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A Free Press Without Democracy

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ERIN C. CARROLL*

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INTRODUCTION

The American press is accustomed to fighting for survival. With platforms squeezing news outlets of advertising revenues and hedge funds often siphoning what profits remain, many news organizations have struggled for economic viability for decades. But in the last several years, the political threat to a free press has grown perhaps greater than the economic one.

Democracy is eroding at a clip.¹ The slide is global.² Although the results of the 2020 presidential election added friction to the fall in the United States, the threat of autocracy remains.

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¹ See JASON STANLEY, *HOW FASCISM WORKS* ix (2020) (“Understanding the lesson of this book has acquired an urgency even I did not predict.”).

² See *id.* at x-xiv; Nazifa Alizada et al., *Autocratization Turns Viral: Democracy Report 2021*, V.-DEM. INS., UNIV. OF GOTHENBURG (Mar. 2021) (describing a “global wave of autocratization”).

Since at least the founding of the Republic, political philosophers and scholars have agreed that democracy requires a free press.³ But we must also consider the inverse: Does a free press require democracy? More pragmatically, and this Article's primary concern: how does the press maintain degrees of freedom as democracy erodes?

Scant attention has been paid to this issue. The press, like so many American institutions, is indoctrinated in the religion of American exceptionalism.⁴ It views its methods and products as uniquely valuable commodities to be exported to far-flung corners of the world. It proudly wears the First Amendment like impermeable armor.⁵ The pride is often justified.

But to embrace uncritically American press exceptionalism today is to betray a key journalistic precept: reporting the truth without bias or favor. If U.S. journalists aspire to a domestic democratic future, they must shed it-could-never-happen-here complacency. Or, more generously, they must reevaluate and reinvest in the institution and profession even in the face of the exhaustion wrought by the economic crisis. Doing so will require that journalists broaden their assessment of the threats they face.⁶

This Article aims to assist. It sets out a framework for American press priorities. It suggests that to resist and weather a turn to autocracy that the press must endeavor to overcome three defining pathologies. These are American press exceptionalism (a hubris about American press freedom), Darwinian in-group competition (a need for one's news organization to always be first and fastest), and an addiction to audience desire (the proclivity to prioritize audiences' reflexive wants).

In tandem with overcoming these pathologies, the press should develop new "practices of freedom." In general, practicing freedom is, writes scholar Maggie Nelson, "a matter of making space, of increasing degrees of possibility and decreasing degrees of domination."⁷ This Article takes Nelson's concept (itself drawn from Michel Foucault and Hannah Arendt) and develops specific practices for the press.⁸ These practices recognize that press freedom is relative, that media systems are inseparable from political ones, and that both democracy and its institutions need continual reinvention.

They also recognize that uncertainty—including political uncertainty—is the status quo.⁹ Existing for more than two centuries in a relatively stable (if imperfect) democracy, the American press has not been forced to grapple with this. But now it must. Even if autocracy

³ One of the most famous statements about the American press ever made is Thomas Jefferson's: "The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter." GARRETT EPPS, *THE FIRST AMENDMENT: FREEDOM OF THE PRESS* 74 (2008); Robert A. Dahl, *What Political Institutions Does Large-Scale Democracy Require?*, 120 *POL. SCI. Q.* 2, 188-89 (2005).

⁴ See generally, Howard Zinn, *The Myth of American Exceptionalism: Howard Zinn at MIT*, HOWARDZINN.ORG, <https://www.howardzinn.org/collection/myth-american-exceptionalism-mit/> (describing the origins of American exceptionalism).

⁵ VICTOR PICKARD, *DEMOCRACY WITHOUT JOURNALISM: CONFRONTING THE MISINFORMATION SOCIETY* 10, 11 (2019) ("Sanctified by the First Amendment, press freedoms are inviolable in the eyes of most Americans.").

⁶ See Ignacio Siles & Pablo J. Boczkowski, *Making Sense of the Newspaper Crisis: A Critical Assessment of Existing Research and an Agenda for Future Work*, 14(8) *NEW MEDIA & SOC'Y* 1377 (2012) (focusing on the crisis facing newspapers as resulting from a "combination of interrelated economic factors").

⁷ See MAGGIE NELSON, *ON FREEDOM: FOUR SONGS OF CARE AND CONSTRAINT* 77 (2021).

⁸ See *id.*

⁹ ANNE APPLEBAUM, *TWILIGHT OF DEMOCRACY: THE SEDUCTIVE LURE OF AUTHORITARIANISM* 56 (2020) (noting that "the appeal of authoritarianism is eternal"); STANLEY, *supra* note 1, at xxi ("A moral of this book is that fascism is not a new threat, but rather a permanent temptation.").

recedes, the practices prescribed here will lead to a more robust, open, collaborative, and responsive press. These qualities are essential as our information eco-system rapidly transforms.

This Article proceeds in four parts. The first situates the press at the epicenter of coinciding and overlapping crises, with a focus on the economic crisis. The American press is obsessed with this particular crisis. As a result, it is a lens through which to understand press inaction in the face of the coinciding political crisis. The economic crisis has led to the proliferation of news deserts, the consolidation of news organizations, and the exhaustion of the press's workforce. These all render the press vulnerable to threats to its freedom.

In Part II, the Article moves to the political threat and describes the global shift toward autocracy. More specifically, it describes the impact of autocracy on the press worldwide, detailing the means by which autocracies coopt, discredit, and destroy the press to consolidate and augment political power. Beyond the traditional playbook of murders, criminal charges, and starving the press of supplies, this Part argues that authoritarians now have an "enhanced" playbook. Technological affordances give authoritarian governments a bevy of furtive and indirect tools for censorship and violence.

Part III focuses on the United States and describes how autocracy has already damaged and continues to threaten American press freedom. It argues that the same authoritarian tactics effectively used in other parts of the world are already at work here. This Part concludes with a call for press action both to protect the institution itself but also to protect democracy. Just as our form of government impacts our degree of press freedom, press freedom impacts how we are governed. Consequently, press action will protect far more than just the press.

In Part IV, the Article turns to brass tacks and lays out what the press can do. It describes three pathologies that define the press—American exceptionalism, hyper-competition, and defaulting to audience desire. In turn, it also describes corresponding practices of press freedom designed to remedy these pathologies. These practices are not plucked from a nostalgic vision of America's press heyday. Rather, they are rooted in an examination of autocracy and journalistic experience under it. They are intended to be concrete and doable. And they are aimed at building the resilience of the American press so that it might be a stronger bulwark against an autocratic regime. This is a tall order. Yet, autocracy finds its opening when its future subjects succumb to exhaustion and are drawn to simplicity.¹⁰ As a vital democratic institution, the press must continue to resist both.

I. THE ECONOMIC THREAT TO THE AMERICAN FREE PRESS

Crisis is a word that has become cliché in describing the situation faced by the American press.¹¹ And yet, it is hard to conjure an alternative to connote accurately the gravity of its challenges. The press faces a crisis of mission. (What does objectivity mean?) It faces a crisis of trust. (How to shed the label of "fake news"?) It faces an epistemic crisis. (What does it mean to seek and report the "truth"?)¹² But even more than these interrelated and daunting crises, the press's energy and resources have been sapped by an economic crisis.

¹⁰ See MASHA GESSEN, *SURVIVING AUTOCRACY* 111, 212 (2020) ("One way out of that anxiety is to relieve the mind of stress by accepting Trumpian reality. Another—and this too is an option often exercised by people living under totalitarianism—is to stop paying attention, disengage, and retreat to one's private sphere. Both approaches are victories for Trump in his attack on politics."); APPLEBAUM, *supra* note 9, at 47.

¹¹ Ignacio Siles & Pablo J. Boczkowski, *supra* note 6, at 1376 (noting the conclusion that "journalism is in crisis ... no longer invites controversy").

¹² See CANDIS CALLISON & MARY LYNN YOUNG, *RECKONING: JOURNALISM'S LIMITS AND POSSIBILITIES* 2 (2020).

This Part tells an abbreviated version of the often-told economic crisis story. But this version focuses on something American journalists and press law scholars have not sufficiently addressed—the way in which the crisis invites autocracy. The shuttering of smaller news outlets across the country, industry consolidation, and worker burnout from economic pressures all leave the press ripe for manipulation. The Article begins with this because the sheer enormity of the economic threat has made it hard for journalists to see the long shadow that autocracy is casting—even as darkness has enveloped them.

A. *What Economic Stress Has Wrought*

The newspaper industry has long been declared dead. Small newspapers across the country are disappearing. In 2021, the journalism nonprofit Poynter published an obituary of sorts for the more than 100 local newsrooms that closed during the Covid-19 pandemic.¹³ These included *The Journal Express* of Knoxville Iowa, whose founder was friends with Abraham Lincoln (1855 – 2020), *The McGregor (Texas) Mirror* (1904 – 2021), *The Eureka* (Nevada) *Sentinel* (1870 – 2020), and the *Advertiser-Herald* of Bamberg, South Carolina (1896 – 2020).¹⁴

These newspapers were not simply quaint storefronts on the Main Street of some distant outpost. Rather, newspapers like this have been—and remain—the font of most of the high-quality, truth-based journalism that Americans consume in any medium. Studies have shown that radio, TV, and online outlets borrow heavily from newspapers.¹⁵

The mass extinction leaves a gaping content hole in American news. It is a hole that is hard to fathom given how awash we are in information. But, that deluge of information is mostly not news. In fact, in one recent and wide-ranging study of news-consumption habits and their effects, researchers found that news sites comprised less than two percent of the sites that subjects visited.¹⁶

The signal of news is fading, and the prognosis is grim. American “news deserts”—defined as communities with limited access to democracy-enhancing news—continue to expand.¹⁷ The global newspaper industry’s revenue is predicted to fall from \$108 billion to \$86 billion between 2019 and 2024.¹⁸

¹³ Kristen Hare, *More Than 100 Local Newsrooms Closed During the Coronavirus Pandemic*, POYNTER (Nov. 30, 2021), <https://www.poynter.org/locally/2021/the-coronavirus-has-closed-more-than-100-local-newsrooms-across-america-and-counting/>.

¹⁴ *Id.*

¹⁵ See Philip Napoli & Jessica Mahone, *Local Newspapers Are Suffering, But They’re Still (By Far) the Most Significant Journalism Producers in Their Communities*, NIEMAN LAB (Sept. 9, 2019), <https://www.niemanlab.org/2019/09/local-newspapers-are-suffering-but-theyre-still-by-far-the-most-significant-journalism-producers-in-their-communities/>; *How News Happens: A Study of the News Ecosystem of One American City*, PEW RESEARCH CENTER (Jan. 11, 2010), <https://www.pewresearch.org/journalism/2010/01/11/how-news-happens/>

¹⁶ See Magdalena Wojcieszak et al., *No Polarization from Partisan News: Over-Time Evidence from Trace Data*, THE INT’L J. OF PRESS/POL. 12 (Nov. 1, 2021), <https://journals.sagepub.com/doi/full/10.1177/19401612211047194>.

¹⁷ See Penelope Muse Abernathy, *The Expanding News Desert*, UNC HUSSMAN SCH. OF JOURNALISM AND MEDIA, <https://www.usnewsdeserts.com/>.

¹⁸ *A New Deal for Journalism*, WORKING GROUP ON THE SUSTAINABILITY OF JOURNALISM, FORUM ON INFORMATION & DEMOCRACY, 6-7 (June 2021), https://informationdemocracy.org/wp-content/uploads/2021/06/ForumID_New-Deal-for-Journalism_16Jun21.pdf.

In this media landscape, weakened smaller newspapers are vulnerable to poaching and consolidation.¹⁹ Already, private equity, hedge funds, or other investment groups control about half of the daily newspapers that remain in the United States.²⁰ The “vulture hedge fund” Alden Global Capital alone controls more than 200 newspapers.²¹ This includes once successful metro dailies like *The Chicago Tribune*, *Baltimore Sun*, *The Denver Post*, and the *New York Daily News*.²² But rather than plowing profits back into journalism, Alden has diverted them to finance “risky bets on commercial real estate, a bankrupt pharmacy chain, and Greek debt bonds.”²³

Consolidation isn’t limited to newspapers. In recent years, a handful of companies have conducted a “buying binge” of local TV stations.²⁴ This handful includes Sinclair Broadcast Group, which owns nearly 200 stations, including local affiliates of ABC, CBS, Fox, NBC, and Univision, many in the same markets.²⁵

Likewise, digital-native news sites are consolidating to compete with the ad dominance of Google and Facebook.²⁶ For example, BuzzFeed acquired HuffPost and then went public in 2021.²⁷ Vice,²⁸ Vox,²⁹ and Bustle³⁰ have all made recent acquisitions.³¹ Consolidation shows no signs of stopping. According to the Reuters Institute at Oxford’s predictions for 2022, “Media companies will get bigger this year through a wave of acquisitions as they look to add scale and value to their subscription or advertising businesses”³²

These closures and consolidation, of course, have a profound impact on the news industry’s workforce. For those journalists willing and able to stay in the business, the impact of this economic crisis has been personally demoralizing and even debilitating.³³ As one journalist

¹⁹ See McKay Coppins, *A Secretive Hedge Fund is Gutting Newsrooms*, THE ATLANTIC (Oct. 14, 2021), <https://www.theatlantic.com/magazine/archive/2021/11/alden-global-capital-killing-americas-newspapers/620171/>.

²⁰ Anna Nicolaou & Fames Fontanella-Khan, *The Fight for the Future of America’s Local Newspapers*, FINANCIAL TIMES (Jan. 23, 2021).

²¹ See Coppins, *supra* note 19.

²² *Id.*

²³ *Id.*

²⁴ Katerina Eva Matsa, *Buying Spree Brings More Local TV Stations to Fewer Big Companies*, PEW RESEARCH CTR. (May 11, 2017), <https://www.pewresearch.org/fact-tank/2017/05/11/buying-spree-brings-more-local-tv-stations-to-fewer-big-companies/>.

