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The Right to Know

Wesley Lowery

In June 1945, the U.S. Supreme Court issued a 4,900-word opinion that significantly curbed the power of an aspiring monopoly known as the Associated Press (AP).[1]

The case arose out of the wire service's adoption of two new bylaws. The first allowed its 1,200 member newspapers to block their competitors from joining the service, thus denying a large number of news outlets access to the vital information provided by the wire. The second banned member newspapers from selling their content directly to any nonmember newspaper. In short, news organizations that were members of the AP had access to news from around the country and the world, but those that were not part of the news agency were denied not only the AP's wire content but also all content produced by the member papers themselves. If one of their competitors managed to gain AP membership, then they were banned from joining as well. The Supreme Court, however, ruled that these new policies were antitrust violations under the Sherman Act, which, among other things, explicitly prohibits businesses from banding together to undercut their competition.

Among its defenses, the AP had argued the government was infringing on its constitutionally protected press freedoms. But Justice Hugo Black, writing for the Court, rejected that argument and held that the First Amendment did not allow the AP to run nonmember papers out of business. In fact, he asserted that the constitutional provision functioned to ensure the opposite. The First Amendment, Black wrote, "rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public," and "a free press is a condition of a free society."

Rather than simply a ban on government interference, Black identified in the First Amendment an *affirmative* right, held by each American, to have access to the breadth and depth of information that only a robust and diverse press can provide. Black's son would later recall that his father believed press freedom meant more to "the preservation of our democratic republic than" any other part of the

[1] Associated Press v. United States, 326 U.S. 1 (1945).

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Constitution, even as he believed it was necessary to break up concentrated media power and "(disperse) that power more equably."[2]

Black's contention that there is a public right to robust, accurate information has been a core value held by many of America's most consequential journalists, who understood it to be a central prerequisite of any nation that aspires to be equal, equitable, and just: "The people must know before they can act. And there is no educator to compare with the press," wrote Ida B. Wells.[3]

Half a century later, Ralph McGill expounded on this idea, declaring, "Freedom of the press is not the personal property of any one editor or publisher, or of any association of them. It is not something that can be locked in the safe at night . . . It is merely one of the guarantees to the people. It is their property."[4]

Most often taken as ensuring a freedom *of* the press as an industry, Black's ruling suggests a more proper reading of the First Amendment provides an individual right *to* the press, namely, that citizens in our democracy will have access to reliable, accurate, and comprehensive information in order to empower their full enfranchisement in our democracy, with the promise that each citizen has a *right to know*.

A free press is often heralded as a key cornerstone of American democracy, functioning as a vital institution tasked with informing the public and holding those in power accountable. Yet, as the industry faces an existential crisis, with the collapse of traditional business models and the rise of deep political polarization amid a sea of misinformation and propaganda, it has become increasingly clear that thinking of press freedom only as a market that must be protected from government interference cannot sustain the kind of robust, diverse, and accessible press that a healthy democracy requires. This chapter argues that to truly fulfill the promise of a "right to know" for all people, we must reimagine the relationship between the press and the public and consider bold new forms of public support for journalism.

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By the time of Black's opinion in *Associated Press*, the American press had evolved far beyond what it was 150 years earlier, when James Madison first crafted the language that would become the First Amendment. In his later writings, Madison argued that in a representative republic in which citizens elect their leaders, care of the public opinion is a paramount concern. "Without the rule of public opinion, government cannot rightfully be considered free," wrote historian Colleen A. Sheehan of Madison's ideology, noting that he and other founders took it as a given that there would be a vibrant, diverse, privately owned American press and that the government had a proactive obligation to ensure that it remained so. "In Madison's understanding of free government, the representative is thus made

[2] Hugo Black, Jr., My Father: A Remembrance (1975).
[3] Ida B. Wells, *Self-Help*, *in* Southern Horrors: Lynch Law in All Its Phases (1892).
[4] Ralph McGill, *There Is Time Yet*, The Atlantic, Sept. 1944.

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responsible for influencing and guiding public opinion . . . Because public opinion is sovereign in a free society, the republican statesman is obliged to advance its formation and expression."[5]

By the late 1800s and early 1900s, the American press had transformed from a relatively niche industry in which men of letters debated the vital issues of the day into loyal organs of competing political parties and then, finally, into an increasingly powerful form of mass communication. "Far more important than any part they ever played in politics, newspapers finally established themselves in an indispensable role as journals of vital information," opined Ken Cooper, the longtime chief executive of the Associated Press.[6]

From the beginning, however, this new form of the press, charged with disseminating nonpartisan information, faced criticism for failing to live up to the nobility of its mission. As the century turned, newspaper titans Joseph Pulitzer and William Randolph Hearst pioneered "yellow journalism" – a sensationalist style that blended fact and fiction in order to maximize profits. In turn, Adolph S. Ochs founded The New York Times on the promise that its news reports would be unbiased, staid, and impartial. Yet, in response to The Times' failures to live up to its own stated standards, critics like Walter Lippmann lambasted the paper, noting that for all its vows of impartiality, its reports often depicted a version of reality skewed by its journalists' establishmentarian biases. "The current theory of American newspaperdom is that an abstraction like the truth and a grace like fairness must be sacrificed whenever anyone thinks the necessities of civilization require the sacrifice,"[7] Lippmann wrote, accusing The Times of censoring views and ignoring facts that cut against status quo beliefs.

Newspaper editors largely rejected Lippmann's calls for rigorous journalistic methods (even as they later developed a self-mythology in which they claimed him as their patron saint). Generations of critics echoed Lippmann and other early twentieth-century press dissidents concerning the dangers of a greedy, lazy, irresponsible commercial press and were similarly dismissed.[8]

[5] Colleen A. Sheehan, *The Politics of Public Opinion: James Madison's "Notes on Government,"* 49 Wm. & Mary Q. 609 (1992).

