives.[1] Among the key, often-targeted knowledge institutions are a free truth-seeking press and independent universities.

Knowledge institutions are public and private entities that have a central purpose of pursuing knowledge – creating, disseminating, and preserving it.[2] They include universities, libraries, museums, the press, government offices charged with collecting and reporting data, and independent research institutes. As organized entities with continuity over time, they pass on to new generations their cultures of knowledge-seeking and verification. Knowledge institutions and their active members seek to apply standards of a wide range of intellectual disciplines, differing across fields and institutions. They aspire to apply these standards autonomously, not

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[1] *See generally* Aziz Huq & Tom Ginsburg, *How to Lose a Constitutional Democracy*, 65 UCLA L. Rev. 78 (2018).

[2] For my earlier work on this idea, *see* Vicki C. Jackson, *Knowledge Institutions in Constitutional Democracies: Preliminary Reflections*, 7 Can. J. Comp. & Cont. L. 156 (2021); Vicki C. Jackson, *Knowledge Institutions in Constitutional Democracy: Reflections on "the Press,"*14 J. Media L. 275 (2022) [hereinafter *On "the Press"*]. Whether public or private, knowledge institutions must have the independence to apply relevant disciplinary standards for the pursuit of truth. In the US, the press is predominantly private, while public universities now enroll more than twice as many students as private ones. *See* Veera Korhonen, *College Enrollment in Public and Private Institutions the U.S. 1965–2031*, Statista, https://www.statista.com/statistics/183995/.

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to reach results tailored to satisfy government or business preferences, but with independence according to the professional norms of their field and institution.[3]

As institutions, they offer protection to knowledge-related values that go beyond those secured by individual freedoms of expression. They do so for several reasons, described at length in my earlier work. First, such institutions help define, in ways no individual can, the best disciplinary tools and practices oriented to discovering or verifying knowledge. Second, institutions transmit cultures of knowledge-seeking across generations – again, in ways that individuals by themselves cannot. Third, institutions provide "focal points"[4] for organizing around the protection of those individual freedoms so essential to the free inquiry on which searches for better truths are founded. Fourth, institutions have legal and financial resources that can be deployed to help protect the knowledge-seeking efforts of their members. Finally, institutions, on the whole, have stronger functional and normative claims than individuals do to act with authority as intermediaries in an ocean of information and misinformation.

In recent years, however, the authority of the press and universities as knowledge institutions has increasingly come under scrutiny – and not just from rising populists. Critics are asking questions such as: Are these institutions genuinely devoted to producing and disseminating knowledge, or are they primarily focused on protecting and aggrandizing their own reputations or economic interests? Is the press overly fixated on sensationalism and short-term news coverage at the expense of deeper and more substantive reporting? Are universities too preoccupied with maintaining "politically correct" stances to be trusted to perform their knowledge-seeking roles and to maintain a free and open campus environment for all students? Can these knowledge institutions truly claim independence from the powerful forces that control so much of society? Are the ethical norms they espouse admirable or despicable? Are their ethical norms sufficiently adhered to in practice to warrant their continued recognition as guiding principles of the press and universities?

This chapter sketches some tentative responses to these questions. It considers how the press and universities are similar as knowledge institutions and how they differ. It explores the nature of journalistic and academic topics and judgments, their independence in the pursuit of knowledge, the time frames of their work, and their ethics. It aims to draw attention to how these two institutions use overlapping but not

[3] Both academia and journalism have a central purpose of developing new knowledge; academic institutions also seek to disseminate and preserve existing bodies of knowledge. Libraries and museums also function as knowledge institutions, with the central purposes of preserving and disseminating knowledge. Trial courts might also be thought of as knowledge institutions insofar as they have the goal, using disciplinary procedures of the law of evidence, to determine the (likely) facts as between two or more contesting parties, although this knowledge-creation may also be viewed as more contingent, and, to the extent it turns on factual findings about some broad phenomenon like drug use, may be subject to unsettlement in other litigations between different parties.

[4] *See* Adam Chilton & Mila Versteeg, How Constitutional Rights Matter (2020).

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identical tools to develop shared knowledge and test knowledge claims, and how sustaining the independent competencies necessary towards this goal is challenged by rising polarization and mistrust and by diminishing public and private financial support. I close with some reflections on the relationships among knowledge institutions and why the interdependent infrastructure of knowledge institutions matters so much to constitutional democracy.

Constitutional democracies are not necessarily self-sustaining. They must safeguard the independence and integrity of elections, government structures, and knowledge institutions, including universities and the free press. Doing so requires honest assessment of their strengths and weaknesses, adequate funding for their central tasks, and appropriate degrees of institutional autonomy to preserve the reliability of their knowledge functions.

20.1 PROFESSIONAL JUDGMENT IN PURSUIT OF GENUINE KNOWLEDGE

Constitutional democracies depend on knowledge to sustain their governments. Whether conceptualized as the need for competence,[5] expertise,[6] or effectiveness,[7] governments depend on the development of shared conceptions of reliable knowledge. Knowledge institutions, including academia and the press, play key roles in the development of this shared knowledge.[8]

Ideally, both the institutional press and higher education institutions seek to protect the exercise of professional judgment by those who do knowledge work within them. For the press, the core knowledge work is done by journalists (including reporters and editors).[9] For academia, the core knowledge work is done by

[5] *See generally* Robert C. Post, Democracy, Expertise and Academic Freedom: A First Amendment Jurisprudence for the Modern State (2012).

[6] *See generally* Bruce Ackerman, *The New Separation of Powers*, 113 Harv. L. Rev. 633 (2000).

[7] *See generally* Constitutionalism and a Right to Effective Government? (Vicki C. Jackson & Yasmin Dawood eds., 2022).

[8] *See* Huq & Ginsburg, *supra* note 1, at 130 (on the importance of a shared epistemic base).

[9] On the key role of editors, *see, e.g.*, Jacqui Banaszynski, *The Core Role of Editors in Trustworthy Journalism*, Nieman Storyboard (Nov. 7, 2023), https://niemanstoryboard.org/stories/editing-journalism-accuracy-bias-gaza/ (arguing that editors provide several crucial quality control functions); Allison Baker & Viviane Fairbank, *Fact-Checking as Part of the Editorial Process*, *in* The Truth in Journalism Fact-Checking Guide (2022), https://thetijproject.ca/guide/the-editorial-process/) (on the editorial process in Canada); *Journalistic Guidelines*, PBS, https://www.pbs.org/wgbh/frontline/about-us/journalistic-guidelines/ (last visited May 21, 2024) (on the editorial process at PBS); Max van Drunen, *Editorial Independence in an Automated Media System*, 10 Internet Pol'y Rev. 1 (2021), https://policyreview.info/articles/analysis/editorial-independence-automated-media-system (on editorial independence in Europe); Emmett Lindner, *Editing with a Reporter's Instinct*, N.Y. Times (June 30, 2022), https://www.nytimes.com/2022/06/30/insider/editing-with-a-reporters-instinct.html (on editing at the N.Y. Times); *see also* Evelyn Douek & Genevieve Lakier, *Rereading "Editorial Discretion,"* Knight First Amendment Institute at Columbia University (Oct. 24, 2022), https://

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individual faculty members, sometimes alone, sometimes working with others, and subject to the more indirect and less collaborative constraints of peer review and evaluation.

For the press, a classic concept of the editorial process embraces the active involvement of editors as internal checks throughout the entire news production cycle. In serious press organs, the relationship between editors and reporters (and other kinds of journalists) is collaborative. It often begins with the selection of which stories to pursue, continues with discussions about when stories are sufficiently established by the facts, and ends with editing of the final article. Editors can be an integral part of the process of reporting a story at many junctures, reflecting a degree of joint venturing between reporters and editors as allies in the development and production of news stories.