²⁵ See *tv stations*, SINCLAIR BROAD. GRP., <https://sbgi.net/tv-stations/>; Indira A.R. Lakshmanan, *Why Sinclair’s Promos Were a Journalism Ethics Train Wreck*, POYNTER (Apr. 9, 2018), <https://www.poynter.org/newsletters/2018/why-sinclair%C2%92s-promos-were-a-journalism-ethics-train-wreck/>.

²⁶ Nic Newman, *Journalism, Media, and Technology Trends and Predictions 2022*, DIGITAL NEWS PROJECT REUTERS INSTIT. FOR THE STUDY OF JOURNALISM, UNIV. OF OXFORD 15 (2022).

²⁷ *Id.* at 15.

²⁸ Todd Spangler, *Vice Media to Acquire Refinery29, as Both Digital-Media Players Seek Scale*, VARIETY (Oct. 2, 2019), <https://variety.com/2019/digital/news/vice-media-acquires-refinery29-1203356073/>.

²⁹ Peter Kafka, *Why is Vox Media Buying Group Nine?*, RECODE (Dec. 13, 2021), <https://www.vox.com/recode/2021/12/13/22833341/vox-media-group-nine-deal-explained>.

³⁰ See Benjamin Mullin, *Bustle Owner Eyes SPAC Deal, Acquires Some Spider Studios*, THE WALL ST. J., (July 21, 2021), <https://www.wsj.com/articles/bustle-owner-eyes-spac-deal-acquires-some-spider-studios-11626894010>; Max Willens, *Continuing Acquisition Spree, Bustle Buys Inverse*, DIGIDAY (July 23, 2019), <https://digiday.com/media/continuing-acquisition-spree-bustle-buys-inverse/>.

³¹ Newman, *supra* note 26, at 15.

³² *Id.* at 7.

³³ See Nick Mathews et al., “*Why I Quit Journalism: Former Journalists’ Advice As a Way to Regain Control*,” 0 JOURNALISM 1-16, 12 (2021); Brianna Hatch, *Creating “Sustainable Journalists”: Six Steps You Can Take to Prevent Burnout*, THE GROUNDTRUTH PROJECT (Aug. 19, 2021), <https://thegroundtruthproject.org/creating-sustainable-journalists-six-steps-you-can-take-to-prevent-burnout/> (noting how competition to break stories and staff reductions have led to burnout).

told researchers at Columbia University, “There’s no clear future for journalists these days and few advancement opportunities, so burnout seems to occur much more quickly.”³⁴ This comes on top of the burnout many journalists have experienced serving as essential information providers during the Covid pandemic.³⁵ And the pandemic came on the heels of an era in which news has become a 24-7 business. Exhaustion has too long been many journalists’ steady state.

Meanwhile, the industry has done little to boost its battered workforce. The poor condition of press finances has even impacted the industry’s ability to deal with other work-related trauma that journalists face in simply doing their jobs from day to day. According to researchers, trauma is a low priority in an industry with “shrinking staff sizes, unstable career prospects, and increasing job responsibilities for journalists.”³⁶

B. A Press Ripe for Autocratic Takeover

This combination of news deserts, consolidation, and worker exhaustion all prime the American news ecosystem and the people that populate it for authoritarian capture. First, news vacuums both embolden corruption and invite disinformation and propaganda. Media scholar Paul Starr cautions “[i]t is not just a speculative proposition that corruption is more likely to flourish when those in power have less reason to fear exposure.”³⁷ Having a paltry amount of insight into the workings of local government is bad for democracy.³⁸

Even worse, false information metastasizes in vacuums. Autocratic regimes capitalize on this. For example, in its effort to sway U.S. electoral politics, the Kremlin-backing Internet News Agency has created English-language websites tailored to appear like those of news organizations, such as the “Newsroom for American and European Based Citizens.”³⁹ Russia is also linked to false news sites spreading misinformation about coronavirus vaccines.⁴⁰ Most recently, Russia has attempted to shut down all independent news sources within its own borders, thereby manufacturing a vacuum, so that it could be filled with propaganda about the country’s

³⁴ See Damian Radcliffe & Ryan Wallace, *Life at Local Newspapers in a Turbulent Era: Findings From a Survey of More than 300 Newsroom Employees in the United States*, TOW CTR. FOR DIGITAL JOURNALISM (Oct. 7, 2021), https://www.cjr.org/tow_center_reports/life-at-local-newspapers-in-a-turbulent-era-findings-from-a-survey-of-more-than-300-newsroom-employees-in-the-united-states.php.

³⁵ See Erin Carroll, *From “Enemy of the People” to “Essential”: The Pandemic Creates an Opening for the Press*, JUST SECURITY (May 3, 2020), <https://www.justsecurity.org/69991/from-enemy-of-the-people-to-essential-the-pandemic-creates-an-opening-for-the-press/>.

³⁶ See Zena Dadouch & Michelle M. Lilly, *Post-Trauma Psychopathology in Journalists: The Influence of Institutional Betrayal and World Assumptions*, JOURNALISM PRACTICE 3-4 (May 13, 2020).

³⁷ Paul Starr, *Goodbye to the Age of Newspapers (Hello to a new Era of Corruption)*, NEW REPUBLIC (Mar. 4, 2009).

³⁸ See NIKKI USHER, NEWS FOR THE RICH, WHITE, AND BLUE x-xi (2021) (“National journalism seems increasingly likely to dominate what limited attention audiences have for journalism. But different places have different resources, opportunities, limitations, histories, and power structures, and national journalism cannot tell these stories as well or as often as local news media. As American political power is tied to geography, this presents a serious problem for democratic life.”).

³⁹ Jack Stubbs, *Exclusive: Russian Operation Masqueraded As Right-Wing News Site to Target U.S. Voters—Sources*, REUTERS (Oct. 1, 2020).

⁴⁰ Michael R. Gordon & Dustin Volz, *Russian Disinformation Campaign Aims to Undermine Confidence in Pfizer, Other Covid-19 Vaccines, U.S. Officials Say*, THE WALL STREET J. (March 7, 2021), <https://www.wsj.com/articles/russian-disinformation-campaign-aims-to-undermine-confidence-in-pfizer-other-covid-19-vaccines-u-s-officials-say-11615129200?mod=e2tw>.

invasion of Ukraine.⁴¹ The restrictions include a law that effectively criminalizes independent journalism in Russia.⁴² For example, merely labeling the war in Ukraine a “war,” could prompt a 15-year prison term.⁴³ This led to news organizations like the Bloomberg News and the *New York Times* to cease reporting from the country.⁴⁴

Vacuums likewise breed the spread of political propaganda in the United States. In the past several years, a network of so-called “pink slime” news sites owned by Metric Media has grown to more than 1,200.⁴⁵ Although Metric Media claims it is the “largest producer of local news in the United States,” it is actually, according to an investigation by researchers at Columbia University, “a sprawling network that promotes political agendas and corporate interests, without disclosing those ties.”⁴⁶ News deserts are particularly susceptible to infiltration by these pink slime sites.⁴⁷

Beyond the vacuums, consolidation of media companies makes them targets for political takeover. Autocratic regimes might acquire companies outright or ensure that they are owned by “friends” of the government. For example, in Russia, even prior to the Ukraine invasion, nearly all media outlets were financially reliant on oligarchs or state contracts.⁴⁸ This, of course, makes the government’s distribution of disinformation and propaganda far easier.⁴⁹

This pattern of consolidation and capture has surfaced even recently in the United States. For example, a longtime funder of conservative political candidates, Sinclair Broadcast Group, created controversy in 2018 when it forced numerous local news anchors to read an identical script about the dangers of “fake news.”⁵⁰ (Trump responded to the uproar by calling Sinclair “far superior to CNN and even more Fake NBC, which is a total joke.”)⁵¹ Sinclair has, on other occasions, produced “must-run” content parroting various Trump talking points.⁵² This included a daily “Terrorism Alert Desk” that “echo[ed] Trump’s fear-mongering about Muslims and

⁴¹ See Greg Miller & Joseph Menn, *Putin’s Prewar Moves Against U.S. Tech Giants Laid Groundwork for Crackdown on Free Expression*, WASH. POST (Mar. 12, 2022), <https://www.washingtonpost.com/world/2022/03/12/russia-putin-google-apple-navalny/>.

⁴² See Michael Grynbaum, *The New York Times Pulls Its News Staff from Russia*, N.Y. TIMES (Mar. 8., 2022), <https://www.nytimes.com/2022/03/08/business/media/new-york-times-russia-press-freedom.html>.

⁴³ Tiffany Hsu & Michael M. Grynbaum, “*Minute-to-Minute Triage*”: *Weighing News Against Safety in Russia*, N.Y. TIMES (Mar. 1, 2022), <https://www.nytimes.com/2022/03/15/business/media/russia-ukraine-journalism-censorship.html>.

⁴⁴ See Grynbaum, *supra* note 42.

⁴⁵ Priyanjana Bengani, *Advocacy Groups and Metric Media Collaborate on Local “Community News,”* COLUMBIA J. REV. (Oct. 14, 2021), https://www.cjr.org/tow_center_reports/community-newsmaker-metric-media-local-news.php.

⁴⁶ *Id.*

⁴⁷ Yasmine Askari, “*Pink Slime*” *Journalism Finds a Home in Texas’ News Deserts*, TEXAS OBSERVER (Oct. 27, 2020), <https://www.texasobserver.org/pink-slime-journalism-finds-a-home-in-texas-news-deserts/>.

⁴⁸ See Eduardo Suárez, *As Putin Cracks Down on the Free Press, Independent News Site Meduza Aims to Be Russians’ ‘Only Window to the World,’* REUTERS INST., UNIV. OF OXFORD (March 11, 2022), <https://reutersinstitute.politics.ox.ac.uk/news/putin-cracks-down-free-press-independent-news-site-meduza-aims-be-russians-only-window-world>.

⁴⁹ Sebastian Stier, *Democracy, Autocracy and the News: the Impact of Regime Type on Media Freedom*, 22 DEMOCRATIZATION 7, 1275 (2015); <https://link.springer.com/article/10.1007/s11616-020-00600-9>.

⁵⁰ See Paul Farhi, *As Sinclair’s Sound-Alike Anchors Draw Criticism for “Fake News” Promos, Trump Praises Broadcaster*, WASH. POST (Apr. 2, 2018), https://www.washingtonpost.com/lifestyle/style/as-sinclairs-sound-alike-anchors-draw-criticism-for-fake-news-promos-trump-praises-broadcaster/2018/04/02/a1be67e8-367a-11e8-9c0a-85d477d9a226_story.html; Matsa, *supra* note 24.

⁵¹ See Farhi, *supra* note 50.

⁵² Matsa, *supra* note 24.

Mexicans ... included unproven reports about chainsaw murders and a story about a burkini ban on French beaches.”⁵³

Journalists’ sheer exhaustion, too, can invite authoritarianism. As philosopher Jason Stanley writes, “Democratic citizenship requires a degree of empathy, insight, and kindness that demands a great deal of all of us. There are easier ways to live.”⁵⁴ The appeal of authoritarianism is the appeal of simplicity. An “authoritarian disposition,” according to journalist Anne Applebaum, is one that “favors homogeneity and order.”⁵⁵ It is appealing to those “who cannot tolerate complexity.”⁵⁶

One hopes that journalists can tolerate complexity. But in situations where work may already be traumatic, combined with the weight of the pandemic, journalists cannot be expected to be superhuman. In such situations, a typical neurological response, according to clinical psychologist Christine Runyan is “rigidity in thinking, getting very myopic in perspective, and not having cognitive flexibility to share anybody else’s perspective or ideas.”⁵⁷ Journalists are susceptible.⁵⁸ Overwhelming exhaustion might make authoritarianism more attractive, or simply too tiring for the press to fight.

It also may make the press willing to adopt means to ease the economic crisis that could worsen the political one. Namely, turning to public funding. This is already happening to some degree. After a long period of resistance to public funding for the press, many journalists and press advocates are now calling for it. (Full disclosure: I have called for it myself.⁵⁹) The Build Back Better Act, for example, contains a payroll credit tax for journalists that could generate a \$1.7 billion public subsidy for the press over the next five years.⁶⁰ As of this writing, the bill has passed the House.⁶¹ Although there seems to be little chance of it passing the Senate in its current form, it is possible the Democrats could reintroduce this bill or another one with the same funding provision.⁶² This pivot toward government aid is driven in some part by sheer desperation.⁶³ Describing his own change of heart about public funding, Art Cullen, a Pulitzer Prize-winning journalist at *The Storm Lake (Iowa) Times*, says, “I’ve been skeptical of things like local tax levies or direct federal subsidy...but on the other hand, we need help.”⁶⁴

Yet, if the U.S. teeters further toward autocracy, such funding could be a liability. It would allow an autocrat to become puppeteer of a government-dependent press.⁶⁵ Recent history

⁵³ Lakshmanan, *supra* note 25.

⁵⁴ STANLEY, *supra* note 1, at 184

⁵⁵ APPLEBAUM, *supra* note 9, at 16.

⁵⁶ *Id.*

⁵⁷ Christine Runyan: *What’s Happening in Our Nervous Systems?*, ON BEING WITH KRISTA TIPPETT (Mar. 18, 2021), <https://onbeing.org/programs/christine-runyan-whats-happening-in-our-nervous-systems/>.

⁵⁸ See, e.g., Alexandria Neason, *The Burnout Year*, COLUM. J. REV. (Winter 2018), https://www.cjr.org/special_report/burnout-journalism.php.

⁵⁹ See, e.g., Erin C. Carroll, *Promoting Journalism As Method*, 12 DREXEL L. REV. 691, 719 (2020).

⁶⁰ Marc Tracy, *Local News Outlets Could Reap \$1.7 Billion in Build Back Better Aid*, N.Y. TIMES (Nov. 28, 2021), <https://www.nytimes.com/2021/11/28/business/media/build-back-better-local-news.html>.