[6] Kent Cooper, The Right to Know: An Exposition of the Evils of News Suppression and Propaganda (1956).

[7] Walter Lippmann, Liberty and the News (1920).

[8] *History*, News Leaders Association, https://members.newsleaders.org/asne-history (last visited June 26, 2024) (noting that the American Society of News Editors, now the News Leaders Association, was founded in 1922 by newspaper editors angry and defensive about similar criticisms leveled by NAACP president Moorfield Storey and journalist Frederick Lewis Allen that called for a more considerate, responsible press); Ben H. Bagdikian, The New Media Monopoly (2004) ("The news media suffer from built-in biases that protect corporate power and consequently weaken the public's ability to understand forces that create the American scene. These biases in favor of the status quo . . . do not seem to change materially over time.").

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During World War II, University of Chicago President Robert Hutchins and Time magazine founder Henry Luce convened a thirteen-member panel of prominent scholars to examine the state of the press. In its 1947 final report, the Hutchins Commission observed and warned that

> [News] agencies can facilitate thought and discussion. They can stifle it. They can advance the progress of civilization or they can thwart it. They can debase and vulgarize mankind. They can endanger the peace of the world; they can do so accidentally, in a fit of absence of mind. They can play up or down the news and its significance, foster and feed emotions, create complacent fictions and blind spots, misuse the great words, and uphold empty slogans . . . [t]heir scope and power are increasing every day as new instruments become available to them. These instruments can spread lies faster and farther than our forefathers dreamed.[9]

If the charge of the press is to nurture our public opinion, which in turn powers our democracy, then the performance of the press can be judged by the health of that democracy. By that measure, then as now, there is no question our press has fallen desperately short.

The Hutchins Commission noted that the American press was controlled by private businessmen who too often utilized their presses to spread divisiveness, misinformation, and political propaganda. Its members warned that an irresponsible press that prioritized profits over the public good would result in an American populace willing to support significant governmental impositions on press freedom. Today, the leader of one of our country's major political parties proclaims the press "the enemy of the people," vows to alter libel and defamation laws in order to undercut press freedoms, and directs his raucous crowds to target individual journalists who fail to indulge him. We are living the Hutchins Commission's nightmare.

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The technological innovations of the last century – from broadcast radio and television to cable and then the digital revolution ushered in by the internet – have upended the media industry, the public square, and the geopolitical order. Ultimately, cellphones, broadband internet, and social media have placed publishing and distribution power in the hands of every individual citizen, giving each the equivalent of their own printing press and the possibility that their dispatches, no matter how factual or farcical, could be consumed by the world.

We, furthermore, live in an era of significant media consolidation. Locally owned newspapers beat out and bought out their cross-town competitors, before themselves combining into regional and then national chains. Many of those companies then shifted from being privately owned to publicly traded companies, requiring them to optimize profit at the expense of the information needs of the public. The internet

[9] Commission on Freedom of the Press, A Free and Responsible Press (1947).

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ripped the heart out of the print advertising business and upended the general-interest news bundle, forcing publishers to chase online traffic and decode ever-changing tech algorithms.

A handful of innovative media outlets have managed to thrive in this challenging environment, often by serving niche audiences, such as political obsessives or high-income finance workers. Others, however, have resorted to monetizing divisiveness and propaganda. As journalist George Packer observed in The Atlantic, "[v]enerable outlets perish or self-mutilate; newer ones come and go in a flash; mountains of bait are thrown into the water to see what rises to the surface."[10] Packer's assessment leads to a damning, if understated, verdict: "This exhausting effort consumes so much time and talent that it's difficult to face the obvious truth: The for-profit model of journalism shows signs of being broken."[11]

These signs are not small ones but rather billboards projecting a dire warning from high above the graveyard that houses a century's worth of corpses.

In the 1940s, America was a nation of about 133 million residents with 44 million newspaper subscriptions among them – nearly a newspaper per household. Circulation continued to climb through the mid-1980s before leveling off and then, with the spread of the internet in the 2000s, plummeted into the abyss. By 2022, there were just 20.9 million American newspaper subscriptions, including digital subscribers – less than one for every 20 of the country's 333 million residents.[12] "It is clear that the for-profit model cannot be sustained except at a few national news brands," asserts Neal Zuckerman, a media analyst with the Boston Consulting Group. "Consumers' and advertisers' willingness to pay is not sufficient to cover the costs of creating, distributing, and operating local newspapers."[13]

The most recent study by Northwestern University found that since 2005 the country has lost nearly 2,900 newspapers and almost two-thirds of its newspaper journalists. "The last 20 years of local news have been grim, a narrative told in verbs such as demise, decimate, devastate, and decline,"[14] according to political scientists Danny Hayes and Jennifer Lawless. They further assert, "No part of the business has gone unaffected, with some newspapers disappearing altogether and others reduced to such shells that it just seems like they've disappeared."[15]

[10] George Packer, *Is Journalism Ready?*, The Atlantic, Dec. 2023.

[11] *Id.*

[12] *Newspapers Fact Sheet*, Pew Research Center (Nov. 10, 2023), https://www.pewresearch.org/journalism/fact-sheet/newspapers/.

[13] Neal Zuckerman, *The Cost of Sustaining Local Journalism: A Working Paper*, Medium (June 6, 2023), https://medium.com/@neal.zuckerman/the-cost-of-sustaining-local-journalism-a-working-paper-5e2d14b52882.