The growth of new outlets for reporting through social media sites and blogs may pose a challenge to the continued viability of the model of editors who act as internal intermediaries checking what journalists write and reinforcing disciplinary norms of good investigative journalism.[10] Yet, the idea of internal checks remains an important aspect of contemporary journalism. The most respected newer journalism sites, such as ProPublica,[11] as well as "legacy" organs, continue to rely on editors to protect the integrity of their journalistic process, though empirical work on the extent of this practice remains to be done.

In academia, such partnerships between editors and researchers in developing scholarly works are less common than in journalism. Editors of scholarly journals or books may sometimes – but need not – play a role similar to news editors in deciding what themes or subjects authors should pursue. Some invited scholarly collections or journal symposia, for example, are framed by the scholarly editors' careful guidance on what topics different chapters should seek to cover. But many scholarly books are conceived entirely by their authors and are submitted to a publisher only after they are complete or well set on course. The checks of peer review are thus both less sustained and more independent than those of an editor in a journalistic institution working with reporters.[12]

knightcolumbia.org/blog/rereading-editorial-discretion (arguing that U.S. Supreme Court has recognized editorial discretion as protected by the First Amendment).

[10] Other changes in the work of journalism may follow from increased streaming of public events, diminishing the perceived need for in-person attendance, and the possibility of artificial intelligence to generate reports of public meetings. *See, e.g.*, Sophie Culpeper, *AI Will Soon Be Able to Cover Public Meetings. But Should It?*, NiemanLab (June 15, 2023), https://www.niemanlab.org/2023/06/ai-will-soon-be-able-to-cover-public-meetings-but-should-it/.

[11] *See* Jason Grotto, *How Do We Verify Anonymous Sources?*, ProPublica (Aug. 28, 2018), https://www.propublica.org/article/ask-propublica-illinois-vetting-anonymous-sources ("Editors play a crucial role in the decision to use an anonymous source. Our code of ethics says editors 'have an obligation to know the identity of unnamed sources' so they can 'assess the appropriateness of using their information.'").

[12] In academia, a separate institutional body, the Institutional Review Board (IRB), will scrutinize projects that entail "human subject research," but primarily with a focus on the adequacy of

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In contrast to journalism's collaborative editorial process, academia relies on peer review in assessing quality both in granting tenure and, for journals, in deciding whether to accept articles for publication. Although the specific practices vary across disciplines, peer review is a key part of academia's decisional processes.[13] The review process for publication in a peer-reviewed journal may be quite substantive and contribute materially to improving the published work. (Publication in peer-reviewed journals is important in many academic fields; a possible exception, however, is the field of law in the United States, where prestigious reviews are often edited by students, not peer-reviewed.) Publication-specific peer review is part of the academic process of knowledge production; it operates in a more arm's-length manner than the process of editors checking journalists' work.

While a faculty mentor may feel some sense of engagement with junior faculty, it would be unusual for that relationship to be seen by either party as the kind of alliance journalists often share with an editor. Faculty members may be able to obtain additional peer feedback and critique from workshopping their papers or sending them out for critical comment from colleagues, which can be an important and helpful part of the scholarly process. But the relationship is not that between an editor and a reporter. Other faculty members offering feedback (rather than as part of a peer review

procedures for consent, and risk minimization and selection criteria for human participants. *See* GAO Report, Institutional Review Boards 9 (Jan. 2023), https://www.gao.gov/assets/d23104721.pdf (identifying three main purposes: assuring that "risks to participants are minimized, . . . participants will have sufficient information to decide whether to consent to the research, and . . . participants will be selected fairly (e.g., not selected because of ease of availability or manipulability).").

[13] For discussions of peer review in the sciences, *see*, *e.g.*, Peyman Sardari Nia et al., *Behind the Curtain of the Editorial Process: How Editors Decide!*, 36 Interdisc. Cardiovascular & Thoracic Surgery 2 (2023), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9977384/ (detailing improvements to journal's peer review process); The ISME Journal, *Editorial Process: Summary of the Editorial Process*, Springer Nature, https://www.nature.com/ismej/authors-and-referees/editorial-process (last visited May 22, 2024) (providing an overview of the submission and peer review process for journal); Simon Wessely, *Peer Review of Grant Applications: What Do We Know?*, 352 The Lancet 301 (1998), https://www.thelancet.com/journals/lancet/article/PIIS0140673697111291/fulltext (assessing criticisms of peer review of grant applications). For peer review in the humanities and social sciences, *see* The British Academy, Peer Review: The Challenges for the Humanities and Social Sciences (2007), https://www.thebritishacademy.ac.uk/documents/197/Peer-review-challenges-for-humanities-social-sciences.pdf (reviewing the practices and difficulties of peer review in the UK in the social sciences and humanities). For more general treatment of peer review in academic publishing, *see* Kristy Law, *The Peer Review Process – A Complete Guide*, Oxford Abstracts (Jan. 10, 2023), https://oxfordabstracts.com/blog/what-is-the-peer-review-process/ (offering a generalized guide to the history, process, and strategies of peer review); *Understanding the Peer Review Process*, Taylor & Francis Grp. (2024), https://authorservices.taylorandfrancis.com/publishing-your-research/peer-review/ (last visited June 9, 2024) (describing peer review for journals published by Taylor & Francis). For a skeptical treatment of proposals to pay for peer review, *see* Tim Vines & Alison Mudditt, *What's Wrong with Paying for Peer Review?*, The Scholarly Kitchen (June 16, 2021), https://scholarlykitchen.sspnet.org/2021/06/16/whats-wrong-with-paying-for-peer-review/.

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process) do not operate as gatekeepers to the publication of academic work in the same way a traditional news editor could be a gatekeeper to journalists' work. However, some scholars do work in very large collaborative groups on work having many coauthors; this surely provides opportunities for review and checking, although it also raises predictable temptations for individual contributors to focus only on the aspects of the work to which they directly contributed, rather than on the entire project.

The comparisons between how the institutions of academia and journalism create knowledge raise a number of questions warranting further consideration. For example, does the insulation of much academic work, as compared to the ongoing (theoretical) relationship of reporters and editors, have any implications for their knowledge-producing roles? Or, is what matters the overall cluster of opportunities for checking and incentives for accurate work? Are there more such opportunities for checking and incentives for accuracy in academia, given its longer time frame for production and extended period during which critiques, modifications, and even retractions can occur? Or are there more such opportunities in journalism, where a wider readership may be quick to point out flaws or questions?[14] Alternatively, is what matters more the commitment of participants to truth-seeking modes of work? How significant is the presence of legal and practical protections for the independence of the overall process – in journalism, for reporting and editing, in academia, for researching, writing, teaching, and publishing of scholarship?

Both news media and academic journals have suffered embarrassing and very public failures of their truth-checking processes in recent years.[15] Academia has

[14] For one well-known example *see* Molly A. Dugan, *Journalism Ethics and the Independent Journalist*, 39 McGeorge L. Rev. 801 (2007) (describing correction, by citizen journalists and bloggers, of Dan Rather's mistaken accusation that President Bush received favorable treatment in the National Guard).