⁶¹ Build Back Better Act, H.R. 5376, 117th Cong. (2021-22), <https://www.congress.gov/bill/117th-congress/house-bill/5376>.

⁶² See Sahil Kapur & Benjy Sarlin, *Manchin Says Build Back Better is “Dead.” Here’s What He Might Resurrect*, NBC NEWS (Feb. 3, 2022), <https://www.nbcnews.com/politics/congress/manchin-says-build-back-better-dead-here-s-what-he-n1288492>.

⁶³ See *id.*

⁶⁴ *Id.*

⁶⁵ See Scott Gehlbach & Konstantin Sonin, *Government Control of the Media*, 118 J. of Pub. Econ. 163, 164 (2014) (describing on Russian broadcasters’ “reliance on state subsidies provided considerable leverage to state officials,

is proving that financial flexibility—even when one’s resources are private—is key to surviving autocracy. As a case in point, in 2021, Russia declared the independent news site Meduza a “foreign agent,” and it swiftly lost its advertisers.⁶⁶ Instead, it had to shift to reader donations.⁶⁷ Then, following Russia’s invasion of Ukraine, it lost revenue streams from inside Russia and turned to a crowdfunding campaign aimed at people abroad.⁶⁸

In the United States, although there has been partisan debate about the Build Back Better Act, this concern about editorial independence does not seem to be a major part of the conversation—even among news organizations.⁶⁹ It is a sign of just how completely the economic crisis has eclipsed thinking about other threats.

II. THE POLITICAL THREAT & ITS IMPACT ON THE GLOBAL PRESS

Outside the United States, journalists know what it is like to live and work under autocratic regimes. Anjan Sundaram recounts his experience teaching a program for journalists in Rwanda in *Bad News: Last Journalists in a Dictatorship*, a book that begins with an explosion.⁷⁰ Sundaram writes, “I felt swallowed by the wide road, the odd car hurtling uphill, the people hissing on the sidewalk bathed in sodium-vapor orange.”⁷¹ When he then walks to the spot where he believes the explosion occurred, and asks a policeman there about it, he is met with denial.⁷²

“The what?”

“The blast. I heard it from down the hill.”

“No, no, you are imagining things.” He spoke slowly shaking his head.

“What is that man sweeping, though?”

“We always clean the roads.”

But I saw fragments shimmer, and I made to take out my camera.

His hand moved in front of my face. “No photos! No *photos!*”

“What’s the problem if there was no explosion?”

“Listen carefully. Nothing happened here.”⁷³

What Sundaram recounts—and elaborates on throughout the book—is the extinguishing of facts. The erasure of truth. The “disappearing” of people, including journalists (not in this explosion but in subsequent incidents described in the book). The resulting impossibility of accurate storytelling. And its perpetuation of a fascist regime.

especially in regional media markets”); Newman, *supra* note 26, at 33; *A New Deal for Journalism*, *supra* note 18, at 34, 35, n. 82; Katrin Voltmer, *How Far Can Media Systems Travel? Applying Hallin and Mancini’s Comparative Framework Outside the Western World*, printed in *COMPARING MEDIA SYSTEMS BEYOND THE WESTERN WORLD*, Daniel C. Hallin & Paolo Mancini eds. 236-37 (Cambridge Univ. Press 2012) (noting that even as of 2012, “public service broadcasting remains extremely vulnerable to state interference).

⁶⁶ See, e.g., Suárez, *supra* note 48.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ Tracy, *supra* note 60.

⁷⁰ ANJAN SUNDARAM, *BAD NEWS: LAST JOURNALISTS IN A DICTATORSHIP* (2016).

⁷¹ *Id.* at 1.

⁷² *Id.*

⁷³ *Id.*

If there were a *How to Build an Autocracy* playbook, journalists would be key. Effective autocrats must control language and conversation. A “contemporary authoritarian” cannot succeed, writes Applebaum, without “writers, intellectuals, pamphleteers, bloggers, spin doctors, producers of television programs, and creators of memes who can sell his image to the public.”⁷⁴ Sundaram agrees. “Writers are often at the forefront of revolutions. And it often is they who bear the brunt of the repression,” he writes.⁷⁵

Autocracy does not want a media that is a watchdog—the preeminent role, in constitutional terms, of the American free press. As one Slovenian journalism professor notes, the autocratic regime in his country was instead looking for “a Chihuahua that gets thrown little bones and runs around with them.”⁷⁶

This Part aims to set out what it looks like, from a free press perspective, when a democratic government slides into autocracy. It describes some elements of the “traditional” autocratic playbook, the one containing tools historically used to gain and maintain power. It then details a technology-enhanced playbook containing methods seemingly more indirect⁷⁷ and sometimes described as “soft censorship.”⁷⁸ Although I make a rough distinction between traditional and newer forms of censorship and cooption, I reject any suggestion that so-called soft methods afforded by technology are necessarily less violent or effective.

First, before delving deeper into autocracy and its impact on the press, I want to be clear about my references to both autocracy and the press. So far, this article has referred to autocracy as if it were uniform. Yet, there is no one type of autocracy. Autocratic governments run a spectrum, and the degree of media freedom in each varies.⁷⁹ Moreover, as democratic governments slide into autocratic ones, neither the transitions nor the media systems that result are uniform.⁸⁰ My concern here is not with the precise labeling of autocratic regimes and measuring the corresponding degree of relative press freedom. Rather, it suffices to establish that under autocratic regimes, press freedom suffers. Of this there is no question.⁸¹ And as

⁷⁴ APPLEBAUM, *supra* note 9, at 17.

⁷⁵ SUNDARAM, *supra* note 70, at 5.

⁷⁶ Andrew Higgins, *Wielding Twitter, Europe’s ‘Marshal Twito’ Takes Aim at the Media*, N.Y. TIMES (June 16, 2021), <https://www.nytimes.com/2021/06/16/world/europe/slovenia-jansa-press-freedom-twitter.html>.

⁷⁷ Gehlbach & Sonin, *supra* note 65, at 164 (noting that “government control of the media can be either direct or indirect”).

⁷⁸ Mikal Hem, *Evading the Censors: Critical Journalism in Authoritarian States*, REUTERS INST. FOR THE STUDY OF JOURNALISM AT UNIV. OF OXFORD 5 (2014), https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2017-10/Evading_the_Censors_Critical_journalism_in_authoritarian_states_0.pdf; APPLEBAUM, *supra* note 9, at 25.

⁷⁹ For example, scholars have demonstrated electoral autocracies, monarchies, and military regimes tend to have the freest media, whereas communist ideocracies have the most illiberal media. Stier, *supra* note 49, at 1273. In personalist and non-ideological one-party regimes media freedom sits between these two poles. *Id.*

⁸⁰ Voltmer, *supra* note 65, at 244 (describing how the transitions from autocracy to democracy have not been homogenous and media systems that resulted do not “fit easily into the concepts and models that have been developed for Western contexts”); Gehlbach & Sonin, *supra* note 65, at 163 (“Although correlated with the presence of democratic institutions, political institutions alone do not determine media freedom. Many nondemocracies have higher levels of media freedom than many democracies, and media freedom often fluctuates within countries even as political institutions remain unchanged.”).

⁸¹ Stier, *supra* note 49, at 1277. “All autocratic regimes deploy regulative and coercive power to preserve their rule. Accordingly, a recent study has shown that there are no systematic differences between autocratic subtypes with regard to the violation of civil liberties. From the perspective of an autocrat, media policies serve two immanent goals, both essential to regime survival. First, autocratic exercise of power is not to be discussed publicly in order to maintain regime legitimacy. Second, mass communication is essential to the collective organization of oppositional interests and has to be strictly controlled. Therefore, the media is either directly owned by the government or restricted in its coverage.” *Id.*

philosopher Stanley says of eliding some distinctions in the effort to stave off the threat of fascism: “such generalization is necessary in the current moment.”⁸² Generalization really is born of urgency.

By “the press,” I mean a truth-based, free press. This is an institution of journalists that abide by ethical norms of verifying information, providing it in context, and doing their work independent of government without fear or favor. In contrast, I conceive of “the media” as broader. It includes the truth-based free press, but it also includes broadcasters and publishers less concerned (or unconcerned) with truth and independence. For example, under my definitions, Fox News would qualify as media. For the most part, it is not the press. As the *New Yorker*’s Jane Mayer wrote in 2019, “The White House and Fox interact so seamlessly that it can be hard to determine, during a particular news cycle, which one is following the other’s lead.”⁸³ As many have said, Fox has served as a propaganda operation for Trump.⁸⁴ Thus, the media includes propagandists, spreaders of mis- and dis-information, and chaos agents. The media (along with the press-attacking tools below) is essential to the flourishing of autocracy.

A. THE TRADITIONAL AUTOCRATIC PLAYBOOK

The methods authoritarians have used to control the press are time tested.⁸⁵ The traditional playbook ranges from barbarous forms of silencing to tactics as banal as controlling access to paper. This section provides a brief overview.

It starts with the most brutal. The most complete way to silence a journalist is, of course, to murder them. Killing journalists is increasingly common around the world. In 2020, murders of journalists more than doubled from the previous year.⁸⁶ Most of these murders cannot be definitively tied to an autocratic regime. But murders of journalists regularly occur in countries

⁸² See STANLEY, *supra* note 1, at xxviii.

⁸³ Jane Mayer, *The Making of the Fox News White House*, THE NEW YORKER (Mar. 11, 2019), <https://www.newyorker.com/magazine/2019/03/11/the-making-of-the-fox-news-white-house>. Similarly, the One America News Network has been referred to as the “ultimate ‘pro-Trump network’.” See A.J. Katz, *How One America News is Becoming the Ultimate “Pro-Trump” Network*, TVNEWSER (July 6, 2017), <https://www.adweek.com/tvnewser/how-one-america-news-became-the-ultimate-pro-trump-network/334171/>. In the last half of his presidency, Trump urged his supporters to watch the network, tweeting about it more than 120 times. John Shiffman, *How AT&T Helped Build Far-Right One America News*, REUTERS (Oct. 6, 2011), <https://www.reuters.com/investigates/special-report/usa-oneamerica-att/>. Meanwhile, according to a deposition given by Rudolph Giuliani, one of OAN’s reporters worked part-time for Trump’s legal team recounting 2020 election votes. *Id.* Plus, two OAN reporters raised \$605,000 to fund an audit of Arizona’s presidential vote. *Id.*

⁸⁴ See, e.g., Sean Illing, *How Fox News Evolved Into a Propaganda Operation*, VOX (Mar. 22, 2019), <https://www.vox.com/2019/3/22/18275835/fox-news-trump-propaganda-tom-rosenstiel>. It is worth noting that for a week in August 2021, Fox’s Tucker Carlson, the most watched host on cable news, broadcast his show live from Hungary. See Zack Beauchamp, *Why it Matters that Tucker Carlson is Broadcasting From Hungary This Week*, VOX (Aug. 5, 2021), <https://www.vox.com/policy-and-politics/2021/8/5/22607465/tucker-carlson-hungary-orban-authoritarianism-democracy-backsliding>. Despite the Hungarian government’s assault on the press, immigrants, academics, and members of minority groups, Carlson said in his Monday monologue that week that Americans should look to Hungary as an example “if you care about Western civilization, and democracy, and family—and the ferocious assault on all of three of those things by leaders of our global institutions.” *Id.*

⁸⁵ Kevin Douglas Grant, *Understanding the Authoritarian’s Playbook: Tips for Journalists*, GLOBAL INVESTIGATIVE JOURNALISM NETWORK (Mar. 2, 2020), <https://gijn.org/2020/03/02/understanding-the-authoritarians-playbook-tips-for-journalists/>.

⁸⁶ *Murders of Journalists More than Double Worldwide*, COMM. TO PROTECT JOURNALISTS (Dec. 22, 2020), <https://cpj.org/reports/2020/12/murders-journalists-more-than-doubled-killed/>.

where democracy is absent, like Afghanistan or the Philippines. Plus, covering politics has been the most dangerous beat, making some government link likely.⁸⁷

In fact, the most murderous country for journalists in the world is the U.S.'s neighbor, Mexico, a country rated by Freedom House as "partly free."⁸⁸ There, thirty-seven media workers have been killed since December 2018, and eight in 2022 alone.⁸⁹ Those journalists targeted are typically ones investigating links between the government and organized crime.⁹⁰ Rarely are these murders prosecuted in Mexico or anywhere in the world. At recent widespread protests of the murders, journalists all read aloud a statement that summed up their utter frustration and desperation.⁹¹ "To kill a journalist in Mexico is like killing no one," they said.⁹²

Murders of journalists are often preceded by campaigns to disparage and discredit the journalists. As Pádraig Ó Tuama, a conflict mediator in Northern Ireland, observes, "The easiest way to silence those who wish to tell other stories is to shut them up, and not only to shut them up, but to disgrace their name before you shut them up."⁹³ This was the case with Daphne Caruana Galizia, who was assassinated in a car bombing in 2017.⁹⁴ Caruana Galizia was a prominent investigative journalist in Malta who had exposed corruption that sparked the resignation of Malta's prime minister.⁹⁵ An inquiry after her murder found that the government created an "atmosphere of impunity" that facilitated her death and that the "state should shoulder responsibility for the assassination."⁹⁶

Short of murder, autocratic governments have found innumerable ways to jail journalists on trumped up charges or to use law to shut down news outlets. Infractions can be as slight as offending the regime.⁹⁷ For example, in January 2022, the Turkish government charged a prominent television journalist with insulting President Recep Tayyip Erdogan.⁹⁸ Her offense was a tweet that said: "When the ox comes to the palace, he does not become a king. But the

⁸⁷ *Id.*

⁸⁸ *Mexico, Freedom in the World 2020*, FREEDOM HOUSE, <https://freedomhouse.org/country/mexico/freedom-world/2020>; David Agren, "We Only Have a Pen," *Fury As Fourth Journalist Killed in Mexico This Year*, THE GUARDIAN (Jan. 31, 2022), <https://www.theguardian.com/world/2022/jan/31/mexico-fourth-journalist-killed-roberto-toledo>.