[14] Penelope Muse Abernathy & Sarah Stonbely, *The State of Local News: The 2023 Report*, Nw. Medill Local News Initiative (2023), https://localnewsinitiative.northwestern.edu/assets/slnp/the_state_of_local_news_2023.pdf.

[15] Danny Hayes & Jennifer L. Lawless, News Hole: The Demise of Local Journalism and Political Engagement (2021).

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Notably, there are a few national mainstream media outlets that have managed to turn our current moment into a financial boon. Take CNN for example. Between 2016 and 2022, as the network's on-air reporters and anchors were (accurately) proclaiming that the fate of American democracy was imperiled, CNN's corporate owners and their shareholders pocketed more than $1 billion a year in profit.[16] Along similar lines, in November 2023, an article headlined Uncertain Times Have Been Good for Dow Jones explained that the corporate owners of the Wall Street Journal and Barons were on pace to make the most money of any quarter since Rupert Murdoch acquired them in 2007.[17] That same year, The New York Times projected that the paper would earn close to $100 million in profits, despite it being one of the American media's worst years in recent history, with thousands of journalism jobs lost.[18]

Our nation needs organizations like The Times which, despite others' best efforts, has no journalistic peer. To its credit, The Times has for years been among the leading chroniclers of the demise of local newspapers. The Times has also invested in significant investigative partnerships with local outlets, sponsoring rigorous journalism in places where market forces long ago forced such work to extinction. But this corporate charity cannot change the fact that The Times and its would-be peers are, first and foremost, businesses with financial interests that will always clash, at least to some extent, with their stated values. No matter its newsroom's ethics, The Times' primary institutional prerogative will always be making (or at least not losing) money. The Times has nobly declared its editorial independence from political causes, movements, and ideologies,[19] but actual independence – true freedom – cannot be achieved by an outlet that remains a slave to the market; its decisions are necessarily dictated by the demands of advertisers, online traffic trends, and the sensibilities of its subscribers. The Times and its peers are not actually, as former managing editor Gerald Boyd was known to call them, "a public trust."[20] At their best, they provide a vital service to society, but they remain, at their core, profit-seeking private enterprises. "The *Times* goes to great lengths to assert its independence; it's practically the company's mission statement. Some of this, undoubtedly, is

[16] Benjamin Mullin, *Profits Slump at CNN as Ratings Plummet*, N.Y. Times (Aug. 2, 2022), https://www.nytimes.com/2022/08/02/business/media/cnn-profit-chris-licht.html.

[17] Dominic Ponsford, *Uncertain Times Have Been Good for Dow Jones, a Rare 2023 Publishing Success Story*, Press Gazette (Nov. 30, 2023), https://pressgazette.co.uk/north-america/dow-jones-almar-latour-interview-2023/.

[18] Angela Fu, *2023 Was the Worst Year for the News Business Since the Pandemic*, Poynter (Dec. 27, 2023), https://www.poynter.org/business-work/2023/2023-was-the-worst-year-for-the-news-business-since-the-pandemic/.

[19] 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.

[20] Gerald Boyd, My Times in Black and White: Race and Power at the *New York Times* (2010).

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driven by business interests . . . it wants the largest possible audience,"[21] media critic Margaret Sullivan, who spent four years as the paper's public editor, has observed. "A big tent, if the entry fee is high enough, is a lucrative tent. That's one of many reasons for this emphasis on 'independence.'"[22]

Even within the most professional newsrooms, journalistic decisions are made based on the concept of "news values" – what assignments, headlines, and story framings will attract the most readers, drive the most clicks, and sell the most newspapers by being the most attractive and compelling to readers – which is a capitalistic incentive, not a journalistic one. In 1987, Pamela Shoemaker offered (and critiqued as tools of the status quo) what remains the widely accepted list of "news values."[23] Shoemaker listed timeliness, proximity, impact, interest, conflict or controversy, sensationalism, prominence, and oddity. These values, or built-in biases, underscore the extent to which our news ecosystem is not based on providing the public what it actually needs to know to nurture a healthy democracy. "News values can be seen less as a reflection of what type of information citizens want or need,"[24] researchers Tony Harcup and Deirdre O'Neill have argued, "[a]nd more as a reflection of organizational, sociological and cultural norms combined with economic factors."[25]

Most "sensational" stories hold little tangible relevance to citizens' lives and livelihoods. Timeliness, by its nature, prioritizes speed over rigor. Proximity precludes thoughtful coverage of consequential events from across the country and around the world, thus denying readers the broad base of knowledge needed to fully participate in the democratic process and to influence not just local matters but global ones. A focus on how many people are "impacted" by a story or event provides a means of dodging the responsibility to accurately document the realities of minority communities. A bias toward framing stories through the lens of controversy or conflict is a recipe for removing necessary context, complication, and nuance. An emphasis on audience "interest" is pure capitalism – defining something as news if people are willing to consume it.

Through that lens, it should not be surprising to see studies like a recent report published in the *Columbia Journalism Review*, which examined political coverage that appeared on the front pages of The Times and its chief rival The Washington

[21] Margaret Sullivan, *Some Unsolicited Advice for Joe Kahn of* The New York Times *and Other Editors*, Am. Crisis (May 10, 2024), https://margaretsullivan.substack.com/p/some-unsolicited-advice-for-joe-kahn.

[22] *Id.*

[23] Pamela J. Shoemaker, *All the Deviance That's Fit to Print: Newsworthiness and Social Change* (Aug. 1985) (paper presented at the *68th Annual Meeting of the Association for Education Journalism and Mass Communication*), https://files.eric.ed.gov/fulltext/ED257128.pdf.

[24] Tony Harcup & Deirdre O'Neill, *What Is News? Galtung and Ruge Revisited*, 2 Journalism Stud. 261 (2001).