[15] On news media, *see*, *e.g.*, Laura Kukkonen, *The Finnish Fabulist*, Colum. Journalism Rev. (Apr. 23, 2024), https://www.cjr.org/analysis/the-finnish-fabulist.php (discussing a Finnish journalist who disclosed that he had made up details in his published work, whose work has been largely pulled); Dan Gillmor, *Can Our Corrections Catch Up to Our Mistakes as They Spread Across Social Media?*, NiemanLab (Mar. 15, 2019), https://www.niemanlab.org/2019/03/can-our-corrections-catch-up-to-our-mistakes-as-they-spread-across-social-media/. On academic work, there have been numerous documented incidents of plagiarism; *see*, *e.g.*, Helayna Schafer, *Plagiarism as a Recurrent Issue*, 48. J. C.& U.L. 71, 74–81 (2023), as well as suspicion that asserted documentation for historical claims did not exist, *see*, *e.g.*, Columbia University Board of Trustees, *The Bancroft and Bellesiles*, History News Network (Dec. 13, 2002), https://www.hnn.us/article/the-bancroft-and-bellesiles (reprinting Columbia University Trustees' announcement in December 2002 that the Bancroft prize in history, which had been awarded to a professor at Emory for a book on gun ownership in the colonial period, was being withdrawn based on "evidence of falsification" and other departures from scholarly practice as determined by a panel of historians from other universities). On much discussed failures of replication of studies in psychology, in particular, but also in other social sciences, pharmacology, neurology, and medicine, *see* Edith Beerdsen, *Litigation Science after the Knowledge Crisis*, 106 Corn. L. Rev. 529, 530–33 (2021) (describing as illustrative two studies in 2010 and 2011 that, by 2017, had been discredited); *see also* Mark Filip, Report of the Scientific Panel of the Special Committee of the Stanford University Board of Trustees

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sought to develop measures to prevent systemic problems in reliability.[16] The declining numbers of journalists and immense financial pressures faced by news organizations of all sizes may inhibit devoting more resources to improving accuracy, yet some journalists, academics, and organizations engage in regular critiques of what they see as flawed journalism.[17] Ideological commitments may impair, or be seen to impair, an institution's willingness to adhere to truth-seeking practices, including open inquiry.[18]

(July 17, 2023), https://boardoftrustees.stanford.edu/wp-content/uploads/sites/5/2023/07/Scientific-Panel-Final-Report.pdf (reviewing allegations of scientific misconduct by Stanford President Marc Tessier-Lavigne and finding manipulation of data by others; finding that he was unaware of the manipulation, but also that he "failed to decisively and forthrightly correct mistakes in the scientific record"); Stephanie Saul, *Stanford University President Will Resign After Report Found Flaws in His Research*, N.Y. Times (July 19, 2023), https://www.nytimes.com/2023/07/19/us/stanford-president-resigns-tessier-lavigne.html. *See generally Board of Directors*, Retraction Watch, https://retractionwatch.com/the-center-for-scientific-integrity/board-of-directors (last visited June 9, 2024) (sponsored by the Center for Scientific Integrity).

[16] *See* Beerdsen, *supra* note 15, at 546–47 (describing massive efforts by researchers to explore extent of replication failures, reasons therefor (including manipulability of "statistical significance" measures), and how research communities are developing remedial tools to combat methodological weaknesses that lead to unreliability, including by diminishing "analytical flexibility" as study goes along).

[17] For critical stances on particular pieces of reporting, *see*, *e g.*, Laura Wagner, *Journalism Professors Call on New York Times to Review October 7 Report*, Wash. Post (Apr. 29, 2024) (journalism professors calling for independent review of New York Times story alleging significant sexual violence during the October 7 Hamas attacks on Israel); Jeff Gerth, *The Press Versus the President, Part One*, Colum. Journalism Rev. (Jan. 30, 2023), https://www.cjr.org/special_report/trumped-up-press-versus-president-part-1.php (critically reviewing The New York Times's and other newspapers' reporting on Trump and Russia). For an organized effort to "provide reliability ratings for news outlets based on transparent journalistic criteria," *see* NewsGuard, at https://www.newsguardtech.com/ (last visited May 25, 2024). For examples of the considerable debate over how to characterize Fox News, *see*, *e.g.*, A. J. Bauer et al., *What Is Fox News? Partisan Journalism, Misinformation, and the Problem of Classification*, 16 Elec. News 18 (2022), https://journals.sagepub.com/doi/pdf/10.1177/19312431211060426 (suggesting the need to expand categories of news media to include partisan reporting sources like Fox); Eric Alterman, *Altercation: Not Now, Not Ever, Has Fox News Been Journalism*, Am. Prospect (June 18, 2021), https://prospect.org/politics/altercation-not-now-not-ever-has-fox-news-been-journalism/.

[18] In the press, NewsGuard's ratings suggest that both Fox News and MSNBC have failed to adhere to journalistic criteria for reporting much of the time. *See* NewsGuard, *Statement by NewsGuard on the Updated Ratings for the Websites of Fox News and MSNBC* (July 22, 2022), https://www.newsguardtech.com/press/newsguard-statementfox-news-msnbc-rating-updates/ ("For the first time since NewsGuard launched in 2018, both the Fox News and MSNBC sites are rated red, meaning they have earned an overall score of less than 60 out of 100. Their readers are urged to proceed with caution when they encounter content from these websites."). In academia, questions have been raised about one-sidedness in classroom teaching at major secular universities and about the political commitments of some religious universities, such as Liberty University, with a "Christian" identity according to its website. *See About Liberty*, Liberty Univ., https://catalog.liberty.edu/graduate/about-liberty/ (last visited June 9, 2024); *see*, *e.g.*, Jennifer Schuessler, *The Fight over Academic Freedom*, N.Y. Times (Feb. 16, 2024), https://www.nytimes.com/2024/02/16/arts/academic-freedom-harvard-universities.html; Nick Anderson, *Virginia's Liberty University: A Mega-College and Republican Presidential Stage*, Wash. Post (Mar. 23, 2015, 10:16 AM),

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These are human institutions, and failures at some levels are to be expected. These failures should be critiqued when they result from deviations from truth-seeking norms and corrected going forward. My point, for now, is that each type of institution employs distinctive mechanisms designed to sort good, accurate reporting from bad, unreliable reporting or good, reliable scholarship from bad, unreliable scholarship. Each knowledge institution has internal mechanisms designed both to reinforce the goal of accuracy at the outset and to provide checks when that goal is not met. At a time when both institutions face serious threats, attention to these mechanisms is of particular importance.

20.2 INDEPENDENCE AND THE IDEAL OF OBJECTIVITY IN THE APPLICATION OF PROFESSIONAL JUDGMENT

Biased precommitments are antithetical to the aspirations for objectivity, impartiality, or fairness associated with good scholarship and good journalistic reporting.[19] Even opinion journalism, which may be quite partisan or advocacy-oriented, should rely on a reasonable factual basis.[20] The search for genuine knowledge must be conducted independently of commercial or governmental interests in predetermined answers.

For most reputable journalists and academics, their perceived and actual independence – including from powerful influences of friends, family, business, or government – is an important element of professional self-understanding.[21] Press

https://www.washingtonpost.com/news/grade-point/wp/2015/03/23/virginias-liberty-university-a-mega-college-and-republican-presidential-stage/.

[19] A revolt against the ideal of "objectivity" in journalism may be more a rejection of a stance too accepting of official accounts, *see* Michael Schudson, Journalism: Why it Matters 48 (2020), or of assumptions that perfect knowledge is possible, rather than a rejection of efforts to provide better accounts of the world through critical attention to what is likely to be true and what is likely to be biased – whether that attitude is called "fair" or "objective." *See id.* at 52–58 (arguing that journalists should try to "forget" their prior knowledge and check their biases, while engaged in evidence gathering to provide not their own "views" but rather "reporting"). *Cf.* Stephen J. A. Ward, The Invention of Journalism Ethics (2d ed. 2015) (arguing for what he terms "pragmatic objectivity").