⁸⁹ Agren, *supra* note 88; Tom Phillips, *Eighth Mexican Journalist To Be Killed in 2022 Is Shot Outside His Home*, THE GUARDIAN (Mar. 16, 2022), <https://www.theguardian.com/world/2022/mar/16/armando-linares-lopez-mexican-journalist-killed-eighth-2022>.

⁹⁰ Agren, *supra* note 88.

⁹¹ Hanaa' Tameez, "To Kill a Journalist in Mexico Is Like Killing No One": Journalists in 40 Mexican Cities Protest Following Three Murders, NIEMAN LAB (Jan. 26, 2022), <https://www.niemanlab.org/2022/01/to-kill-a-journalist-in-mexico-is-like-killing-no-one-journalists-in-40-mexican-cities-protest-following-three-murders/>.

⁹² *Id.*

⁹³ PÁDRAIG Ó TUAMA, INTO THE SHELTER: FINDING A HOME IN THE WORLD 235 (YEAR).

⁹⁴ Agence France-Presse in Valletta, *Daphne Caruana Galizia Murder: Life Term Sought for Alleged Mastermind*, THE GUARDIAN (Aug. 18, 2021), <https://www.theguardian.com/world/2021/aug/18/daphne-caruana-galizia-life-term-sought-alleged-mastermind-yorgen-fenech>.

⁹⁵ *Id.*

⁹⁶ Jacob Borg, *State Should "Shoulder Responsibility" for Daphne Assassination – Inquiry*, TIMES OF MALTA (July 29, 2021), <https://timesofmalta.com/articles/view/state-should-be-held-responsible-for-journalists-assassination.889936>.

⁹⁷ *Murders of Journalists More than Double Worldwide*, COMM. TO PROTECT JOURNALISTS (Dec. 22, 2020), <https://cpj.org/reports/2020/12/murders-journalists-more-than-doubled-killed/>.

⁹⁸ Staff and agencies, *Turkey: Journalist "Will Not Go Unpunished" for Insult, Says Erdogan*, THE GUARDIAN (Jan. 26, 2022), <https://www.theguardian.com/world/2022/jan/26/turkey-journalist-will-not-go-unpunished-for-insult-says-erdogan>.

palace becomes a barn.”⁹⁹ Speaking of the case, Erdogan said that the charges had “nothing to do with freedom of expression.”¹⁰⁰ Rather, they stemmed from his “duty to protect the respect of my function, the presidency.”¹⁰¹

In 2020, India, often referred to as the world’s most populous democracy, arrested, detained, or questioned sixty-seven journalists for doing their work.¹⁰² (The prior year it was 13.)¹⁰³ The majority of these criminal cases have occurred in states controlled by the Hindu-nationalist Bharatiya Janata Party, the party of India’s Prime Minister Narendra Modi.¹⁰⁴ Charges against journalists include terror, sedition, and criminal defamation.¹⁰⁵

Authoritarians have grown increasingly brash in the lengths to which they will go to detain and prosecute journalists. In 2021, Belarus and its authoritarian leader Alexander Lukashenko used a MiG-29 fighter jet to divert to the Belarusian capital Minsk an Irish commercial airline that had departed from Greece carrying a journalist.¹⁰⁶ The journalist, Roman Protasevich, was arrested upon touch down.¹⁰⁷ As of December 2021, Protasevich was under house arrest and facing charges of organizing mass riots.¹⁰⁸

Civil law is used to control journalists as well. In Kazakhstan, forty different clauses in the administrative code regulating mass media render the Kazakh press “essentially a government propaganda machine.”¹⁰⁹ Among them, journalists seeking to publish personal or financial information about someone need that person’s permission, making it virtually impossible to report on any corruption.¹¹⁰ And beginning in 2021, the government required that journalists work with a “host” when they cover government events.¹¹¹ Violation of these regulations can result in blocking of websites or suspension of print editions.¹¹²

Beyond using the courts, another classic playbook tactic is to consolidate media entities so as to more easily control them.¹¹³ For example, in Hungary, hundreds of news outlets have been joined in a single holding company that is controlled by allies of Prime Minister Viktor Orbán. Only one national television station is financially independent of the government and

⁹⁹ *Id.*

¹⁰⁰ *Id.* As of the end of 2021, Turkey held eighteen of the 293 journalists known to be imprisoned worldwide. 293 *Journalists Imprisoned*, COMM. TO PROTECT JOURNALISTS,

https://cpj.org/data/imprisoned/2021/?status=Imprisoned&start_year=2021&end_year=2021&group_by=location.

¹⁰¹ Staff and agencies, *Turkey: Journalist “Will Not Go Unpunished” for Insult, Says Erdogan*, *supra* note 98.

¹⁰² Geetika Mantri, *67 Journalists Arrested, Detained, Questioned in India in 2020 For Their Work*, THE NEWS MINUTE (Jan. 6, 2021), <https://www.thenewsminute.com/article/67-journalists-arrested-detained-questioned-india-2020-their-work-140963>; Geeta Seshu, *Behind Bars: Arrest and Detention of Journalists in India, 2010-20*, FREE SPEECH COLLECTIVE, <https://freespeechcollectivedotfiles.wordpress.com/2020/12/behind-bars-arrests-of-journalists-in-india-2010-20.pdf>.

¹⁰³ Seshu, *supra* note 102, at 8.

¹⁰⁴ *Id.* at 2, 5, 10.

¹⁰⁵ *Id.* at 2.

¹⁰⁶ Neil Vigdor & Ivan Necheperenko, *Who is Roman Protasevich, the Captive Journalist in Belarus*, N.Y. TIMES (May 23, 2021), <https://www.nytimes.com/2021/05/23/world/europe/roman-protasevich.html>.

¹⁰⁷ *Id.*

¹⁰⁸ *Belarus Charges Dissident Blogger’s Girlfriend with “Inciting Hatred,”* THE MOSCOW TIMES, <https://www.themoscowtimes.com/2021/12/08/belarus-charges-dissident-bloggers-russian-girlfriend-with-inciting-hatred-a75761>.

¹⁰⁹ Sher Khashimov, *Kazakhstan’s Alternative Media Is Thriving—And in Danger*, FOREIGN POLICY (July 12, 2021), <https://foreignpolicy.com/2021/07/12/kazakhstan-alternative-media-thriving-danger/>.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *See, e.g.,* Hem, *supra* note 78, at 19, 30-31 (describing Russian control over the media).

critical of Orbán.¹¹⁴ In Poland, a state-run oil company has acquired a string of regional newspapers.¹¹⁵ The European Commission is so concerned about consolidation and takeover of news media in countries like Poland, Hungary, and Serbia, that it announced it would be introducing legislation in 2022 entitled the Media Freedom Act.¹¹⁶ Among other things, the Act would prevent a few large media companies from poaching smaller rivals with the stated aim of preventing government interference with the press.¹¹⁷

In other instances, there may be no consolidation, but autocrats may take over a broadcaster outright. For example, in Poland, the right-wing Law and Justice party took over the state public broadcaster, in violation of the country's constitution. When it did so, it fired experienced journalists, replaced them with recruits, and content shifted to "straightforward ruling-party propaganda, sprinkled with easily disprovable lies, at taxpayers' expense."¹¹⁸ In December of 2021, Poland's president vetoed legislation pushed through by Law and Justice that would have eliminated the country's only independent news channel. The channel is American-owned and the president worried that the legislation would alienate the United States.¹¹⁹

Finally, less dramatic means may ultimately prompt censorship that is just as widespread. For example, it is common for governments to starve the press of the infrastructure and supplies it needs. Near Belgrade, Serbia, builders with close ties to the government have blocked a broadband company from installing its cable in a large housing area that is under construction.¹²⁰ The cable company, Serbian Broadband, hosts an independent news channel affiliated with CNN.¹²¹ Similarly, the Venezuelan government controls access to news by requiring media companies to get government permission to buy foreign currency to import paper.¹²²

B. THE UPDATED AUTOCRATIC PLAYBOOK

Although the traditional playbook remains very much in use, autocrats have also adopted new means by which to achieve censorship. Technology allows them to do this with increasing ease. These means include online threats, harassment, doxing, surveillance, hacking, troll farms, and flooding.¹²³ Governments target individuals, entire news organizations, and entire regions (like Kashmir and Hong Kong).

The most well-known example of technologically-enhanced targeting of an individual is perhaps against journalist and 2021 Nobel Peace Prize Winner Maria Ressa. Ressa is founder and editor of *The Rappler*, an independent news organization in the Philippines that has been critical of President Rodrigo Duterte. Based on an analysis of hundreds of thousands of posts on Twitter and Facebook directed at Ressa, the International Center for Journalists found evidence

¹¹⁴ Andrew Higgins, *Eastern Europe Tests New Forms of Media Censorship*, N.Y. TIMES (Jan. 17, 2022), <https://www.nytimes.com/2022/01/17/world/europe/serbia-media-censorship.html>.

¹¹⁵ *Id.*

¹¹⁶ Foo Yun Chee, *EU Plans Media Act, Industry Chief Breton Says, Amid Curbs on Freedom*, REUTERS (Nov. 29, 2021), <https://www.reuters.com/business/media-telecom/eu-plans-media-act-industry-chief-breton-says-amid-curbs-freedom-2021-11-29/>.

¹¹⁷ *Id.*

¹¹⁸ APPLEBAUM, *supra* note 9, at 5; STANLEY, *supra* note 1, at 8.

¹¹⁹ Andrew Higgins, *Eastern Europe Tests New Forms of Media Censorship*, *supra* note 114.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Hem, *supra* note 78, at 201

¹²³ Silvio Waisbord, *Mob Censorship: Online Harassment of US Journalists in Times of Digital Hate and Populism*, DIGITAL JOURNALISM, 8:8, 1030-1046, 1039 (Sept. 24, 2020).

of coordinated or orchestrated attacks—a “hallmark of State-led disinformation campaigns”—against Ressa.¹²⁴ Much of the abuse aimed at Ressa—including threats that she be publicly raped to death—were “fueled by President Duterte’s public statements demonizing Ressa,” according to the study.¹²⁵

Ressa has proved almost insusceptible to censorship in that she keeps speaking up. Her Nobel Prize is testament to this. But her courage in the face of unending vitriol, the murder of colleagues (a former colleague was shot dead just 36 hours before Ressa delivered her Nobel lecture),¹²⁶ and even criminal charges against her for “cyber libel,” is virtually superhuman.

Regardless, online threats appear to be effective in silencing many other journalists—especially women.¹²⁷ In a recent United Nations study, nearly three quarters of women journalists said they had experienced online abuse, harassment, threats, and attacks.¹²⁸ Although autocratic leaders might not themselves be hitting the “send” button on these threats, researchers note that populist politics and misogynistic narratives that demonize journalists and women are both triggers for this violence.¹²⁹ The violence is increasingly causing women journalists to leave the profession.¹³⁰

Beyond directing bile at journalists, governments are also spying on them. In January, Hungarian journalists said they planned to take legal action against Hungary and the creator of Pegasus, invasive spyware that allows wide-ranging access to data and features on a user’s phone.¹³¹ Hungary has confirmed acquiring the spyware, and forensic testing shows it used on journalists’ phones.¹³² Likewise, in January, Canadian researchers issued a report showing that Pegasus had infected the phones of thirty-five “journalists and members of civil society” in El Salvador.¹³³ The hacking occurred while its victims “were reporting on sensitive issues”

¹²⁴ Julie Posetti et al, *Maria Ressa: Fighting an Onslaught of Violence: A Big Data Analysis*, INT’L CTR. FOR JOURNALISTS, https://www.icfj.org/sites/default/files/2021-03/Maria%20Ressa-%20Fighting%20an%20Onslaught%20of%20Online%20Violence_0.pdf.

¹²⁵ *Id.* at 33.

¹²⁶ Maria Ressa, *Nobel Lecture*, THE NOBEL PRIZE (Dec. 10, 2021), <https://www.nobelprize.org/prizes/peace/2021/ressa/lecture/>.

¹²⁷ In part, this is what has prompted the Council of Europe has issued extensive recommendations aimed at countering an “alarming” wave of abuse aimed at journalists. See *Implementation Guide to Recommendation CM/Rec(2016)4 on the Protection of Journalism and Safety of Journalists and Other Media Actors*, COUNCIL OF EUROPE 6 (2020). A Council report said that “journalism has become one of the most dangerous professions in the world.” Peter Noorlander, *Background paper on the implementation of CM/rec(2016)4 on the safety of journalists and other media actors, for the Conference of Ministers responsible for Media and Information Society (Nicosia, Cyprus, May 2020)*, COUNCIL OF EUROPE 5 (2020).

¹²⁸ Julie Posetti, et al., *Online Violence Against Women Journalists: A Global Snapshot of Incidence and Impacts*, UNITED NATIONS EDUC., SCI., AND CULTURAL ORG. 1 (2020), <https://www.icfj.org/sites/default/files/2020-12/UNESCO%20Online%20Violence%20Against%20Women%20Journalists%20-%20A%20Global%20Snapshot%20Dec9pm.pdf>.

¹²⁹ *Id.* at 6. As Turkish journalist Ece Temelkuran puts it, misogyny is the “wingman to right-wing populism.” ECE TEMELKURAN, *HOW TO LOSE A COUNTRY: THE 7 STEPS FROM DEMOCRACY TO DICTATORSHIP* 172 (2019).

¹³⁰ See Erin C. Carroll, *Obstruction of Journalism*, __ DENVER L. REV. __ (2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3921256.

¹³¹ Shaun Walker, *Hungarian Journalists Targeted with Pegasus Spyware to Sue State*, THE GUARDIAN (Jan. 28, 2022), <https://www.theguardian.com/world/2022/jan/28/hungarian-journalists-targeted-with-pegasus-spyware-to-sue-state>.