[25] *Id.*

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Post during the months leading up to the 2022 midterm elections.[26] The study found that our nation's leading news organizations had provided coverage that offered "little insight into policy."[27] Researchers found that, out of The Times' 219 frontpage articles about domestic politics, just 10 "explained domestic public policy in any detail."[28] On the frontpage of The Post, just four pieces out of 215 "discussed any form of policy," and not a single one probed the "policies that candidates aimed to bring to the fore."[29] During a vital election year, amidst a historic battle for the future of our multiracial liberal democracy, our leading journalistic outlets produced reams of political "news," yet, by at least this measure, managed to offer the public little in terms of vital knowledge and information necessary for self-government.

Of course our leading journalistic organizations provide more political theater criticism and horse race analysis than they do substantive coverage about the stakes of public policy. This is because they operate in a market that has made it clear what it is willing to pay for and what it is not. For decades, press critics, with Jay Rosen at the forefront, have been detailing the democracy-corroding norms of most mainstream political journalism. In 2008, Rosen aptly described the pervasive "who's-gonna-win" mentality: "'Who's-gonna-win?' is portable, reusable from cycle to cycle, and easily learned by newcomers to the press pack."[30] It's a mentality, Rosen explained, that "generates an endless series of puzzles toward which journalists can gesture as they display their savviness, which is the unofficial religion of the mainstream press."[31]

Such journalism has continued largely unaltered not because most journalists disagree with the substance of these critiques, though some, of course, do. Rather, it persists because of the underlying financial realities. For the companies that control our media, journalism befitting our democracy – focused on substance and complexity, not ephemeral scoops and partisan conflict – is not a viable business plan. It can't win ratings wars, it doesn't sell papers and drive traffic, and it certainly doesn't produce the kind of profits needed in order to keep owners, executives, shareholders, and their offspring firmly planted within the American aristocracy. Adequately informing the whole of the public and maximizing profits are incompatible aims. We've convinced ourselves our goal is the former, yet we've constructed our democracy's information ecosystem around the latter.

[26] Gideon Heltzer et al., *Warped Front Pages*, Colum. Journalism Rev. (Nov. 20, 2023), https://www.cjr.org/analysis/election-politics-front-pages.php.
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] Jim Romenesko, *Jay Rosen: Why Horse Race Journalism Works for Journalists*, Poynter (Jan. 21, 2008), https://www.poynter.org/reporting-editing/2008/jay-rosen-why-horse-race-journalism-works-for-journalists/.
[31] *Id.*

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It is necessary to draw a distinction between a media system that prioritizes "news" and one that aims to disseminate "information." All news contains some information. But not all information or journalism is "news." The most vital information – how to participate in democracy, what public services are available and how to procure them, what your government is actually doing and not doing, how to best understand and contextualize daily societal occurrences – is almost never relayed in our "news." Instead, most "news" consists of context-lacking micro-updates, singular scenes cut from an ongoing public soap opera that are nearly incomprehensible to anyone who has missed the last episode and that will be proven inaccurate, irrelevant, or both by the airing of the next one. As famed writer Gay Talese recalled of his childhood impression of the press, "[n]ews" was not information, facts, or even knowledge but was "ephemeral."[32] "News is a commodity, not a mirror image of reality,"[33] economist James T. Hamilton wrote in 2004. "Focusing on media economics shows how consumers' desires drive news coverage and how this conflicts with the ideal of what the news ought to be."[34] Or, as Lippmann noted a century ago: The truth and the news are not the same thing. "The function of news is to signalize an event,"[35] he wrote, and "[t]he function of truth is to bring to light the hidden facts."[36]

Truth has tangible value; it decodes complexity and equips the citizenry with the ability to navigate an ever-complicated world. *News* is now produced at an unprecedented clip by social media influencers, podcasters, and virtually every person with access to the internet. *News* sows distrust because most news is sensational, lacking rigor, and incomplete. What American democracy needs, what it craves, is *quality information*: vetted, trustworthy, and complete. "Citizens need journalists more than ever, precisely because there is so much information available, of such varying quality and relevance,"[37] Thomas E. Patterson wrote in 2013's *Informing the News*, in which he argued that the journalism required for healthy democracy must be reflective, not reflexive. Patterson called for "knowledge-based journalism," in which journalists develop expertise and deploy slow, rigorous methods.[38] "There are plenty of conscientious journalists. But their efforts are diminished by what other reporters are doing."[39]

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[32] Gay Talese, Bartleby and Me: Reflections of an Old Scrivener (2023).
[33] James T. Hamilton, All the News That's Fit to Sell (2004).
[34] *Id.*
[35] Walter Lippmann, Public Opinion (1965).
[36] *Id.*
[37] Thomas E. Patterson, Informing the News: The Need for Knowledge-Based Journalism (2013).
[38] *Id.*
[39] *Id.*

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Although there have been American news organizations operating as nonprofits for more than a century, the post-Watergate era witnessed the birth of a small but influential wave of nonprofit outlets that set the stage for the sector's current explosion. The movement began with the founding of Mother Jones magazine in 1976 and the Center for Investigative Reporting in 1977. These outlets were explicit about their mission: to tell the types of stories that corporate-owned media were disincentivized from producing by deploying the kind of journalistic rigor often absent from daily news coverage. "As news organizations have reduced their commitment to serious journalism, there has been an incalculable cost to communities, to citizens' ability to monitor those in power, and of course to those professionals directly impacted in the profession of journalism itself,"[40] wrote Charles Lewis, a pioneer of the nonprofit journalist model. In 1989, Lewis founded the Center for Public Integrity,[41] and in 1997 he launched the International Consortium of Investigative Journalists. He would later be among the co-founders of the Institute for Nonprofit News and launch the Investigative Reporting Workshop.[42] "The question was," Lewis wrote in 2006, "Is there a way to create a modest attempt at a journalistic utopia . . .?"[43]