[20] Although this idea is oft asserted, *see, e.g.*, Parker Molloy, *Opinion Journalism Is Broken*, Dame Mag. (Apr. 13, 2022), https://www.damemagazine.com/2022/04/13/opinion-journalism-is-broken/ ("Good opinion writing is heavily fact-checked, thoroughly edited, and strives to make whatever arguments are available with the facts as they are."); Matthew M. Reavy, *Objectivity and Advocacy in Journalism*, 25 Media Ethics (2013) (describing advocacy journalism as "endeavor[ing] to be fact-based"), many critics of journalism fear that opinion writing now detracts from the role of more objective news reporting. *See, e.g.*, Molloy, *supra* note 20; Jakob Moll, *Opinion Pieces (Including This One) Are Ruining the Internet*, Nieman (June 3, 2022), https://nieman.harvard.edu/articles/opinion-pieces-online-news/.

[21] *See, e.g.*, A. G. Sulzberger, *Journalism's Essential Value*, Colum. Journalism Rev. (May 15, 2023), https://www.cjr.org/special_report/ag-sulzberger-new-york-times-journalisms-essential-value-objectivity-independence.php.

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and academic institutions deploy various methods, some overlapping, some distinctive, to protect that independence.

Some academics enjoy "tenure," that is, a guarantee of their position absent extraordinary justification for removal. Tenure is believed to contribute to the desired independence of thinking, research, writing, and teaching. Yet increasingly, teaching loads at colleges and universities are filled by nontenure track faculty, many of whom are part-time workers with relatively little job security or bargaining power.[22] Many journalists likewise work without any institutional guarantees of tenure or even long-term contracts in an increasingly shrinking part of the economy. Even without tenure protections, though, other factors may help sustain commitments to journalistic independence. These include working as part of a team, collaborating with an editor, and operating in a journalistic culture that values independence and accuracy of reporting.

Job tenure is not the only source of independence. Ethical norms in academia also insist on intellectual independence and integrity. The first principle in the American Association of University Professors's (AAUP) Statement of Professional Ethics provides that professors' "primary responsibility . . . is to seek and to state the truth as they see it . . . [and] practice intellectual honesty," while not allowing "subsidiary interests" to "seriously hamper or compromise their freedom of inquiry."[23] The ethos of objectivity or impartiality in professional judgment remains an important aspect of both academia and professional journalism, and it may be as dependent on institutional cultures as it is on structural protections of job security.[24] Institutional cultures in academia and journalism nurture norms about what it means to value accuracy, knowledge, and independent judgment.

The New York Times' *Ethical Journalism* handbook, for example, discusses several situations of apparent conflicts of interest that might threaten "the

[22] *See* USC Rossier Pullias Center for Higher Education, *Off the Track: The Rising Number of Non-Tenure-Track Faculty and What It Means for Students in Our Colleges and Universities*, https://pullias.usc.edu/download/off-the-track-the-rising-number-of-non-tenure-track-faculty-and-what-it-means-for-students-in-our-colleges-and-universities/ (last visited June 9, 2024) (In 1969, 78.3 percent of university professors were tenured or tenure track, but only 33.5 percent in 2009, with close to 48 percent employed as part-time faculty); *see also* Jacques Berliner Blau, *They've Been Scheming to Cut Tenure for Years. It's Happening*, Chronicle of Higher Education (Feb. 1, 2023) (reporting that a 2020–21 survey shows that 24 percent of faculty are tenured and another 9 percent are on a tenure track, with a trend toward replacing tenure track with contingent faculty positions).

[23] *See Statement of Professional Ethics*, Am. Ass'n of Univ. Professors, https://www.aaup.org/report/statement-professional-ethics (last visited June 9, 2024).

[24] Professional aspirations are even reflected in union positions in journalism and academia, which articulate the importance of "protecting academic freedom," Collective Bargaining, Am. Ass'n of Univ. Professors, https://www.aaup.org/programs/collective-bargaining (last visited June 9, 2024), and promoting "honesty" in "news, editorials, advertising, and business practices" and raising "the standards of journalism and ethics of the industry," The News Guild–CWA Constitution Art. 1, Sec. 2, https://newsguild.org/constitution/ (last visited June 9, 2024).

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impartiality and neutrality of The Times and the integrity of its report."[25] It prohibits accepting "free or discounted lodging and transportation except where special circumstances give little or no choice" and includes a sample letter to return gifts, along with a policy forbidding acceptance of all but "trinkets of minor value."[26] The Times also forbids accepting "anything that could be construed as a payment for favorable coverage or as an inducement to alter or forgo unfavorable coverage."[27]

Similarly motivated rules appear elsewhere in news organs and associations. The Guardian's Editorial Code of Practice and Guidance requires news staff to disclose financial interests that might "create the impression of a conflict of interest,"[28] prohibits journalists from holding public office,[29] and substantially limits the receipt of "freebies."[30] The Global Charter of Ethics for Journalists likewise provides for the avoidance of conflicts of interests by journalists and asserts that the "right of the public to truth is the first duty of the journalist."[31] (The contrast here with the alleged conduct of the tabloid National Enquirer in paying to "kill" a news story and keep it from the public is obvious.[32])

[25] *See Ethical Journalism*, N.Y. Times, https://www.nytimes.com/editorial-standards/ethical-journalism.html# (last visited Apr. 28, 2024) [hereinafter N.Y. Times Ethics].

[26] *Id.*

[27] *Id.*

[28] Guardian News & Media, Editorial Code of Practice and Guidance (2023), https://uploads.guim.co.uk/2023/07/27/GNM_editorial_code_of_practice_and_guidance_2023.pdf (last visited Apr. 28, 2024).

[29] *See id.* ("[I]t is important that outside interests do not come into conflict with journalists' work for GNM in any way that could compromise, or appear to compromise, the editorial integrity and reputation of individual journalists or GNM."; also requiring disclosures of personal or financial activities that might create impressions of potential conflicts and prohibiting public office holding while a journalist).

[30] *Id.* (prohibiting "any payment, gift or other advantage" that would "undermine accuracy, fairness or independence"). The policy requires reporting to the "senior duty editor" of attempts "to induce favourable editorial treatment through the offer of gifts or favours"; and requires reporting in footnotes "when an airline, hotel or other interest has borne the cost of transporting or accommodating a journalist" and states, "[a]cceptance of any such offer is conditional on GNM being free to assign and report, or not report, any resulting story as it sees fit."

[31] *See* International Federation of Journalists, Global Charter of Ethics for Journalists, https://www.ifj.org/who/rules-and-policy/global-charter-of-ethics-for-journalists (last visited Apr. 28, 2024) ("The journalist shall not use the freedom of the press to serve any other interest and shall refrain from receiving any unfair advantage or personal gain because of the dissemination or non-dissemination of information. He/she will avoid . . . any situation that could lead him/her to a conflict of interest in the exercise of his/her profession.. . . He/she will refrain from any form of insider trading and market manipulation."). This is not to say such ethical precepts are always adhered to. For a discussion of "envelope journalism," where reporters are paid by nonemployers to write particular things, *see, e.g.*, Katrin Voltmer, The Media in Transitional Democracies 208 (2013); Bahtiyar Kurambayev & Eric Freedman, *Ethics and Journalism in Central Asia: A Comparative Study of Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan*, 35 J. Media Ethics 31 (2019).