¹³² *Id.*

¹³³ John Scott-Railton et al., *Project Torogoz: Extensive Hacking of Media & Civil Society in El Salvador with Pegasus Spyware*, THE CITIZEN LAB (Jan. 12, 2022), <https://citizenlab.ca/2022/01/project-torogoz-extensive-hacking-media-civil-society-el-salvador-pegasus-spyware/>.

involving President Nayib Bukele.¹³⁴ Reporters Without Borders, on behalf of journalists targeted by Pegasus and hailing from multiple countries—including Azerbaijan, Mexico, India, Morocco, and Togo—has also asked the United Nations to investigate this surveillance.¹³⁵ The maker of Pegasus has said the tool is meant for use against terrorists and criminals, not journalists, dissidents, or activists.¹³⁶

Cyber-tactics like these are especially effective because they can be used at scale. For example, Kashmiri journalists blame the Indian government for hacking and erasing their archives.¹³⁷ Caches of archived stories have, recently, simply disappeared.¹³⁸ “The idea is to write-off facts and truth about the situation in Kashmir,” one Kashmiri journalist says.¹³⁹ The effort is literally erasing history.¹⁴⁰

Inversely, autocrats have also used information dumps—or “flooding the zone”—as a way to neutralize reporting.¹⁴¹ As journalist Masha Gessen writes, “The end result is not a controlled communications sphere where reality is dictated from above, but a weak one, where nothing can be known, no reality is tangible.”¹⁴²

Although again hard to measure, perhaps the most effective way in which all of these methods (technologically-enhanced or not) work is by prompting self-censorship. Multiple studies in various countries “show that many journalists react to strong and violent pressure with wide-ranging self-censorship.”¹⁴³ As one Russian journalist says, the threat of censorship makes the “atmosphere in the media [such that] you think five times ‘Do I really want to write about this?’”¹⁴⁴

The fear, erasure, and silencing spawned by all of these tactics is a bludgeon to democracy. These methods aim to achieve what journalist Sundaram says in Rwanda is dubbed the “pensée unique”—French for a “single way of thinking.”¹⁴⁵ (Belgians imposed French when they colonized the region in the 1920s.)¹⁴⁶ Pluralism, fundamental to democracy, becomes the enemy. “It was in such an environment that the [Rwandan] genocide was conducted,” writes Sundaram. He adds that “when the killing began there were almost no voices to oppose it.”¹⁴⁷

¹³⁴ *Id.*

¹³⁵ See *NSO/Pegasus: 17 Journalists From 7 Countries Join RSF’s Complaint in Paris and Before the UN*, REPORTERS WITHOUT BORDERS (Aug. 6, 2021), <https://rsf.org/en/news/nsopegasus-17-journalists-7-countries-join-rsfs-complaint-paris-and-un>.

¹³⁶ *Id.*

¹³⁷ Aakash Hassan, *Kashmir’s Vanishing Newspaper Archives*, .CODA (Nov. 23, 2021), <https://www.codastory.com/disinformation/kashmir-vanishing-newspaper/>.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ GESSEN, *supra* note 10, at 134.

¹⁴² *Id.*

¹⁴³ Esther Somfalvy & Heiko Pleines, *The Agency of Journalists in Competitive Authoritarian Regimes: The case of Ukraine During Yanukovich’s Presidency*, 9/4 MEDIA AND COMM’N 83 (2021).

¹⁴⁴ Hem, *supra* note 78, at 18.

¹⁴⁵ SUNDARAM, *supra* note 70, at 45

¹⁴⁶ *English to Become Official Language in Rwanda*, NPR (Nov. 20, 2008), <https://www.npr.org/templates/story/story.php?storyId=97245421>.

¹⁴⁷ SUNDARAM, *supra* note 70, at 45-46.

III. THE POLITICAL THREAT & THE AMERICAN PRESS

Autocracy is not a distant or looming threat. It is a present and immediate one. According to philosopher Jason Stanley, “Our democratic culture is on life support.”¹⁴⁸ Although reasonable minds could differ on the degree to which we’ve slipped into autocracy, unmistakable signs of it surround us. And there is no shortage of credentialed intellectuals like Stanley describing the state of our democracy and free societies globally in apocalyptic terms.

Even if one believes these descriptions are extreme, there can be little argument that democracy is failing in significant ways and that many living under it are dissatisfied with how it is functioning.¹⁴⁹ The ascendancy of Donald Trump is but a sign of waxing authoritarianism in the United States. Its impact on the free press—in ways that track the playbook—is underway.

A. THE POLITICAL SLIDE TO AUTOCRACY

The United States is not immune to authoritarianism. As Applebaum writes in *Twilight of Democracy* after discussing autocratic turns in Eastern Europe, “The reader who has come this far... may be tempted to dismiss these as merely regional stories.”¹⁵⁰ They are not, she cautions. “There is nothing special, in this sense, about the lands between Moscow and Berlin ... Unity is an anomaly. Polarization is normal. Skepticism about liberal democracy is also normal. And the appeal of authoritarianism is eternal.”¹⁵¹

Although the “third wave” of global democratization swept the globe in the last quarter of the twentieth century, since about 2006 “the world has been in the grip of a democratic recession.”¹⁵² But, according to political sociologist Larry Diamond, until fairly recently, “this has been a mild and even ambiguous phenomenon, so much so that distinguished scholars challenged the notion that it was happening at all.”¹⁵³ It is as if we have not wanted to see it.

Yet, it has become harder to ignore. In the last handful of years, the pace of democratic breakdown has accelerated.¹⁵⁴ In the United States, the slide has been most evident since the 2016 election of Donald Trump, of course. But seeds were planted far earlier. Donald Trump is not a phenome or genius, but the result of a landscape that Americans collectively created. “[A]n autocratic attempt builds logically,” writes journalist Gessen “on the structures and norms of American government: on the concentration of power in the executive branch, and on the marriage of money and politics.”¹⁵⁵ Trump’s rise shows, Gessen adds, that even in the United States, autocracy “has a credible chance of succeeding.”

¹⁴⁸ STANLEY, *supra* note 1, at xix.

¹⁴⁹ See Richard Wike et al., *Citizens in Advanced Economies Want Significant Changes to Their Political Systems*, PEW RSCH. CTR. (Oct. 21, 2021), <https://www.pewresearch.org/global/2021/10/21/citizens-in-advanced-economies-want-significant-changes-to-their-political-systems/>.

¹⁵⁰ APPLEBAUM, *supra* note 9, at 55.

¹⁵¹ *Id.* at 56; STANLEY, *supra* note 1, at xx (“In the bastions of democracy in Western Europe, far-right parties are ascendant. All around the world, liberal democracy is in retreat. Not since the middle of the twentieth century has liberal democracy been in such peril.”); TIMOTHY SNYDER, ON TYRANNY: TWENTY LESSONS FROM THE TWENTIETH CENTURY 114 (2017) (“Democracy failed in Europe in the 1920s, ‘30s, and ‘40s, and it is failing not only in much of Europe but in many parts of the world today.”).

¹⁵² Larry Diamond, *Democratic Regression in Comparative Perspective: Scope, Methods, and Causes*, 28(1) DEMOCRATIZATION 22, 25 (2021).

¹⁵³ *Id.* at 25.

¹⁵⁴ *Id.* at 26.

¹⁵⁵ GESSEN, *supra* note 10, at 81.

In 2021, the United States was added to a list of backsliding democracies for the first time.¹⁵⁶ The list, compiled by the Swedish Institute for Democracy and Electoral Assistance, cited the contestation of the 2020 election and subsequent violence, travel bans by the Trump administration, and voting laws that hurt minorities as indicative of the backsliding.¹⁵⁷ An author of the report told *The Guardian* that even though the U.S. is a “high-performing democracy” that “declines in civil liberties and checks on government indicate that there are serious problems with the fundamentals of democracy [in the country].”¹⁵⁸

Scholars have also focused on the contested 2020 election results as the kind of “big lie” that autocrats use to try to turn themselves into victims who deserve to exact revenge. As election law scholar Rick Hasen says, “I’ve never been more scared about American democracy than I am right now, because of the metastasizing of the ‘big lie.’”¹⁵⁹ A big lie can be used by the autocrat as a means of creating an “us” and “them.” Hitler used it to blame Jews for all of Germany’s problems.¹⁶⁰ Trump has used it to demonize any number of groups that did not support or merely criticized him, including the press.

And, of course, Trump’s “big lie” was preceded by literally tens of thousands of smaller ones. Reporters from the *Washington Post* catalogued former President Donald Trump’s “untruths” and counted 30,753 during his presidency.¹⁶¹ Trump lied about the size of crowds, the weather, and that he was Michigan’s Man of the Year.¹⁶² Each of these chipped away at the line between truth and falsity, smoothing the way for the perpetuation of the big lie.

The election of President Joe Biden was not a firebreak in autocracy’s conflagration. Even if self-proclaimed defenders of democracy remain in charge of the executive branch, much work must be done on the ground to strengthen institutions and restore norms.¹⁶³ Journalist Gessen argues that even if Democrats give us “hope of reversing the autocratic attempt,” that still, even now “half of the country in which we are living is functioning in the public space, like an autocracy.”¹⁶⁴

As Americans have already witnessed, the slide from democracy can be slick and steep. History also provides chilling examples. It took less than a year after Hitler’s 1933 election as chancellor of Germany for “the new Nazi order to consolidate.”¹⁶⁵ In February of 1933 a leading newspaper for German Jews stated, “We do not subscribe to the view that Mr. Hitler and his friends, now finally in possession of the power they have so long desired [will] suddenly deprive German Jews of their constitutional rights [or] enclose them in ghettos [or] subject them to the

¹⁵⁶ Agence France-Presse in Stockholm, *US Added to List of “Backsliding” Democracies for First Time*, THE GUARDIAN (Nov. 22, 2021), <https://www.theguardian.com/us-news/2021/nov/22/us-list-backsliding-democracies-civil-liberties-international>

¹⁵⁷ See THE GLOBAL STATE OF DEMOCRACY 2021: BUILDING RESILIENCE IN A PANDEMIC ERA, INT’L INST. FOR DEMOCRACY AND ELECTORAL ASSISTANCE iv, 12, 15, 24, 27 (2021), <https://www.idea.int/gsod/>.

¹⁵⁸ Agence France-Presse in Stockholm, *supra* note 156.

¹⁵⁹ See Melissa Block, *The Clear and Present Danger of Trump’s Enduring “Big Lie,”* NPR (Dec. 23, 2021), <https://www.npr.org/2021/12/23/1065277246/trump-big-lie-jan-6-election>.

¹⁶⁰ *Id.*

¹⁶¹ Glenn Kessler et al., *Trump’s False Or Misleading Claims Total 30,573 Over 4 Years*, WASH. POST (Jan. 24, 2021), <https://www.washingtonpost.com/politics/2021/01/24/trumps-false-or-misleading-claims-total-30573-over-four-years/>.

¹⁶² Daniel Dale, *The 15 Most Notable Lies of Donald Trump’s Presidency*, CNN POLITICS (Jan. 16, 2021), <https://www.cnn.com/2021/01/16/politics/fact-check-dale-top-15-donald-trump-lies/index.html>.

¹⁶³ <https://freedomhouse.org/report/freedom-world/2021/democracy-under-siege>

¹⁶⁴ GESSEN, *supra* note 10, at 54.

¹⁶⁵ SNYDER, *supra* note 151, at 24.

jealous and murderous impulses of the mob.”¹⁶⁶ Yet, by the end of the year, “Germany had become a one-party state in which all major institutions had been humbled.”¹⁶⁷ We know the horror that followed.¹⁶⁸

The chronic underlying and interrelated conditions that lead to autocracy remain and, in many cases are worsening—polarization, economic inequality, deterioration of and distrust in institutions, crumbling of local media, mass migration, and climate change.¹⁶⁹ We have every reason to be preparing for a prolonged battle against autocracy.

Many residents of autocratic regimes are shouting at Americans to prepare, trying to rouse us from our relative comfort. They loudly caution against complacency—telling personal stories of how they themselves succumbed to it. As Turkish journalist Ece Temelkuran writes, “One hardly realises how dire the damage to free thought and free speech is until the day comes when, for example, an important petition against the populist leader is launched, and you find yourself struggling to come up with prominent names who have not been tainted by the cage fight or driven crazy by the chaos.”¹⁷⁰ Many are asking us to wake up and ready ourselves, but it is not clear we can be roused.

B. THE SLIDE’S IMPACT ON THE AMERICAN PRESS

I wish that Sundaram’s story about the explosion in Kigali, Rwanda had felt otherworldly when I read it—as it might have a decade (or even fewer years) ago. I would have liked to have absorbed it with more detached academic curiosity. But I could not and did not. Something in it lodged in me and registered as eerily familiar.

For reasons already explained, this makes sense. Plus, as I read Sundaram’s book, the nation had just marked the one-year anniversary of the January 6, 2021 insurrection—a day about which Americans have no agreed upon “truth.” As Trump wrote in a statement by his fundraising group, “The insurrection took place on November 3, Election Day. January 6 was the Protest!”¹⁷¹

In fact, January 6 was a day of horrific violence—against law enforcement, against legislators, and also against journalists. The words “Murder the Media” were written on a Capitol door.¹⁷² One photojournalist was dragged through a crowd, thrown over a wall, and threatened with death.¹⁷³ Another photojournalist described men becoming angry after reading her press

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ There are numerous other examples. Hungary and Poland, too, “which only recently were thriving liberal democracies, [are] vivid examples of the rapid normalization of fascism.”

STANLEY, *supra* note 1, at 190. Likewise, Venezuela “has experienced a dizzying 40-point score decline over the last 15 years.” Sarah Repucci & Amy Slipowitz, *Freedom in the World 2021: Democracy Under Siege*, FREEDOM HOUSE, <https://freedomhouse.org/report/freedom-world/2021/democracy-under-siege>.