Once an outlier in the journalistic landscape – for much of the last century, nonprofit media consisted primarily of National Public Radio and its various local affiliates – the sector ballooned in the 2000s, as the bottom finally fell out of the newspaper industry. Over the last two and a half decades, a number of high-profile nonprofit newsrooms have been launched, including ProPublica in 2008, the Texas Tribune in 2009, the Marshall Project in 2015, the 19th* in 2020, and a wave of lesser-known news organizations that have sprouted up across the country. In many cases, these organizations have framed their missions not as replicating the corporate media outlets that they hope to replace but as explicitly offering a public service that those organizations refuse to provide. In 2015, the Institute for Nonprofit News had about 120 members.[44] Today, it represents more than 400 nonprofit news organizations, about 300 of them local newsrooms.

The nonprofit news ecosystem is primarily bankrolled by a handful of major philanthropic organizations and includes structural support, consisting of, among others, programs that help these publishers establish membership programs, run end-of-the-year giving campaigns, and share editorial and business best practices. These noble efforts have unquestionably bettered our field and resulted in a

[40] Charles Lewis, *The Growing Importance of Nonprofit Journalism*, Harv. U. Shorenstein Ctr. Working Paper Series (Apr. 2007), https://dash.harvard.edu/bitstream/handle/1/37375928/2007_03.pdf?sequence=1&isAllowed=y.

[41] Since 2020, I have been a member of the Center for Public Integrity's board of directors. I am currently co-chair.

[42] In July 2023, I succeeded Lewis as the Investigative Reporting Workshop's executive editor.

[43] Lewis, *supra* note 40.

[44] *Annual Report 2015*, Inst. for Nonprofit News (2015), https://inn.org/wp-content/uploads/2022/09/2015-INN-AnnualReport.pdf.

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nonprofit media sector that produces meaningful journalism. Indeed, to some, nonprofit journalism is the coveted answer to the failings of the commercial press, especially at the local level.

Reality, however, suggests that we remain far from the utopia Lewis envisioned because there simply is not enough money available to finance a nonprofit journalistic nirvana. The best estimates suggest that rebuilding the local news and information ecosystem will require between $1 billion and $3 billion each year.[45] As of 2023, the Boston Consulting Group estimated that current philanthropic giving to local journalism totals about $150 million a year.[46] A coalition of longtime journalism funders, led by the MacArthur Foundation and Knight Foundation, has recently launched a campaign called "Press Forward," which aims to mobilize $500 million over the course of five years toward rebuilding, revitalizing, and reimagining local news.[47] It is a noble, unprecedented effort that is undoubtedly already the largest fundraising campaign for news and information in American history.

It's also a band-aid being frantically fastened over a gaping bullet hole. Even if Press Forward reached its goal of pumping half a billion dollars into local nonprofit news over the course of five years, and even if every single one of those were new, previously uncommitted dollars, that would bring the total of philanthropic funding for local news and information to about $250 million a year – somewhere between 8 and 25 percent of what has been deemed necessary, and nowhere close to the amount needed to stabilize American democracy.

And there are legitimate concerns, often voiced quietly by those unwilling to risk earning the ire of such prominent and important potential funders, that such a centralization of nonprofit funding could in fact create a more risk-averse, stylistically monochromatic nonprofit press. In April 2024, Richard Logan, a leading journalism funder, warned attendees of an investigative journalism conference at UC Berkeley that, intended or not, such consolidation of foundation giving would have the same disastrous effects that corporate media consolidation had over the course of the previous century, leading to a nonprofit press corps too terrified of upsetting its wealthy benefactors and powerful foundations to do its job: "The writing has been on the wall for a long time,"[48] Logan declared, according to the notes I took from the audience. "If you think life without freedom and democracy is worth living, then well I guess when we're in the camps we'll have very little to talk about."[49]

[45] Steve Waldman, *Size of the Gap*, Rebuild Local News (Apr. 4, 2023), https://www.rebuildlocalnews.org/size-of-the-gap/.

[46] Zuckerman, *supra* note 13.

[47] *Press Forward Will Award More Than $500 Million to Revitalize Local News*, MacArthur Found. (Sept. 7, 2023), https://www.macfound.org/press/press-releases/press-forward-will-award-more-than-500-million-to-revitalize-local-news.

[48] Richard Logan, *Remarks at 16th Annual Reva and David Logan Symposium on Investigative Reporting* (Apr. 19–21, 2024) (notes on file with author).

[49] *Id.*

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And those nonprofit news organizations who succeed in earning the favor of philanthropies and foundations are then tasked with completing the same puzzle that for-profit media failed to solve for a century, namely convincing a sizable-enough portion of the public to pay sufficient money to support an information system that can effectively serve the masses before this philanthropic seed money runs out. "No one in the foundation world wants to think these nonprofits are going to be dependent on foundations for a long time,"[50] an employee of a major foundation remarked in 2010. "Journalism startups have got to figure out some way to get people to pay for them."[51] More recently, when announcing support for a new local nonprofit news organization in Houston, a major journalism funder described philanthropy's role as supporting the Fourth Estate "until the industry finds its footing"[52] – as if the flailing information system undermining our democracy were a younger sibling in need of some cash to cover their housing deposit.

The assumption at the heart of the push for nonprofit media "sustainability" is that, despite a century of available evidence, local markets across the country are not only capable of but willing to support healthy information ecosystems. But unacknowledged in this formulation is the fact that many of the core components of the local news bundle that kept newspapers, magazines, and television news profitable for much of the twentieth century – sports scores, classified ads, weather predictions, crosswords, coupons, and comics – are now readily available, for free, to would-be news consumers via the internet.