[32] On the National Enquirer's "catch and kill" approach to suppress news stories disadvantageous to Trump's campaign, *see, e.g.*, Julia Reinstein et al., *David Pecker Testified that Trump Stories*

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Some traditional news media have reflected their concern for independence by separating the reporting divisions from the business divisions – a separation that has come under strain in recent years as the economic challenges for legacy news media have increased.[33] For example, The New York Times forbids consultation between the news and business division, *except when* advertising needs are "directly related to the business of the news department;" the Times also limits and regulates (rather than prohibits) information exchange between the news and advertising departments.[34] Such consultations can play a critical role in helping news media navigate great economic challenges and maintain enough financial viability to be able to report independently on the news.[35] Yet if a particular story is shown to have been "pulled" or held back because of political or economic influence, it reflects badly on the press organ's reputation.[36]

Academia faces similar concerns about conflicts, although it handles them differently. In the last decades of the twentieth century, commercial and governmental collaborations in university-based research increased substantially, creating heightened opportunities for conflicts of interest.[37] Universities have developed policies and structures to help manage these new relationships,

Were "National Enquirer Gold." He Said He Killed Them to Help Trump, ABC News (Apr. 29, 2024), https://abcnews.go.com/US/david-pecker-testified-trump-stories-national-enquirer-gold/story?id=109708606.

[33] *See, e.g.*, Alessio Cornia et al., *'We No Longer Live in a Time of Separation': A Comparative Analysis of How Editorial and Commercial Integration Became a Norm*, 21 Journalism 172 (2020), https://doi.org/10.1177/1464884918779919; Ira Basen, *Breaking Down the Wall*, Ctr. for Journalism Ethics (Dec. 19, 2012), https://ethics.journalism.wisc.edu/2012/12/19/breaking-down-the-wall/. *See generally* Martha Minow, Saving the News (2021).

[34] *See* N.Y. Times Ethics, *supra* note 25.

[35] *See* Adam Nagourney, The Times 388–97 (Kindle, 2023) (describing discussions between news and editorial staff about whether to have a paywall for The N.Y. Times' online stories).

[36] *See, e.g.*, Michael Calderone & Jason Schwartz, *Wall Street Journal Staffers Accuse Editor of Suppressing Story*, Politico (Mar. 29, 2018), https://www.politico.com/story/2018/03/29/wall-street-journal-editor-story-suppression-accusations-492393; David Folkenflik, *'Washington Post' CEO Tried to Kill a Story About Himself. It Wasn't the First Time*, NPR (June 7, 2024), https://www.npr.org/2024/06/07/nx-s1-4995105/washington-post-will-lewis-tries-to-kill-story-buzbee.

[37] *See, e.g.*, Peter J. Harrington, *Faculty Conflicts of Interest in an Age of Academic Entrepreneurialism: An Analysis of the Problem, the Law and Selected University Policies*, 27 J. Coll. & Un. L. 775 (2001); Peter Lee, *Patents and the University*, 63 Duke L. J. 1 (2013) (discussing case law "reflecting a new normative vision of universities as commercial entities" with the same obligations under the patent laws as other commercial actors). For a recent example of academic collaboration with business and government in scientific innovation, *see* Anne J. Manning, *Glimpse of Next Generation Internet*, Harv. Gazette (May 15, 2024) (describing the work reflected in a new paper on two-node quantum networking as "supported by the AWS [Amazon Web services] Center for Quantum Networking's research alliance with the Harvard Quantum Initiative, the National Science Foundation, the Center for Ultracold Atoms (an NSF Physics Frontiers Center), the Center for Quantum Networks (an NSF Engineering Research Center), the Air Force Office of Scientific Research, and other sources").

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including technology transfer offices and offices of sponsored programs.[38] These programs can involve policies that, in contrast to general academic norms of openness, permit researchers to withhold their findings, for example, to allow time for patenting. In some fields, individual faculty members may develop separate consulting businesses related to research work patented by the university, which complicates their roles as members of the academic community.[39] In these respects, scholars may be much more financially involved with outside influences than are journalists.

Universities and press organizations increasingly adopt conflict of interest policies designed to prevent – or at least disclose – influences that might undermine the independence of professional judgment. At some news media companies, policies limit involvement between journalists and the subjects they are writing about, and editors may reassign reporters if involvements create the appearance of partiality.[40] In academia, the scholar herself may be the primary judge of whether her work presents conflicts of interest.[41] And in some fields of research, such as anthropology, the role of participant observation as a research method is relatively well-established. While news media may tightly control what other entities their reporters can work for (for example, prohibiting freelance work for competitors[42]), academics – especially in the sciences – frequently collaborate with faculty at other institutions. Competition among journalistic media is the norm; academia can be very competitive, but there are also major areas of collaborative work. Scholarly journals increasingly require a statement either disclaiming or disclosing potential conflicts of interest, and many universities have policies requiring disclosure of potential conflicts of interest.[43]

[38] *See* Christopher J. Ryan, Jr, et al., *The Hidden Cost of University Patents*, 21 Berk. Bus. L. J. 203, 208 (2024).

[39] *Cf.* Peter Lee, *Innovation and the Firm: A New Synthesis*, 70 Stan. L. Rev. 1431, 1482–87 (2018) (describing a range of arrangements involving universities, firms, and faculty inventors); Brenda M. Simon, *Preserving the Fruits of Labor: Impediments to University Inventor Mobility*, 89 Tenn. L. Rev. 1 (2021).

[40] N.Y. Times Ethics, *supra* note 25, at Pursuing the News.

[41] *See, e.g.*, *Conflict of Interest/Commitment Policy*, Carnegie Mellon Univ., https://www.cmu.edu/policies/administrative-and-governance/conflict-of-interest-commitment.html (last updated Mar. 27, 2012) ("The first and most important line of defense against conflicts of interest or commitment must be the university members themselves.").

[42] *See* N.Y. Times Ethics, *supra* note 25, at Work Outside the Times.

[43] For policies at Carnegie Mellon, *see, e.g.*, *Conflict of Interest/Commitment Policy*, *supra* note 41. For policies at Harvard, *see, e.g.*, Harvard University Office of Labor and Employee Relations, *Conflicts of Interest or Commitment*, *in* Staff Personnel Manual (dated 2007), https://hr.harvard.edu/staff-personnel-manual/general-employment-policies/conflicts-interest-or-commitment (last visited June 22, 2024); Harvard University Office of the Vice Provost for Research, *Conflicts of Interest and Commitment*, *in* Research Policies & Compliance (dated 2012), https://research.harvard.edu/researchpolicies-compliance/financial-conflicts-of-interest/; Harvard University Institutional Conflicts of Interest Policy (2020), https://bpb-us-e1.wpmucdn.com/websites.harvard.edu/dist/f/106/files/2023/10/icoi_policy.pdf (last visited June 22, 2024). For a more recent reiteration of disclosure requirements, *see*, e.g., Office of the Vice Provost for Research, Conflict of Commitment Policy (June 1, 2024) chrome-

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Disclosure is no panacea,[44] but it is a recognition of the importance of upholding ethical norms of independent judgment.

Both journalists and academics may be influenced in their choice of research or writing topic by incentives from outside and within their institutions. In academia, the interests of leading journals, or the availability of grants, may influence scholars' topics of inquiry. Some academics may choose topics regarded as easier to publish on, in the interest of obtaining tenure or other academic benefits. Grants are more likely to be available for novel findings (at least in some scientific fields), which may influence the incentives of the researcher – discouraging replication studies, for example, despite their importance for the continued verification of initial results. In law, there are "popular" topics in which student editors (who play an important role in the US scholarly legal literature) or even academic editors are deemed more likely to have an interest.