¹⁶⁹ See *United States*, REPORTERS WITHOUT BORDERS (2021), <https://rsf.org/en/united-states>; STANLEY, *supra* note 1, at 192.

¹⁷⁰ TEMELKURAN, *supra* note 129, at 83

¹⁷¹ Barton Gellman, *Trump’s Next Coup Has Already Begun*, THE ATLANTIC (Dec. 9, 2021)

<https://www.theatlantic.com/magazine/archive/2022/01/january-6-insurrection-trump-coup-2024-election/620843/>.

¹⁷² Fu, *supra* note 2.

¹⁷³ Jaime Ross, “*Get the Fuck Out of Here! Video Shows Terrifying Moment Capital MAGA Mob Attacks AP Photographer*,” DAILY BEAST (Jan. 8, 2021), <https://www.thedailybeast.com/video-shows-terrifying-moment-capitol-maga-mob-attacks-ap-photographer-john-minchillo>.

pass, then throwing her to the Capitol floor.¹⁷⁴ As she screamed for help, “[p]eople just watched. At this point, I thought I could be killed and no one would stop them.”¹⁷⁵ Several weeks later, journalists wore bulletproof vests when they covered the inauguration.¹⁷⁶

The U.S. government has not “disappeared” any American journalists as Sundaram describes happening in Rwanda, but journalists have been murdered on U.S. soil because of their work.¹⁷⁷ Moreover, the American government’s response to the Saudi government’s drugging and dismemberment of *Washington Post* columnist Jamal Khashoggi was tepid.¹⁷⁸ And local governments in the United States are responsible for violence against journalists. Police have shot rubber bullets at and arrested reporters.¹⁷⁹ The now-governor of Montana hit a journalist when the journalist asked a question.¹⁸⁰ Even the private citizens who beat journalists on the Capital grounds were responding to Trump’s big lie.¹⁸¹ Violence against journalists is increasing so fast that the one nonprofit tracking and verifying it has had trouble documenting all of it.¹⁸²

Beyond physical violence, consistent with an autocratic playbook, U.S. officials have increasingly criminalized the act of journalism. In 2020 alone, police arrested 142 journalists, many of whom were covering protests.¹⁸³ Although that number dropped to 59 in 2021, this is still far higher than in previous years in which arrests were tracked.¹⁸⁴ As Joel Simon, executive director of the Committee to Protect Journalists (a group typically focused on protection of press outside of the U.S.) says, “There is simply no reason for police to be arresting and detaining journalists in the United States ... the problem has become deeply entrenched.”¹⁸⁵

Moreover, prosecutors have persisted in seeking convictions against journalists. A journalist for the *Des Moines Register*, Andrea Sahouri, went to trial in 2021 on charges of failure to disperse and interfering with official acts during a Black Lives matter protest that she

¹⁷⁴ Nicholas Fandos et al., “*Senate Being Locked Down*”: *Inside a Harrowing Day at the Capitol*, N.Y. TIMES (Jan. 7 2021), <https://www.nytimes.com/2021/01/07/us/politics/capitol-lockdown.html>.

¹⁷⁵ *Id.*

¹⁷⁶ Kerry Flynn, *Bulletproof vests and gas masks: Journalists prep for Inauguration Day*, CNN BUSINESS (Jan. 18, 2021), <https://www.cnn.com/2021/01/18/media/journalists-inauguration-preparation/index.html>.

¹⁷⁷ Ian Duncan and Nicholas Bogel-Burroughs, *Capital Gazette shooting suspect’s anger flared, and fell silent. Then police say, it exploded*, THE BALTIMORE SUN (July 8, 2018), <https://www.baltimoresun.com/news/crime/bs-md-ramos-profile-20180705-story.html>.

¹⁷⁸ See David E. Sanger, *Biden Won’t Penalize Saudi Crown Prince Over Khashoggi’s Killing Fearing Relations Breach*, N.Y. TIMES (Feb. 26, 2021), <https://www.nytimes.com/2021/02/26/us/politics/biden-mbs-khashoggi.html>.

¹⁷⁹ Courtney Douglas, *Amid Black Lives Matter Protests, a Crushing Moment for Journalists Facing Record Attacks, Arrests at the Hands of Law Enforcement*, REPS. COMM. FOR FREEDOM OF THE PRESS (Sept. 4, 2020), <https://www.rcfp.org/black-lives-matter-press-freedom/>.

¹⁸⁰ Whitney Bermes, *Gianforte sentenced to anger management, community service for assault of reporter*, BOZEMAN DAILY CHRON. (Jun. 12, 2017), https://www.bozemandailychronicle.com/news/crime/gianforte-sentenced-to-anger-management-community-service-for-assault-of-reporter/article_b6e6241e-e1a3-56fe-a32a-6a02ba234129.html; Office of Governor Greg Gianforte, <https://governor.mt.gov/>.

¹⁸¹ See Jan Wolfe, *‘He Invited Us’: Accused Capitol Rioters Blame Trump in Novel Legal Defense*, REUTERS (Feb. 2, 2021), <https://www.reuters.com/article/us-usa-trump-capitol-defense/he-invited-us-accused-capitol-rioters-blame-trump-in-novel-legal-defense-idUSKBN2A219E>.

¹⁸² *U.S. Press Freedom in Crisis: Journalists Under Arrest in 2020* 15 FREEDOM OF THE PRESS FOUNDATION (2020), <https://freedom.press/news/2020-report-journalists-arrested-us/>.

¹⁸³ *Arrest/Criminal Charge*, U.S. PRESS FREEDOM TRACKER, <https://pressfreedomtracker.us/arrest-criminal-charge/> (noting that since 2017, 225 journalists have been arrested covering protests).

¹⁸⁴ *Id.*

¹⁸⁵ Kio Herrera, *More Than 50 Journalists Arrested Or Detained While On the Job in the U.S. in 2021*, U.S. PRESS FREEDOM TRACKER (Nov.22, 2021), <https://pressfreedomtracker.us/blog/arrests-of-journalists-remain-a-threat-to-a-free-press/>.

was covering.¹⁸⁶ A jury acquitted her.¹⁸⁷ Oregon Public Radio reporter and editor April Ehrlich faces a 2022 trial for charges of trespassing, resisting arrest, and obstruction related to her coverage of the cleanup of homeless encampments in Medford, Oregon.¹⁸⁸ Charges, too, remain pending against other journalists.

The United States is also getting bolder in using espionage as a tool to cow journalistic sources, and in turn, journalists themselves. In 2021, a federal judge sentenced Daniel Hale, a former U.S. Air Force Intelligence analyst, to forty-five months in prison for disclosing to the press documents about the U.S. drone warfare program.¹⁸⁹ Responding to Hale's sentencing, Betsy Reed, Editor-in-Chief of *The Intercept* (which the government strongly implied was the recipient of the leak) wrote that the sentence is "another tragic example of how the government misuses the Espionage Act to punish alleged journalistic sources as spies, a practice that damages human rights, press freedom, and democracy."¹⁹⁰ According to the Reporters Committee for Freedom of the Press, leak prosecutions under the Espionage Act "have been trending troublingly upward in recent years."¹⁹¹ Hale's sentence was the fourth longest in American history, following Chelsea Manning, Reality Winner, and Terry Albury, for violations of the Espionage Act.¹⁹²

The United States is also seeking to extradite from the United Kingdom Wikileaks founder Julian Assange, who is also charged with violating the Espionage Act.¹⁹³ Although Assange is unpopular even among many journalists, journalism advocates are disturbed by his prosecution. That prosecution depends, says one press lawyer, on "a profoundly troubling legal theory, one rarely contemplated and never successfully deployed . . . to punish the pure act of publication of newsworthy government secrets under the nation's spying laws."¹⁹⁴

Meanwhile, surveillance of journalists appears to be evolving in unprecedented ways. In 2021, *CNN*, the *New York Times*, and the *Washington Post* all revealed that the Trump Justice Department had authorized secret demands for phone and email records of reporters to identify confidential sources.¹⁹⁵ This surveillance occurred despite a Justice Department policy that requires notifying news organizations of these types of seizures except with very limited

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Ryan Devereaux & Murtaza Hussain, *Daniel Hale Sentenced to 45 Months in Prison for Drone Leak*, THE INTERCEPT (July 27, 2021), <https://theintercept.com/2021/07/27/daniel-hale-drone-leak-sentencing/>.

¹⁹⁰ *Id.*

¹⁹¹ Mailyn Fidler, *Daniel Hale Sentenced to 45 Months in Leak Prosecution, This Week in Technology + Press Freedom*, REPORTERS COMM. FOR FREEDOM OF THE PRESS (Aug. 2, 2021), <https://www.rcfp.org/daniel-hale-sentenced-45-months/>; *Federal Cases Involving Unauthorized Disclosures to the News Media, 1778 to the Present*, REPORTERS COMM. FOR FREEDOM OF THE PRESS, <https://www.rcfp.org/resources/leak-investigations-chart/>.

¹⁹² Fidler, *supra* note 191.

¹⁹³ Rob Iddiols et al., *Wikileaks Founder Julian Assange Allowed to Seek Appeal Against Extradition to U.S.*, CNN (Jan. 24, 2022), <https://www.cnn.com/2022/01/24/europe/wikileaks-julian-assange-appeal-extradition-intl-gbr/index.html>.

¹⁹⁴ See, e.g., Gabe Rottman, *The Assange Indictment Seeks to Punish Pure Publication*, LAWFARE (May 24, 2019).

¹⁹⁵ Bruce D. Brown & Gabe Rottman, *Everything We Know About the Trump-Era Records Demands From the Press*, LAWFARE (July 6, 2021), <https://www.lawfareblog.com/everything-we-know-about-trump-era-records-demands-press>.

exceptions.¹⁹⁶ In one of these cases, the Justice Department even won a court order gagging CNN’s general counsel from informing CNN’s journalists of the demands.¹⁹⁷

Perhaps the situation is improving. The Biden Justice Department has said it “will no longer use compulsory process to obtain reporters’ source information when they are doing their jobs.”¹⁹⁸ The State Department under Biden has also criticized foreign government’s use of surveillance against journalists.¹⁹⁹ But journalism advocates have expressed a need for “durable protections” that outlast any one occupant of the White House.²⁰⁰

The Justice Department is not the only agency accused of tracking journalists. Recent reporting revealed that a secret unit of Customs and Border Protection investigated at least twenty journalists as part of “Operation Whistle Pig.”²⁰¹ This included running journalists’ names through a terrorist watch list.²⁰² Although an inspector general’s report on Operation Whistle Pig found a basis for criminal charges against the lead CBP investigator, federal prosecutors opted not to file charges.²⁰³ The CBP has since said it is investigating the “incident” and ensuring “proper safeguards are in place.”²⁰⁴

Numerous federal and state government entities are also clamping down on press access to information. Many were quick to use the pandemic as cover—limiting or suspending their responses to requests for records under the Freedom of Information Act or equivalent laws.²⁰⁵ This, despite numerous state governments simultaneously recognizing the importance of journalism and accurate information during the pandemic by classifying the press as essential workers.²⁰⁶

Although the criminal charges, intimidation of sources, surveillance, and squelching of information might have raised hackles a short time ago, today, if there is any resistance to these practices, it is lukewarm. The explosion of anti-press rhetoric by Trump and others is propelling the erosion of norms that once protected the press.²⁰⁷ Trump’s refrain of “fake news” is a resurrection of the German “Lügenpresse” used by the Nazis and more recently by German anti-

¹⁹⁶ *Id.*; Sari Horwitz, *Holder Tightens Investigators’ Guidelines in Cases Involving News Media*, WASH. POST (Jan. 14, 2015), https://www.washingtonpost.com/world/national-security/holder-tightens-investigators-guidelines-in-cases-involving-news-media/2015/01/14/1f4065d6-9c0f-11e4-96cc-e858eba91ced_story.html.

¹⁹⁷ Brown & Rottman, *supra* note 195.

¹⁹⁸ *Id.*

¹⁹⁹ Ned Price, *The International Day to End Impunity for Crimes Against Journalists*, U.S. STATE DEP’T (Nov. 2, 2021), <https://www.state.gov/the-international-day-to-end-impunity-for-crimes-against-journalists/>.

²⁰⁰ *Id.*

²⁰¹ See Jana Winter, *Operation Whistle Pig: Inside the Secret CBP Unit With No Rules That Investigates Americans*, YAHOO! NEWS (Dec. 11, 2021), <https://news.yahoo.com/operation-whistle-pig-inside-the-secret-cbp-unit-with-no-rules-that-investigates-americans-100000147.html>.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ Jana Winter, *CBP Launches Review of Secretive Division That Targeted Journalists, Lawmakers, and Other Americans*, YAHOO! NEWS (Dec. 31, 2021), <https://news.yahoo.com/cbp-launches-review-secretive-division-that-targeted-journalists-lawmakers-americans-100035634.html>.

²⁰⁵ Adam A. Marshall & Gunita Singh, *Access to Public Records and the Role of the News Media in Providing Information About COVID-19*, 11 J. OF NAT’L SEC. LAW & POLICY 199, 202 (2001).

²⁰⁶ See Erin Carroll, *From “Enemy of the People” to “Essential”: The Pandemic Creates an Opening for the Press*, *supra* note 35.