Also unacknowledged in this plan is the reality that all too often the communities most in need of healthy civic information are also those least able to pay for it, even if they wanted to. "Business models for local news . . . simply don't work for outlets serving low-income communities,"[53] observed Madeleine Bair, who in 2017 founded El Timpano, which serves Latino and Mayan immigrants in the Bay Area of California. "Sustainability has become a core focus for many journalism funders, who want to see that a news outlet will not rely on philanthropy for the long term,"[54] Bair continued,

> But in a context in which the one common denominator of sustainable digital outlets is that they serve affluent audiences, this metric becomes a bias in favor of news that serves the well-to-do, and in the end a self-fulfilling prophecy: There are

[50] Mary Walton, *The Nonprofit Explosion*, Am. Journalism Rev. (Sept. 2010), https://ajrarchive.org/article.asp?id=4906.

[51] *Id.*

[52] *Houston Foundations to Launch Nonprofit Newsroom*, Philanthropy News Dig. (Jan. 24, 2022), https://philanthropynewsdigest.org/news/houston-foundations-to-launch-nonprofit-newsroom.

[53] Madeleine Bair, *Toward Equitable Models of Journalism Sustainability*, JSK Fellows (Dec. 11, 2023), https://jskfellows.stanford.edu/toward-equitable-models-of-journalism-sustainability-f0b76f864cf5.

[54] *Id.*

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> few models of sustainable outlets that serve low-income audiences, so funders don't take a chance investing in such outlets.[55]

If there is one lesson the last one hundred years of the American press has taught us, it is that the type of rigorous information ecosystem required of a healthy democracy is *not* sustainable as a market-supported enterprise – at least not in many of the communities that most desperately need accurate news and information, and certainly not at scale. Yes, some local nonprofit news efforts have – through subscription, sponsorship, membership, events, and foundation money – found innovative ways to fill information gaps. But we cannot allow small successes to distract from inescapable conclusions. Through its focus on the unachievable aspiration of local news sustainability, philanthropy has made clear it is unwilling and unable to support democracy's long-term information needs. So too have the consumers. National Public Radio – described as public media but more accurately understood as a nonprofit outlet with some public support – has spent decades attempting to build a membership model. It is currently in a crisis, with at least one industry watcher predicting all of "public radio" could collapse within a decade.[56]

Amid these realities, many of the journalists most successful at building nonprofit organizations have explicitly called for a non-market-based remedy. "More ambitious philanthropy and business model improvements will not be enough to reverse the loss of local news, let alone build a better, more robust, more inclusive local news sector than we've had before. Government must play a role,"[57] argued Steve Waldman, the co-founder and former president of Report for America and his Rebuild Local News coalition colleague Anna Brugmann. Sewell Chan, the outgoing editor-in-chief of the Texas Tribune and incoming editor of the Columbia Journalism Review, wrote an essay pleading for urgent investments not just from philanthropy and citizens but from the government in order to stem what he described as an "information apocalypse":

> Proposals for any kind of government intervention will raise hackles among journalists who believe the First Amendment rules out a role for public support of journalism. I know the danger of state control of broadcasting . . . I hear, as well, warnings of negative unintended consequences of government action . . . But most

[55] *Id.*

[56] Benjamin Mullin & Jeremy W. Peters, *Inside the Crisis at NPR*, N.Y. Times (Apr. 24, 2024), https://www.nytimes.com/2024/04/24/business/media/inside-the-crisis-at-npr.html ("I believe that public radio has five to seven years to reimagine itself before it's simply unsustainable," said Eric Nuzum, a former NPR executive and co-founder of the audio consulting and production company Magnificent Noise; he continued, "And they can't take two or three years of that time debating a business model.").

[57] Anna Brugmann & Steven Waldman, *Testimony Submitted to the California Senate Judiciary Committee on Local Journalism in the Digital Age*, Rebuild Local News (Dec. 5, 2023), https://www.rebuildlocalnews.org/testimony-submitted-to-the-senate-judiciary-committee-on-local-journalism-in-the-digital-age/.

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journalists do not have the luxury of temporizing as their institutions and livelihoods crumble.[58]

Or, as Elizabeth Green, the CEO and co-founder of Chalkbeat, has put it: "We have to subsidize reporting if we want democracy to survive."[59]

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In American democracy, innovative and provocative ideas – from abolition to suffrage to desegregation to marriage equality to drug legalization to redress and reparations – often begin in states before eventually marching their way to Washington. And recent years have seen a movement, largely led by Waldman and his colleagues, to convince local and state governments to provide public funding as a means of infusing resources into our dying media ecosystem.

If a free press is truly a vital public good, with the best media outlets vowing to serve as a public trust, then we must create an *actual* federal public trust to ensure every American has access to the news and information they need to be full citizens in our democracy. The aim would not be a government-run media but rather a government-ensured one. Rather than create a centralized public media that could be punished by politicians who dislike its coverage – or commandeered as a propaganda tool by a demagogue president – we could instead direct federal news and information money directly to local communities.

If Congress were to create such a trust, it could, for example, pledge to provide $10 million in annual federal public information grants to each of the country's 435 congressional districts. This would channel urgent public resources to every community in the country, instantly transforming the news and information landscape for the relatively modest, by federal budgeting standards, price tag of $4.35 billion per year. Such a program would place money directly in the hands of local media outlets, neighborhood organizations, and civic institutions that reflect the demographics, values, and sensibilities of America's various communities.