In the press, the increased conjoining of business with reporting concerns reflects the reality that the press (whether traditional legacy press or new blogs or websites that want to be viewed as impartial news sources) must attract sufficient audience share to sustain themselves. Publishers care, as they usually have, about net revenue; reporters care about how many followers they have on Twitter or Facebook. Thus, financial and popular incentives may influence reporters in what kinds of topics they pursue, as may the ideological commitments of their employer. (This raises the question of whether stronger norms of impartiality and independence exist in what is reported in a story than in the selection of what topics to pursue or report on.[45])

While the ideal of independence is important, it is unsurprising that neither academic research nor news reporting, as human institutions in a world of finite resources and attention, are conducted based only on the abstract importance of the subject or the internal interests of the researcher. For the press, the combined, related pressures of current popular interest, the role of clickbait and unseen algorithms, and financial sustainability (which may favor what those who are advantaged in society are interested in) may play a larger day-to-day role on topic choice than in parts of academia. For academics, the rise of untenured faculty in the US may threaten both the time and the independence faculty have for research. Yet

extension://efaidnbmnnnibpcajpcglclefindmkaj/https://research.harvard.edu/files/2024/05/Conflict-of-Commitment-Policy-June-2024.pdf.

[44] *See generally* Omri Ben-Shahar & Carl E. Schneider, *The Failure of Mandated Disclosure*, 159 U. Pa. L. Rev. 647, 652 (2011). Note that in order for disclosure to mean much, watchdogs – like journalists – are needed to follow and report on the disclosures.

[45] *Cf.* Cornia et al., *supra* note 33 (describing the new norm of integration as influencing in some areas what topics to cover more and what topics to cover less, without necessarily being told what they "have to follow," and keeping political reporting distinct from business interests of news outlet). For related discussion, *see* Anya Schiffrin, *Same Beds, Different Dreams?: Charitable Foundations and Newsroom Independence in the Global South*, Center for International Media Independence 17–19 (2017), https://www.cima.ned.org/resource/beds-different-dreams-charitable-foundations-newsroom-independence-global-south/ (describing differing views on donor designation of topics to be covered and editorial independence).

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journalists and academics retain considerable freedom on what topics to write on. The aspiration for independence of judgment in what is reported or what is written remains an important distinguishing feature of both. A major challenge for years to come is how to sustain both forms of independence as they face pressures from economic change, political controversies, and unusually virulent attacks.

20.3 TIME, RESOURCES, AND THE NATURE OF KNOWLEDGE DEVELOPMENT

The different time scales of journalism and academia influence the kind of topics and the depth of coverage that academic and journalistic work produce. Universities – major ones, at least – will provide a depth of knowledge-related resources in libraries, access to scholarly databases, scientific equipment, and the collective presence of scholarly experts in many fields. Press organizations are likely to be quite differently and perhaps more thinly resourced, but journalists may be able to more readily gain access to information from current officeholders than academics.

Daily or even weekly journalists report on sudden, unexpected events[46] and look for "scoops" – that is, important newsworthy developments that have not been discovered or reported by others. This task is becoming more challenging given the widespread public sharing of breaking news on social media, including reporting by noninstitutional reporters. Professional journalists who develop networks of reliable information providers are still able to produce such scoops, especially in areas in which information is tightly controlled and not accessible to casual observers.[47] Daily reporters, moreover, regularly work against very tight deadlines. Even feature reporters for newspapers and magazines may be working on deadlines related to the topicality of their subjects. Investigative journalists may work on a time frame of months pursuing a story in depth – but if they are associated with news media, typically not years, as many academics may spend on a single book or article.

Academics face different time pressures than do members of news media. As noted above, writing even a single good article for publication in an academic journal can take months or even years; academic books can take even longer. Moreover, most faculty in the United States also have teaching responsibilities; devoting time to good teaching means that most faculty usually cannot devote their work life exclusively to research.[48] Untenured academics who are hoping for tenure

[46] On the value of such event-driven reporting, *see* Michael Schudson, *Why Democracies Need an Unlovable Press*, *in* Freeing the Presses: The First Amendment in Action (Timothy E. Cook ed., 2005).

[47] *See generally* National Security, Leaks and Freedom of the Press: The Pentagon Papers Fifty Years On (Geoffrey R. Stone & Lee C. Bollinger eds., 2021).

[48] This teaching obligation is a key difference between university faculties and journalists. Unlike leading journalists, university faculty members are expected to teach students as well as develop

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face definite time pressures to produce published scholarship before tenure consideration; in systems with regular review of all faculty, pressures to show regular research publications continue throughout an academic career. Junior faculty and those outside the United States with competitively ranked systems based on regular review of faculty publications have serious incentives to frequently produce scholarship that is placed in well-rated journals.[49]

It continues to be the case that academic life allows more time for reading and reflection than most journalism positions do. Yet commentators have expressed concerns about the prioritizing of quantity over quality in articles in academia. Professors in highly competitive fields are facing increased pressure to produce more papers in shorter time periods, although this is not the same type of time pressure as is faced by journalists who work under daily deadlines. Academic time scales allow – or, in some cases, require[50] – more time for deep research, reflection, and multiple drafts in ways that journalism often does not. This gives rise to an expectation of fewer errors in academic work than in daily journalism. Nonetheless, although the time pressures differ, they exist in both fields.

The analytical tasks that can be expected of academic work and journalism also differ, though there are areas of overlap. Some areas of academic inquiry, such as in the physical sciences, are simply beyond the capacities of those who do not have a quality lab to work in. Some areas of academic inquiry are not sufficiently contemporary, or take too long to research, to be possible (or of interest) for journalists.

The press is better situated than academia to quickly produce daily or weekly reporting and in-depth investigations that are published close in time to the events being investigated. Unlike academics, press outlets typically do not have processes that can delay, sometimes by many months, even being able to start interviewing sources.[51] Yet the search for the popular (or sensational) does not always correspond with what is important to public well-being; commercial incentives may be at war

knowledge. The obligation to teach students both constrains time for developing new knowledge and, at least for classroom teaching, may impose a different set of obligations on faculty than would apply to, say, "opinion" journalism. *See* Edward Shils, The Academic Ethic 99–100 (1984) (arguing that classroom faculty have obligations "not to pretend that what is controversial is not controversial," and to be "scrupulous to recommend reading which will make the idiosyncratic bent of [their own] teaching obvious," presumably by introducing the range of views on contested subjects that have reasonable degrees of support). By contrast, journalistic opinion writing does not have the same obligation of fair presentation of competing views but can offer more particular views of a subject.

[49] On regular publication assessments in the UK, *see* REF 2029: Research Excellence Framework, https://www.ref.ac.uk/ (last visited May 22, 2024).

[50] Academic research on "human subjects" involving interviewing living persons, having living persons participate in social or cognitive experiments, or even surveying living persons, as well as the testing of medical drugs, devices, or approaches may require approval in advance of undertaking the research by IRBs. *See supra* note 12.

[51] On IRB review, which can delay research involving human subjects while awaiting approval, *see supra* notes 12 and 50.

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with reporting that informs citizens about events relating to government policy. The topicality that news media see – reporting on current developments in government in regulation, in politics, and in events and trends affecting people's daily lives – is wide, but under these pressures, still limited.