²⁰⁷ See RonNell Andersen Jones and Sonja R. West, *Don’t Expect the First Amendment to Protect the Media*, N.Y. TIMES (Jan. 25, 2017), <https://www.nytimes.com/2017/01/25/opinion/dont-expect-the-first-amendment-to-protect-the-media.html>.

immigrant activists.²⁰⁸ During his presidency, Trump posted approximately 1,800 negative tweets about the media.²⁰⁹ He targeted specific organizations and called reporters “nasty,” “disgusting,” “dumb,” “fake,” “dishonest” and “human scum.”²¹⁰ The rise in anti-press rhetoric accompanies the drop in public trust in the media.²¹¹ It also accompanies increased harassment and threats against journalists.²¹² Trump, says Lucy Daghli, former executive director of the Reporters Committee, is “encouraging the public—actually calling on them—to harm journalists.”²¹³

Today, being anti-press is an unofficial part of the GOP platform.²¹⁴ Hating the press is a means of signaling in-group identity.²¹⁵ And, of course, creating such enemies (the press, chief among them) is a key part of the autocratic playbook.²¹⁶

C. A FREE PRESS WITHOUT DEMOCRACY

Given the swift and continuing global slide toward autocracy and the unmistakable signs of it in the United States, the question of how a free press should respond is vital. After all, philosophers and scholars have long lauded the importance of a free press to democracy.

Journalists delight in quoting Thomas Jefferson saying, “were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter.”²¹⁷ But although these words warm a journalist’s soul, they signal a misunderstanding of the relationship between media and politics generally and the free press and democracy in particular.

That relationship is co-dependent. On the one hand, governments rely on the media to distribute information. In a democracy, the press is a network serving up information to citizens to in turn help those citizens participate in government. In an autocracy, the media is an instrument to seed propaganda and ensure the “pensée unique.” To be fair to Jefferson, he surely

²⁰⁸ See Rick Noack, *The Ugly History of ‘Lügenpresse,’ a Nazi Slur Shouted at a Trump Rally*, WASH. POST. (Oct. 24, 2016), <https://www.washingtonpost.com/news/worldviews/wp/2016/10/24/the-ugly-history-of-luegenpresse-a-nazi-slur-shouted-at-a-trump-rally/>.

²⁰⁹ *Trump’s Negative Tweets About the Press (Living Doc)*, <https://docs.google.com/spreadsheets/d/1uNA6nsgcRhhQOb6USsMNzhYLMfuDRSMhbGZLNZ00WkHk/edit#gid=0>; *The Last Trump Tweet Against the Media*, U.S. PRESS FREEDOM TRACKER (Jan. 11, 2021) (embedding a link to the Google doc entitled *Trump’s Negative Tweets About the Press (Living Doc)*), <https://pressfreedomtracker.us/blog/last-trump-tweet-against-media/>.

²¹⁰ Leonard Downie Jr., *The Trump Administration and the Media*, COMM. TO PROTECT JOURNALISTS (Apr. 16, 2020), <https://cpj.org/reports/2020/04/trump-media-attacks-credibility-leaks/#11>.

²¹¹ Emily Van Duyn & Jessica Collier, *Priming and Fake News: The Effects of Elite Discourse on Evaluations of News Media*, 22 MASS COMM’N & SOC’Y 1, 44 (2019), <https://www.tandfonline.com/doi/abs/10.1080/15205436.2018.1511807>.

²¹² Stephanie Sugars, *From Fake News to Enemy of the People: An Anatomy of Trump’s Tweets*, COMM. TO PROTECT JOURNALISTS (Jan. 30, 2019), <https://cpj.org/blog/2019/01/trump-twitter-press-fake-news-enemy-people.php>.

²¹³ Downie, Jr., *supra* note 210.

²¹⁴ Meredith Conroy, *Why Being “Anti-Media” Is Now Part of the GOP Identity*, FIVETHIRTYEIGHT (Apr. 5, 2021), <https://fivethirtyeight.com/features/why-being-anti-media-is-now-part-of-the-gop-identity/>.

²¹⁵ *Id.*

²¹⁶ APPLEBAUM, *supra* note 9, at 6 (noting of Law and Justice that “the party stopped using ordinary political arguments, and began identifying existential enemies instead.”).

²¹⁷ See, e.g., The Editorial Board, *A Free Press Needs You*, N.Y. TIMES (Aug. 15, 2018), <https://www.nytimes.com/interactive/2018/08/15/opinion/editorials/free-press-local-journalism-news-donald-trump.html>.

knew this.²¹⁸ As proof, he pushed for the creation of a nationalized postal system that would, among other things, distribute newspapers widely at a highly-subsidized rate.²¹⁹

On the other hand, political systems determine, to a considerable extent, the degree of freedom the press operating within them has.²²⁰ Democracies are, in theory, committed to freedom of the press and expression. Autocracies, in contrast, limit them. The very vitality of autocracy depends on smothering pluralistic thinking.

Writing in 1920, philosopher Walter Lippmann described this co-dependency in terms that are remarkably current:

Everywhere to-day men are conscious that somehow they must deal with questions more intricate than any that church or school had prepared them to understand. Increasingly they know that they cannot understand them if the facts are not quickly and steadily available. Increasingly they are baffled because the facts are not available; and they are wondering whether government by consent can survive in a time when the manufacture of consent is an unregulated private enterprise. For in an exact sense the present crisis of western democracy is a crisis in journalism.²²¹

Today, too, we face quandaries and questions that overwhelm. Likewise, facts are often elusive despite the barrage of information. Noise is cancelling signal. As in the 1920s, our current crisis of democracy is a crisis of journalism.

The remainder of this Article is dedicated to proposing practices that recognize the co-dependence of the press and government. They are also offered with full knowledge that both democracy and freedom are relative.²²² They exist along a sliding scale—pulling one another forward or dragging one another back. If one end of this scale were labeled “utopian democracy” or “ideal free press”—it has never been reached. Even at its most sparkling and impressive, ours has never been a perfect democracy.²²³ Nor has the United States had a press that is either entirely free or that serves democracy as robustly as it might. Democracy and a free press are ideals that we can only attempt to achieve.

But to the extent the press moves forward with practices of freedom, then it can, borrowing from Maggie Nelson, engage in “making space” and “increasing degrees of possibility and decreasing degrees of domination.”²²⁴ This is the spirit in which this Article offers up practices of freedom. This may seem a sunny or bohemian retort to a dark, encroaching future. It is neither. Rather, I argue that only intentional and repeated work—both doing and reflecting—will make possible the freedom that I believe we desire.

²¹⁸ Both Jefferson and Madison “saw the Post Office as an indispensable link in disseminating information.” Anuj C. Desai, *The Transformation of Statutes into Constitutional Law: How Early Post Office Policy Shaped Modern First Amendment Doctrine*, 58 HASTINGS L.J. 671, 686, 677 (2007). Such “a conduit for political information,” they believed “was a necessary condition for maintenance of a democracy over such a geographically dispersed area.” *Id.* ²¹⁹ *Id.* at 694-95.

²²⁰ Stier, *supra* note 49, at 1273.

²²¹ WALTER LIPPMANN, LIBERTY AND THE NEWS 4-5 (1920),

<https://archive.org/details/libertynews00lippuoft/page/n5/mode/2up?view=theater>.

²²² See MIKE ANANNY, NETWORKED PRESS FREEDOM: CREATING INFRASTRUCTURES FOR A PUBLIC RIGHT TO HEAR 64 (2018)

²²³ NELSON, *supra* note 7, at 5.

²²⁴ *Id.* at 77.

IV. DEVELOPING PRACTICES OF PRESS FREEDOM

To this point, I have intended this Article to be a dunk in a cold pool—an effort to get you, the reader, to awaken further to autocracy’s creep and to see just how unprepared one democratic institution—the free press—is to resist it. The remainder of this Article contains additional splashes of water. It describes three press pathologies that, in addition to the economic crisis, hobble the press in its effort to resist autocracy: American press exceptionalism, Darwinian press competition, and an addiction to audience desire.²²⁵ The press is cognizant—even obsessed—with the economic crisis. In contrast, these pathologies are so engrained that news organizations may not view them as problems. Or, if they do, they have not sufficiently engaged with how to overcome them.

This Part offers help. I counter each of these pathologies with tailored practices of press freedom. Together, these practices constitute a regimen to weaken the pathologies. Used and repeated, they can help the press reinvigorate its freedom and resist the slide toward autocracy.

A. A PRACTICE OF GLOBALISM INSTEAD OF AMERICAN EXCEPTIONALISM

“[W]e are fond, in the United States, of congratulating ourselves for how wonderful we are and how we are the best—we are the greatest—we are the strongest—we are the most prosperous—we are the freest—we are the most democratic,” historian Howard Zinn told an audience gathered at Massachusetts Institute of Technology in 2005. One problem with this, Zinn continued, is it makes us particularly unprepared for, and even susceptible to, catastrophe. “[W]e will be shocked,” he continued, “if something happens one day that arouses us from our complacency.”

A significant “something” is happening, and yet, we still seem to be complacent. As Zinn recognized, American exceptionalism impedes responding to crisis. We are flat-footed, in no small part, because of our insistence that we remain a “shining city on a hill” shielded by our Constitution.²²⁶

Right now, press humility and outreach are urgent. American journalists and news organizations could learn from colleagues working under authoritarianism. But this means shifting mindset. For generations, the American press, its advocates, and sometimes its lawyers have seen themselves as the source of all journalistic aid and knowledge and not as a recipient. They have been the ones with skills, stories, and law to offer colleagues abroad. As Columbia University President and First Amendment scholar Lee Bollinger wrote in 2010, the American press “is one of the greatest achievements of the United States. Wherever you go in the world, journalists envy it.”²²⁷ But hardly more than a decade later, this is not true. Now, it is time for American journalists to reevaluate their position and to look outward for knowledge and resources to protect the press.

²²⁵ Journalism scholar Nikki Usher has talked about the importance of resilience at the local level. See USHER, *supra* note 38, at 255. I want to push it at the national level.

²²⁶ See APPLEBAUM, *supra* note 9, at 144, 147-48; Zinn, *supra* note 4.

²²⁷ LEE C. BOLLINGER, UNINHIBITED, ROBUST, AND WIDE-OPEN: A FREE PRESS FOR A NEW CENTURY 1 (2010).

1. Tapping International Colleagues

The press has not been immune to our nation's tendency to confront the world with a nose tilted upward. The history of this is long. Take Henry Luce, a mid-twentieth century media magnate who owned *Time*, *Life*, and *Fortune*. As Luce said in his heyday, "The victory at the end of World War II, gave the United States the right to exert upon the world the full impact of our influence for such purposes as we see fit and by such means as we see fit."²²⁸ It is harder to imagine a grosser statement of American might.

Part of exerting our influence on the world has included journalism. The American government has used journalism as a tool of democracy building. The U.S. Agency for Global Media is aimed at providing news in countries where the press is not free.²²⁹ It includes Voice of America, Radio Free Europe, Radio Free Asia, Office of Cuba Broadcasting, and Middle East Broadcasting Networks.²³⁰ These entities are arms of U.S. diplomacy and policy.²³¹ Voice of America states, for example, as part of its mission, that it "will present the policies of the United States clearly and effectively."²³²

In addition, journalistic fellowships in the United States help to educate and train foreign journalists.²³³ One in which I participated along with my journalist husband, involved fellows from Argentina, Brazil, England, South Korea, and Germany.²³⁴

The underlying message American journalists have broadcast is that the American press is the best, the freest, and the most sophisticated. Although maybe this was true at some point, it is measurably untrue today. In 2021, Reporters Without Borders ranked the United States forty-fourth of 180 nations in freedom.²³⁵ This put the United States behind Taiwan, Italy, the Czech Republic, and Botswana, among others.²³⁶ As basis for the ranking, the study sites widespread violence against journalists, erosion of trust in the media, and the Biden Administration's continued efforts to extradite Julian Assange.²³⁷

As this report recognizes, although the U.S. exports press freedom, its actual history of exercising that freedom in service of democracy is checkered. Despite celebrating its watchdog role, the press often serves the powerful. It too often focuses on the wants of affluent readers over community needs. Although it touts its "objectivity," its perspectives and its ranks have always skewed white and male.²³⁸ As journalism scholars Candis Callison and Mary Lynn

²²⁸ Zinn, *supra* note 4.

²²⁹ See *Mission*, U.S. AGENCY FOR GLOBAL MEDIA, <https://www.usagm.gov/who-we-are/mission/>.

²³⁰ *Id.*

²³¹ See *Legislation: Standards & Principles*, BROAD. BD. OF GOVERNORS, <https://web.archive.org/web/20191215131808/https://www.bbg.gov/who-we-are/oversight/legislation/standards-principles/>.

²³² *Mission*, U.S. AGENCY FOR GLOBAL MEDIA, *supra* note 229.

²³³ See, e.g., *About*, NIEMAN, NIEMAN FOUND. AT HARVARD. <https://nieman.harvard.edu/about/> (noting that fellows have come from almost 100 different countries).

²³⁴ See *2011-2012 Fellows, Past Fellows*, WALLACE HOUSE, UNIV. OF MICHIGAN, <https://wallacehouse.umich.edu/knight-wallace/our-fellows/2011-2012/>.

²³⁵ *United States*, REPORTERS WITHOUT BORDERS, *supra* note 169.

²³⁶ *2021 World Press Freedom Index*, REPORTERS WITHOUT BORDERS (2021), <https://rsf.org/en/ranking#>.

²³⁷ *United States*, REPORTERS WITHOUT BORDERS, *supra* note 169.

²³⁸ The press has regularly taken racist stances that hurt the communities it covered and the nation more broadly. For example, the Chicago Tribune editorialized against the Civil Rights Act of 1964 and the Boston Globe advocated against busing to integrate schools. See USHER, *supra* note 38, at 27.

Young argue, “journalism knowledge supports certain powerful interests over others” and “media representations tend to reinforce structural inequities.”²³⁹

American journalists should lower their noses. A pivot toward humility and the global journalistic community would have multiple benefits. It would help to prepare the press for the political shift that seems to be coming; it could, at least, lead to a clearer reckoning with the risk. Journalists still have time to learn from international colleagues.²⁴⁰

This could take many forms, but it could include American media coverage of the experiences of journalists working under autocracy. At its most basic, this might mean published Q&As about the means and methods journalists use to evade censorship and capture.²⁴¹ It could mean publishing opinion pieces by journalists working under autocratic regimes. Already, in the brief time since Russia’s invasion of Ukraine, the American press has begun to publish first-person accounts from journalists related to how they are doing their work under the press of autocracy.²⁴²

Additionally, these practices could include American journalists bringing foreign journalists into their newsrooms for presentations and discussions. It could include conferences between these journalists focused on how autocracy impacts journalistic methods and business decisions.