Such a program could follow the successful, widely accepted model of the U.S. National Science Foundation, a federal agency established in 1950, which in fiscal year 2023 distributed more than $7 billion in taxpayer money to researchers at US colleges and universities.[60] And there is precedent, in the Corporation for Public Broadcasting (CPB), for the independent administration and distribution of government dollars to support a free press. The $4.25 billion allotment for public

[58] Sewell Chan, *A Lost Decade: Policymakers Fiddled as Newsrooms Burned*, 707 Annals of the Am. Acad. of Pol. & Soc. Sci. 62 (2023).

[59] Sara Fischer, *Pandemic Drives Nonprofit Media Boom*, Axios (Feb. 23, 2021), https://www.axios.com/2021/02/23/covid-newspapers-nonprofit-media.

[60] *FY 2025 Budget Request to Congress*, National Science Foundation (Mar. 11, 2024), https://nsf-gov-resources.nsf.gov/files/00_NSF_FY25_CJ_Entire%20Rollup_web.pdf?VersionId=cbkdqD_UMweHEIsZwPjtVgcQRwMccgvu.

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information could be administered through the creation of a new agency, governed by a charter that ensures and insists it is operated in a way that is, as President Lyndon B. Johnson vowed when he authorized the creation of the CPB, "carefully guarded from Government or from party control. It will be free, and it will be independent – and it will belong to all of our people."[61]

Federal public information money could be limited to news and information efforts, excluding pure opinion journalism, and available to any institution that proposes innovative efforts to expand the availability of rigorous, factual information in order to empower citizens to fully participate in our democracy. Eligible institutions could include for-profit and nonprofit newsrooms, other nonprofit organizations, colleges and universities, libraries, and other civic institutions. It is easy to imagine a host of projects, carried out by news organizations, civic institutions, or partnerships between both, that would meet such criteria. These projects could ensure that every citizen has access to information about registering to vote, polling locations, and local candidates and political issues on their ballot, as well as their community's local history and contemporary challenges. This money could also guarantee that an accessible public record is created of every government meeting, that a transcript is taken and archived of every court proceeding, and that there are trained professional journalists in every city hall and statehouse to help sift through and interpret all of this information. Importantly, at a time when news organizations face, among other things, a *distribution* crisis, the funds would ensure that such information is actively disseminated to citizens in order to inform public opinion.

Just as the point of a public library is not to replace or compete with the bookstore, such an agency would not aspire to construct a public media system to replace or displace commercial and nonprofit media. Rather, it would provide for a suite of services that the market will never incentivize for-profit businesses to create on their own – services that compile and curate information while also working to ensure that all citizens, regardless of means, have access to that information. "Americans need accurate, contextual news and information to make decisions that help our communities thrive. It's tempting to think that means news leaders need only focus on gathering and publishing facts. But local news has other essential roles that complement and enhance reporting,"[62] Samantha Ragland and Kevin Locker of the American Press Institute have argued, highlighting public information efforts, including the "solutions circles" convened by the Mississippi Free Press to brainstorm ways of addressing community problems, public forums held by the Cardinal News in Virginia, and storytelling events run by The Tennessean that help

[61] President Lyndon B. Johnson, *Remarks upon Signing the Public Broadcasting Act of 1967* (Nov. 7, 1967) (transcript available in the LBJ Presidential Library, https://www.lbjlibrary.org/object/text/remarks-upon-signing-public-broadcasting-act-11-07-1967).

[62] Samantha Ragland & Kevin Loker, *Journalism Has Many Roles. It's Time to Embrace the Role of Convener*, Ky. Press Ass'n (May 9, 2024), https://members.kypress.com/articles/journalism-has-many-roles-its-time-to-embrace-the-role-of-convener/.

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community members share their own experiences, among others. "Media should also be a force for social connection," asserted Ragland and Locker, and further, media should be "[a] convener of people across differences and a facilitator for what to do after the facts are laid bare."[63]

What those who champion such public information (also referred to as civil information and, in the mid-1990s, "public journalism"[64]) understand is that democracy will not be saved by fact-checks, investigations, or view-from-nowhere-coded news dispatches alone – not even if today's media organizations possessed a means of distributing them to a majority of the population (which they do not) and not even if that population trusted our media organizations (which it does not). In fact, decades of social science tell us that presenting people with facts that contradict their beliefs and opinions is not enough to change their minds or eradicate falsehoods.[65]

"No one is ever forced by just the collection of facts to accept a particular theory of their meaning,"[66] philosopher John Dewey wrote in 1927. "The imagination of the founders did not travel beyond what could be accomplished and understood in a congeries of self-governing communities,"[67] Dewey continued, calling for us to consider democracy, especially a geographically vast and racially diverse one, impossible without the development of a shared "great community." A similar framing was echoed, decades later, in the final book published by the Rev. Dr. Martin Luther King Jr. prior to his assassination, which wrestled with how, following the 1965 Voting Rights Act, Americans could best build cohesive multiracial democracy. "Where Do We Go From Here," asks the book's title, "Chaos or Community?"[68]

While often framed as having been in ideological "debate," Dewey and Lippmann are better read together, as an argument for *democratic cohesion*: the belief that a healthy public opinion, and thus a functioning democracy, requires both that the public have access to reliable, rigorously compiled and honestly presented facts *as well as* thriving local communities, well-tended by reliable institutions (the press chief among them), for that information to be digested and debated. A democracy fails if it has one but not the other. Currently, our democracy has neither.