In contrast, the choice of topics for academic research in universities is quite broad and not constrained by subjects of current topical interest. Classicists pore over ancient texts in languages no longer spoken; archeologists explore understandings of peoples and societies' lives from the past; historians pursue improved understandings of different periods of history of different peoples and countries around the world; physicists seek to improve understanding of the smallest particles in the universe and the largest distances between objects in the universe; biologists and chemists work to improve understandings of processes of physical change. Scholars can pursue research into more lasting forms of knowledge than journalists, deepening or challenging existing understandings in philosophy, history, literature, and art, or testing the continued validity of scientific beliefs or mathematical propositions and developing new ones. Sometimes these avenues of research yield interesting perspectives on current topics, but often they do not, yet they contribute to the development of valuable human knowledge by engaging with the world and existing understandings in an epistemically open and (hopefully) rigorous way.

In areas of overlapping interests, which may arise in fields of social sciences, scholars may be better – in part because they have more time – at developing and testing theoretical explanations for phenomena, periodizing large amounts of historical data, and more generally identifying patterns across time and societies. Journalism, on the other hand, is superior to most academic work in its currency, which can provide raw material for historians and other academics by offering a daily diffusion of new information on contemporary life, government, elections, candidates for and incumbents in public office, emerging problems, conflicts, and trends. Journalism also continues to provide a forum for curated public discussion through letters to the editor and opinion pieces, a feature not so available with respect to academic work. Occasionally, journalism has also risen to provide astonishingly deep levels of research requiring immense collaboration in the acquisition and presentation of data, as exemplified by The New York Times' daily charts on the COVID pandemic.[52]

The time constraints and substantive work of journalists and academics share some characteristics but also differ in important ways. Do journalists chase stories that have little long-term value but appeal to currently popular obsessions? Do academics pursue topics of interest only to a small number of other academics,

[52] *See Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times, https://www.nytimes.com/interactive/2021/us/covid-cases.html (last updated Mar. 23, 2023) (reporting on the end of its daily COVID data reporting).

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or, alternatively, write in "safe" or "politically correct" well-ploughed veins? Yes, all of these occur, as well as more concerning conduct.

Yet, both academics and journalists regularly produce highly valuable reports, discoveries, and analyses, which may inform the public of major problems with government or business (often being concealed by those who benefit from them) or offer the kind of medical discoveries that have extended life spans dramatically. History suggests that only free and open fields of inquiry – that will inevitably include some low-value or mistaken research and reporting – will produce these and other such valuable results. Increased awareness of these benefits, increased attention to the resources needed to sustain knowledge institutions, and constructive critique to help institutions improve their own work will benefit both knowledge institutions and the constitutional democracies to which they are so important.

20.4 ETHICAL CONSTRAINTS SUPPORTED BY PROFESSIONAL OR RELATED ORGANIZATIONS

Books about universities tout these organizations' importance to advances in science, cross-cultural knowledge, competitiveness (in business and more generally), amelioration of poverty, and government policy or public administration.[53] Some also emphasize their contributions to democracy more generally and to social equality.[54] Books about the press tout its importance to civic knowledge, communication among readers, "watchdogging" those in positions of (private or public) power, and holding them to account.[55] Yet these books do not as often claim that the press facilitates effective government or business competitiveness, even though some of the origins of the European press in newsletters concerning commercially valuable information plainly existed to serve business interests[56] and even though there is a long linkage between the press and government functions (and a link between local "news deserts" and corruption).[57] Notably, writers do not call on the press to develop innovations that enable better business practice or governance, while they do assign this task to universities. The ethos of the press as independent

[53] *See, e.g.*, Derek Bok, Universities and the Future of America (1990).

[54] *See, e.g.*, Ronald J. Daniels et al., What Universities Owe Democracy (2021).

[55] *See generally* Schudson, *supra* note 19.

[56] For descriptions of the development of commercial newsletters in Europe in the seventeenth and eighteenth centuries, *see* David H. Tucker et al., *The First Newspapers*, Britannica (last updated May 20, 2024), https://www.britannica.com/topic/publishing/The-first-newspapers; Paul Starr, The Creation of the Media: Political Origins of Modern Communications 31 (2004).

[57] *See* Timothy E. Cook, Governing with the News (1998) (arguing that the press as a whole was an institution and that it had a principal function of serving as a tool of government policymaking by those in government or concerned with government policy). On how loss of local newspapers is associated with a rise in corruption, *see*, e.g., Ted Matherly & Brad N. Greenwood, *No News Is Bad News: The Internet, Corruption, and the Decline of the Fourth Estate*, 48 MISQuarterly 699 (June 2024).

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and as reporting on rather than "making" the news would resist such instrumentalization. Consequently, a quite different ethos animates academia and journalism.

Despite this and other differences, both journalism and academia have commitments to pursuing genuine knowledge, and both have developed ethical principles, which may be reinforced by standards of conduct adopted by specific institutions (that is, specific newspapers or universities). The ethical standards of both entities include an emphasis on transparency, accuracy, and truth-seeking. I have discussed the ethical, truth-seeking, and information-verification norms of the press in earlier writing.[58] Below I discuss academic ethics.

The AAUP Statement on Professional Ethics asserts, as a basic obligation of faculty: "Their primary responsibility to their subject is to seek and to state the truth as they see it … They accept the obligation to exercise critical self-discipline and judgment in using, extending and transmitting knowledge. They practice intellectual honesty."[59] In succeeding paragraphs, the statement addresses obligations to students, colleagues, the institution, and their community.[60]

Discrete disciplinary associations of faculty across universities often reflect on the ethics of scholarship in their fields. For example, the publishing arm of the American Institute of Physics sets technical precepts for authors, including the expectation that "results of research should be recorded and maintained in a form that allows analysis and review, both by collaborators before publication and by other scientists for a reasonable period after publication."[61] The Institute also establishes norms, including that "fabrication of data is an egregious departure from the expected norms of scientific conduct, as is the selective reporting of data with the intent to mislead or deceive, as well as the theft of data or research results from others."[62] Similarly, in the humanities, the American Historical Association says that while historians have much they disagree on, they all agree on some precepts: "All historians believe in honoring the integrity of the historical record. They do not fabricate evidence. Forgery and fraud violate the most basic foundations on which historians construct their interpretations of the past."[63]

[58] Jackson, *On "the Press," supra* note 2 at 289–91.

[59] Statement on Professional Ethics, Am. Ass'n of Univ. Professors, https://www.aaup.org/report/statement-professional-ethics (last updated 2009).

[60] For the AAUP's Statement on Professional Ethics, *see supra* note 59. As the AAUP statement also notes, the enforcement mechanism for academia differs from that in law and medicine: it points out that, unlike in law and medicine, where there are statewide professional associations that enforce codes of conduct, in academia the expectation is that the individual institution of higher education will enforce. *Id.* On the professions as "knowledge communities," *see* Claudia E. Haupt, *Professional Speech*, 125 Yale L. J. 1238, 1248–49 (2016).

[61] *Ethics for Authors*, AIP Publ'g, https://publishing.aip.org/resources/researchers/policies-and-ethics/authors/ (last visited May 8, 2024).

[62] *Id. See also id.* ("Proper acknowledgment of the work of others used in a research project must always be given.").

[63] *Statement on Standards of Professional Conduct*, Am. Hist. Ass'n, https://www.historians.org/jobs-and-professional-development/statements-standards-and-guidelines-of-the-discipline/statement-on-standards-of-professional-conduct (last updated 2023).

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Some ethical norms differ between journalists and academics. Journalists typically name their sources, and they generally contend that the sources a reporter relies on for a story should only be kept confidential in special circumstances. In contrast, social scientists who do survey research are expected to take measures to maintain the confidentiality of their survey respondents. For both reporters and academics, the obligation to protect the confidentiality of a source once a promise of confidentiality has been given may raise conflicting moral and legal obligations.[64] On occasion, journalists have gone to jail rather than comply with a subpoena and reveal an anonymous source without the source's consent. Some condemn those journalists for obstructing justice, while others hail them as heroes. Most US states provide some protection for journalists from forced disclosure of confidential sources. Although similar protection for academics is less well established, they have sought it on similar grounds and on occasion been successful.[65] As many state journalist-shield laws recognize, sometimes confidentiality assurances are the only way to verify and get an important story of government or private malfeasance out to the public.

The aggressive critique that follows public disclosure of departures from ethical standards suggests the continued relevance of these norms in both journalism and academia. There are too many such departures. But they attract controversy and critique – through which norms of honest, truth-oriented work can be upheld.

20.5 KNOWLEDGE INSTITUTIONS' INTERDEPENDENCE AND CONSTITUTIONAL DEMOCRACY

The shared aspiration of journalism and academia to honesty and to "extending . . . knowledge"[66] is reflected in their intellectual *interdependence*. In earlier work, I have provided examples of how the press, universities, and government offices that collect and provide data draw from one another's work and are, in a sense, parts of an interdependent epistemic infrastructure; the press may play an important role in circulating new ideas from academia.[67] However, the interdependence of

[64] *See generally* Michael Farrell, *Anonymous Sources*, Soc'y of Pro. Journalists, https://www.spj.org/ethics-papers-anonymity.asp (last visited June 9, 2024).

[65] *See, e.g.*, Frank Murray, *Boston College's Defense of the Belfast Project: A Renewed Call for a Researcher's Privilege to Protect Academia*, 39 J.C. & U.L. 659 (2013); Cusumano v. Microsoft Corp., 162 F.3d 708, 714 (1st Cir. 1998) (upholding lower court decision refusing to compel discovery for, inter alia, confidential information academic researchers had obtained and stating: "Academicians engaged in pre-publication research should be accorded protection commensurate to that which the law provides for journalists.").

[66] AAUP Statement, *supra* note 59.

[67] *See Jackson, On "the Press," supra* note 2 at 319–20, nn.193–200. For additional examples, *see, e.g.*, Richard L. Hasen, *Racial Gerrymandering's Questionable Revival*, 67 Ala. L. Rev. 365, 380 n.79 (2015) (citing the work of journalist Jason Zengerle); Frank D. LoMonte & Daniel Delgado, *The Importance of Accessible Government Data in Advancing Environmental Justice*, 47 Wm. & Mary Env't L. & Pol'y Rev. 827, 864–65 (2023) (discussing series in the Tampa Bay Times, which won a Pulitzer in 2022 for investigative journalism, on conditions inside a lead

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knowledge institutions goes beyond these kinds of instances of direct utilization by one kind of institution of the work of another. Historically, increases in education and literacy helped promote press readership.[68] More generally, knowledge institutions can play a role of supporting overarching values that benefit society and government in constitutional democracies – of "truth, science, morality and arts in general," as the Continental Congress proclaimed about the role of the press in 1774,[69] and the ideals of disciplined truth-seeking searches for better knowledge.

These overarching values include a commitment to rationality in decision-making. This commitment, in turn, requires that people have skills of critical inquiry and understanding, including skills in evaluating evidence that bears on important public questions. These values also include the importance of public knowledge of government – not just knowledge of what the institutions are but understanding of how government actually works – appreciating the need for trade-offs in desired ends, for example, or developing an ability to distinguish abuses of power from ordinary disagreements. For these tasks, President Washington and many other US presidents thought a national university was required.[70] The national universities that exist today, created through more decentralized mechanisms, continue to be urged to consider whether they are providing the education that participants in our constitutional democracy need.[71]

From the earliest days, the press has been viewed as playing a central role in serving as a watchdog that could criticize government officials, providing a forum for letters and opinions from a range of readers, and promoting public knowledge of government. A postal subsidy for newspapers was provided in the 1792 Act establishing the postal service.[72] Even earlier, in September 1789, the very first Congress mandated the secretary of state to receive all enacted laws and to assure their publication in "at least three public newspapers."[73]

smelting plant). Journalists may also benefit from academic work that provides a context for understanding more specific incidents or trends on which they report.

[68] Paul Horwitz, First Amendment Institutions 147 (Kindle 2014).

[69] Starr, *supra* note 56, at 76 (quoting from the Continental Congress "address to the Inhabitants of Quebec").

[70] *See* George Thomas, The Founders and the Idea of a National University: Constituting the American Mind 2–6 (2014) (arguing that for its proponents, a national university would help inculcate the habits of mind and knowledge that would enable the organs of our constitutional government to work).

[71] *See* Daniels et al., *supra* note 54, at 86–130 (discussing "free minds" and "educating democratic citizens").

[72] *See* https://about.usps.com/who/profile/history/periodicals-postage-history.htm (noting "rock bottom rate" for newspaper delivery specified by Congress in 1792 Act).

[73] 1 Stat 68, Sept. 15, 1789, an Act for the Safekeeping of Records of the United States. One might contrast this statute with what Stephen Ward reports was an action by the British House of Commons in 1660 making it a criminal offense to report on parliament. Ward, *supra* note 19, Kindle p. 147.

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Finally, these knowledge institutions and others together help promote the idea that the truth, or truths, or better understandings of the world, are worth pursuing. Without the idea that there *is* knowledge – that at any given time, there are better (more accurate) and worse (less accurate) understandings of facts and trends, physical and social processes and causes; and that study, reason, and consideration of evidence can help arrive at ever better understandings – it is almost impossible to find a shared epistemic space for democratic self-governance. There are also necessarily uncertainties in the real pursuit of knowledge, which both universities and journalists can help us understand. But trying to have a democracy without some shared basis for establishing what is, at least contingently, accepted as usable knowledge is almost impossible to imagine.

Whether the press or universities will retain their current institutional and economic forms is a serious question.[74] The press, in particular, has undergone a dramatic economic and professional shift over the last two decades; governments in recent years have "disinvested" in public universities; and public trust in both news media and universities has declined markedly.[75] But the functions these institutions serve – of attempting honestly and accurately to report on daily events and attempting honestly and accurately to understand the human and natural world in all its manifestations – are essential to good societies. In helping to hold governments accountable, they are of particular importance to constitutional democracies, where decisions by an informed citizenry are at the theoretical foundation of the legitimacy of the state.

[74] New models of journalism are struggling to emerge. *See*, e.g., Ellen Clegg & Dan Kennedy, What Works in Community News: Media Startups, News Deserts and the Future of the Fourth Estate (2024); Alexandra Bruell, *How the Atlantic Went from Broke to Profitable in Three Years*, Wall St. J. (Mar. 28, 2024).

[75] *See*, e.g., William C. Kirby, *Introduction: International Innovation & American Challenges*, Daedalus 7 (Spring 2024) ("[F]orty-three of all fifty states have disinvested in higher education since 2008"); Gallup, Confidence in Institutions (reflecting decline from 37 percent in 2000 to 18 percent in 2023 of persons with a "great deal" or "quite a lot" of confidence in newspapers, and a similar decline for television news; for universities, reflecting a decline of 57 percent to 36 percent of those with "great deal" or "quiet a lot" of confidence in higher education), https://news.gallup.com/poll/1597/confidence-institutions.aspx. The causes of these declines are too complex to fully explore here, but likely include well-publicized lapses by these institutions (or their members) from standards of independence, competence, and impartiality, as well as unprecedentedly sustained attacks on the institutions as such by high public officials.

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