As Richard Young, the founder and executive director of CivicLex, a media organization in Lexington, Kentucky, put it:

> If we want people to value local news, we must demonstrate its importance to young people early in their life. If we want people to trust our data and sources, we must help them know how to navigate that data themselves. If we want people to be open

[63] *Id.*
[64] Alicia C. Shepard, *The Gospel of Public Journalism*, 16 Am. Journalism Rev.28 (1994).
[65] Richard Sima, *Why Do Our Brains Believe Lies? Correcting Lies and Misinformation Is Difficult Because Learning the Truth Doesn't Delete Them From Our Memory*, Wash. Post (Nov. 3, 2022), https://www.washingtonpost.com/wellness/2022/11/03/misinformation-brain-beliefs/.
[66] John Dewey, The Public and Its Problems (1927).
[67] *Id.*
[68] Martin Luther King, Jr., Where Do We Go From Here: Chaos or Community? (1967).

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to different perspectives in our publications, we must build spaces where they actually interact with people who are different from them. If we want the information and reporting we produce to compel people to participate in the decision-making that shapes their communities, we must build a civic life worth participating in.[69]

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There will likely be a powerful, vocal opposition from within journalism and the media, not just to the particulars of this proposal but to any step toward providing significant public funding to support the American press. The core of this is an ideological rejection of anything that could threaten the perception that our media is independent of the government that it covers.[70] And there is no question that there is significant reason for vigilance to prevent political figures and partisans from wielding indiscriminate power over the press that holds it to account.

Yet the American market is as powerful a force in American life as the American government. We've spent centuries worrying that some president or king will seize our presses when all along it has been our own owners, publishers and editors – ever anxious about the sensibilities of advertisers, readers, and subscribers – who are those most likely to halt them and most often actually halting them. It has been a press that is hopelessly wedded to that market that incentivizes our industry's worst professional instincts and has helped bring our democracy to the brink. As poll after poll shows trust in the American press at the lowest levels on record,[71] too many industry leaders and journalistic practitioners insist that the only potential solution is more of the same. Surely, we can survive a mild resetting of the scales. Because the market, left to its own devices, does not build community. It sows chaos.

There is a growing movement in favor of more market regulation, especially as it relates to technology companies who now hold near monopolies on the distribution of information. And there are arguments being made for a more robust, fully funded public media. Both are based in the same principle, namely, that the government must play a proactive role in encouraging and facilitating a healthy information

[69] Richard Young, *Local News Must Help "Build a Civic Life Worth Participating In,"* The Objective (Dec. 5, 2023), https://objectivejournalism.org/2023/12/richard-young-local-news-building-civic-life/.

[70] No matter the historical reality that the US government has provided significant financial support to the press at various junctures.

[71] Art Swift, *Americans' Trust in Mass Media Sinks to New Low*, Gallup (Sept. 14, 2016), https://news.gallup.com/poll/195542/americans-trust-mass-media-sinks-new-low.aspx; Megan Brenan, *Americans' Trust in Media Remains Near Record Low*, Gallup (Oct. 18, 2022), https://news.gallup.com/poll/403166/americans-trust-media-remains-near-record-low.aspx ("At 34%, Americans' trust in the mass media to report the news 'fully, accurately and fairly' is essentially unchanged from last year and just two points higher than the lowest that Gallup has recorded, in 2016 during the presidential campaign. Just 7% of Americans have 'a great deal' of trust and confidence in the media, and 27% have 'a fair amount.' Meanwhile, 28% of U.S. adults say they do not have very much confidence and 38% have none at all in newspapers, TV and radio. Notably, this is the first time that the percentage of Americans with no trust at all in the media is higher than the percentage with a great deal or a fair amount combined.")

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ecosystem, as the argument for the creation of a public trust to sponsor public information. Such government investment should not be seen as a replacement for the growing philanthropic support for journalism but rather as a welcome supplement to it. Nothing in this chapter should be taken as an argument in favor of centralized, government-run media. Instead, it is an endorsement of a news and information ecosystem composed of countervailing forces: a healthy, properly regulated market-based press; an ascendant nonprofit press sector; and a properly funded public media. All of those distinct forces would then, in this system, be buoyed by the possibility of receiving government support in exchange for providing vital public information they would otherwise be disinclined by market forces to produce.

Imagine an American information ecosystem constructed as a stool with three distinct legs. When one wobbles or falters, the others are able to carry its weight. But the stool itself cannot stand if it is constructed on top of sand. A healthy press requires a firm foundation, a minimum flow of healthy information available to all, and communal venues in which all can gather to digest and debate it. A public trust for the press would help ensure that foundation, incentivizing each pillar of our press toward its better angels.

Legal scholar Martha Minow has argued, "Government action always carries risks and need to comport with constitutional guarantees, but government inaction can also jeopardize constitutional guarantees."[72] Minow has also opined that,

> If the infrastructure for gathering, reporting, and distributing news is absent in many communities, if readers and viewers are overwhelmed by distractions designed to take their attention, and if no recourse is available through the accountability mechanisms designed for either government or private enterprises, it is time to return to the Constitution's text and basic principles.[73]

If there truly is, as Justice Black argued, an American right to know, then there is little choice *but* to subsidize our news and information ecosystem. Our society has a long-established solution for public entitlements that the free market will not support equitably: We have the government pay for them. Such a system would not be a government-controlled press but rather a government-ensured one. And such public investment would ensure every American has news and information providers that, as journalist Darryl Holliday has put it, "strengthen democracy rather than erode it."[74] If we aspire to be a true multiracial and multicultural society, then we must ensure that each American has an equal claim to public goods and protected rights, and, perhaps most crucially, their right to know.

[72] Martha Minow, Saving the News: Why the Constitution Calls for Government Action to Preserve Freedom of Speech (2021).

[73] *Id.*

[74] Darryl Holliday, *Journalism's Civic Media Moment Could Be a Movement*, in Reinventing Journalism to Strengthen Democracy: Insights From Innovators (P. Dallas & P. Ellis eds., 2023).

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