These small but meaningful efforts would all be anti-fascist acts. Fascists seek to make our world smaller—creating an “us” and “them.”²⁴³ These efforts of outreach and curiosity counter that directly.²⁴⁴ They are also acts very much in journalists’ wheelhouse. To seek out colleagues for interviewing, listening, and learning are all acts of reporting. American journalists would serve themselves and democracy well to turn their professional curiosity to their colleagues abroad.

2. *Stitching a Patchwork of Press-Protecting Law*

American journalists’ allegiance to the First Amendment is virtually unshakeable. It is their totem. “The First Amendment has served as the world’s gold standard for free speech and the free press for two centuries,” according to *New York Times* publisher A.G. Sulzberger.²⁴⁵ “It has been one of the keys to an unprecedented flourishing of freedom and prosperity in this country and, through its example, around the world.”²⁴⁶ Journalists believe that the First Amendment is “pretty close to boundless.”²⁴⁷

What better testament to this idolatry (and its shortcomings) than the Newseum, a museum celebrating the First Amendment and the press, that once stood within eyeshot of the

²³⁹ CALLISON & YOUNG, *supra* note 12, at 37.

²⁴⁰ See SNYDER, *supra* note 151, 97-98 (noting generally that Americans need to learn from peers in other countries who have lived under and survived tyranny).

²⁴¹ See, e.g., Suárez, *supra* note 48.

²⁴² See Alexey Kovalev, *I’m a Russian Journalist. I Had to Flee My Country*, WASH. POST (Mar. 11, 2022), <https://www.washingtonpost.com/outlook/2022/03/11/russian-journalist-putin-crackdown/>; David Remnick, *How Russia’s Nobel-Winning Newspaper is Covering Ukraine*, THE NEW YORKER (Feb. 28, 2022), <https://www.newyorker.com/news/q-and-a/how-russias-nobel-winning-newspaper-is-covering-ukraine>.

²⁴³ APPLEBAUM, *supra* note 9, at 74-75.

²⁴⁴ See STANLEY, *supra* note 1, at 184

²⁴⁵ See, e.g., A.G. Sulzberger, *The Growing Threat to Journalism Around the World*, N.Y. TIMES (Sept. 23, 2019), <https://www.nytimes.com/2019/09/23/opinion/press-freedom-arthur-sulzberger.html>.

²⁴⁶ *Id.*

²⁴⁷ DAVID E. MCCRAW, TRUTH IN OUR TIMES 228 (2019).

U.S. Capital.²⁴⁸ On the façade was a 75-foot-tall slab of Tennessee marble into which all forty-five words of the First Amendment were carved. When the museum shuttered for financial reasons in 2019, the building’s new owner (Johns Hopkins University) removed the slab.²⁴⁹ It was a potent metaphor for the First Amendment’s inability to protect the press.

Press lawyers tend to be clearer-eyed about the First Amendment’s limits. As the *New York Times*’s top newsroom lawyer David McCraw writes, “The law can only do so much. It can give the press freedom to matter but it can’t make the press matter.”²⁵⁰ As many press law scholars have described, freedom of the press is not so much a matter of law but a “mishmash” of other factors.²⁵¹ These include the press’s financial strength, public trust, the support of the judiciary, and political norms.²⁵² Given that all these are crumbling, it is a red-alert moment for press freedom.

One way to respond would be to create a more durable legal scaffold for the press. Looking outward—toward journalist globally—could help in two ways. First, Americans might see more value in positive press law. As it stands, the First Amendment, provides the press a negative right—a right to be free of government intervention. To be sure, this formulation does have serious benefits in protecting independence. These benefits can’t be underestimated—especially as we talk about authoritarianism. But, it also has serious shortcomings. By its very formulation, it suggests no other press-protecting law is desirable or even necessary. It enables a myth that the press is completely self-sustaining—that it is a business that can survive like any other in a free market.

Admittedly, other nations and governmental bodies do not currently have well-developed positive press rights. But some are moving in this direction. One key area in which this is happening is the combatting of violence against journalists. The Council of Europe has issued an extensive set of recommendations to counter an “alarming” wave of off and online abuse against journalists.²⁵³ Among its recommendations are removing limitations periods for prosecution of crimes against freedom of expression and better tracking of complaints, investigations, prosecutions and convictions.²⁵⁴ The United Nations has recommended similar responses to violence against journalists.²⁵⁵ In 2021, the United Kingdom released a “National Action Plan for the Safety of Journalists.”²⁵⁶ Among other things, the plan calls for every police force in the United Kingdom to have access to a “designated journalist safety liaison officer” and a “robust prosecutorial approach” to crimes against journalists. The U.S. would do well to emulate these

²⁴⁸ *About*, NEWSEUM, <http://www.newseum.org/about/>.

²⁴⁹ *Id.*; Christine Condon, *Johns Hopkins University Officially Purchases Former Newseum Building in D.C.*, THE BALTIMORE SUN (Jun. 29, 2020), <https://www.baltimoresun.com/business/real-estate/bs-bz-hopkins-newseum-purchase-official-20200629-e53qu3oxv5aaxgccpb5mvd45vm-story.html>.

²⁵⁰ MCCRAW, *supra* note 247, at 156.

²⁵¹ *See* Jones & West, *supra* note 207.

²⁵² *Id.*

²⁵³ *See Implementation Guide to Recommendation CM/Rec(2016)4 on the Protection of Journalism and Safety of Journalists and Other Media Actors*, COUNCIL OF EUROPE 6 (2020).

²⁵⁴ *Id.* at 44 at 50, 56-57.

²⁵⁵ *See* S.C. Res. 1738 (Dec. 23, 2006), <https://www.securitycouncilreport.org/un-documents/document/civilians-sres1738.php>; Educ., Sci. & Cultural Org. Res. 29 (Nov. 1997), https://en.unesco.org/sites/default/files/ipdc_resolution_29.pdf.

²⁵⁶ *National Action Plan for the Safety of Journalists*, DEPARTMENT FOR DIGITAL, CULTURE, MEDIA, & SPORT (Mar. 9, 2021), <https://www.gov.uk/government/publications/national-action-plan-for-the-safety-of-journalists/national-action-plan-for-the-safety-of-journalists>.

protections and to work in tandem with these governments and entities. Coordination on this issue might spark other efforts.

Second, a global patchwork of press-protecting law is becoming more of an imperative in our global economy. In the realm of information, speech, and communication, there are “New Governors” as powerful as a national government.²⁵⁷ Today, Meta, Google, and Twitter—not courts or legislatures—arguably make the impactful decisions about the shape and content of our public square. These companies are all U.S.-based and steeped in American law, but they increasingly look to legal and cultural contexts outside the U.S.

To date, social media platforms—namely Meta—have not been particularly solicitous of the press or press rights and vary their treatment of the press on a country-by-country basis. For example, Meta’s Mark Zuckerberg has gone on record saying the company is intentionally downranking news in its News Feed.²⁵⁸ Also, because of varying national laws, platforms like Facebook reimburse publishers in some countries but not others for their use of news on the platform.

Given the power of these global communication platforms to decide what and how we view news, collaboration on global free press rights and norms is essential. To the extent the American press, press scholars, and other press advocates can help to facilitate more global pro-press norms, this could be a boon to press freedom going forward. It would give the international press more leverage against companies that straddle any one nation-state. This could include making international law and collaboration more of a priority for American-based press advocacy groups like the Reporters Committee for Freedom of the Press. It could mean lobbying international press organizations like Reporters Without Borders and the Committee to Protect Journalists to prioritize legislative advocacy. It might mean forming new collaborations to do this work. It could also include scholarly investigation of potential workable pathways for positive press law.

B. A PRACTICE OF COLLABORATION INSTEAD OF COMPETITION

Journalism is an intensely competitive business. This is driven by a double whammy of economics and human nature. Commercial pressure exists to publish a story first. And journalists are invested in the race.

I’ve felt the adrenalin. When I was a cub reporter at *The Philadelphia Inquirer* in the late 1990s working in a county courthouse pressroom, I would escape to a nearby payphone to dial my editors about a scoop. I did not want to risk any competitors overhearing. But judged against the annals of journalistic history, my stealth was unimpressive. Other journalists have “hijacked competitors’ trains, bribed postal riders to outrace competitors’ horses, and shot down competitors’ pigeons” to beat the competition.²⁵⁹ Although dangerous and probably illegal, these methods, they were driven by all-too-real concerns. As described, the economic crisis that the press is facing is tremendous. It is a lens through which it views virtually everything else.

²⁵⁷ See Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 HARV. L. REV. 1598, 1602–03 (2018) (coining the term “New Governors”).

²⁵⁸ See Mark Zuckerberg, FACEBOOK (Jan. 11, 2018), <https://www.facebook.com/zuck/posts/10104413015393571> (noting that Facebook’s News Feed would prioritize posts from users’ family and friends over those from “businesses, brands, and media”).

²⁵⁹ Matthew Gentzkow & Jesse M. Shapiro, *Competition and Truth in the Market for News*, 22 J. OF ECON. PERSP. 141 (2008).

Yet, the American press needs to develop a practice of collaboration and temper its obsession with competition. The quest for the exclusive story needs to be better balanced against the benefits of institutional and journalistic alliances and cooperation. Only with a hearty and resilient network of press entities, is there any hope for standing up to autocrats, who have themselves already joined forces. As journalist Applebaum writes, “Nowadays, autocracies are run not by one bad guy, but by sophisticated networks composed of kleptocratic financial structures, security services (military, police, paramilitary groups, surveillance), and professional propagandists.”²⁶⁰ These networks cross national boundaries. Journalistic networks, if they have any chance of beating down autocracy, must do the same.

Communications scholars have dubbed today’s media a “networked press.”²⁶¹ Yet, this definition generally includes social media platforms, audiences, and even non-human elements like algorithms.²⁶² The networks I envision here are of journalists—those committed to professional norms and ethics and engaged in the regular practice of newsgathering and creation. These human and professional collaborations are, I believe, our best chance of producing excellent journalism, emboldening free speech, and promoting democracy.

Collaborations among members of these networks can run a gamut. Here I roughly divide them into two categories. The first is inter-newsroom collaboration, which includes sharing of sources, information, distribution, and expertise. The second is intra-newsroom collaboration, which includes unionization and norm-sharing and reinforcement. Alliances of both types would help stave off autocracy and create resilience against censorship.

1. INTER-NEWSROOM COLLABORATION

Inter-newsroom collaboration is an area in which the American press has already made meaningful strides. The most well-known example may be the International Consortium of Investigative Journalists, which was the organizing force behind the Panama Papers.²⁶³ The Consortium sifted a leak of 11.5 million files detailing “myriad ways in which the rich can exploit secretive offshore tax regimes.”²⁶⁴ It was followed by the Paradise Papers investigation, which involved a cache of 13.6 million documents, that exposed a “shadowy offshore financial system” for global elites.²⁶⁵

The Consortium refers to its philosophy as “radical sharing.”²⁶⁶ This sharing is a necessity born of the volume of information as well as a way to bring together diverse expertise

²⁶⁰ Anne Applebaum, *The Bad Guys are Winning*, THE ATLANTIC (Dec. 2021), <https://www.theatlantic.com/magazine/archive/2021/12/the-autocrats-are-winning/620526/>.

²⁶¹ This term is used by communications scholar Professor Mike Ananny who describes the networked press’s members as including “journalists, software engineers, algorithms, relational databases, social media platforms, and quantified audiences.” ANANNY, *supra* note 222, at 4.

²⁶² *Id.*

²⁶³ See Luke Harding, *What Are the Panama Papers? A Guide to History’s Biggest Data Leak*, THE GUARDIAN (Apr. 5, 2016), <https://www.theguardian.com/news/2016/apr/03/what-you-need-to-know-about-the-panama-papers>.

²⁶⁴ *Id.*

²⁶⁵ Pierre Romera & Cecile S. Galleo, *How ICIJ Deals With Massive Data Leaks Like the Panama Papers and Paradise Papers*, INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (July 3, 2018), <https://www.icij.org/inside-icij/2018/07/how-icij-deals-with-massive-data-leaks-like-the-panama-papers-and-paradise-papers/>; Dean Starkman et al., *Frequently Asked Questions About the Pandora Papers and ICIJ*, INT’L CONSORTIUM OF INVESTIGATIVE JOURNALISTS (Oct. 21, 2021), <https://www.icij.org/investigations/pandora-papers/frequently-asked-questions-about-the-pandora-papers-and-icij/>.

²⁶⁶ See Romera & Galleo, *supra* note 265.

to “get closer to the complete picture.”²⁶⁷ The founder of the Consortium, Charles Lewis, has also directly spoken to the need for collaboration in the face of political deterioration.²⁶⁸ Lewis writes that “amid a world of debilitating political dysfunction with the most dire potential consequences, the crucial concept of public accountability cannot and should not be narrowly defined by local or national borders, or the rigid strictures, orthodoxies, conceits and insecurities of traditional journalism.”²⁶⁹

These are simply the most well-known collaborations in a broader trend. Other examples include the Center for Cooperative Media,²⁷⁰ the Tiny News Collective, the Oxford Climate Journalism Network,²⁷¹ and the Organised Crime and Corruption Reporting Project.²⁷² These collaborations may be driven in part by the necessities of data dumps and the benefits of expertise sharing, but as Lewis suggests, it also has the benefit of creating more resilient news systems. Most often invoked in the context of responding to climate change, the principles involving building resilient systems are at play with information as well. These involve redundancy in the face of external pressure.

Under autocracy, resilient and redundant systems can become a necessity for distribution of news. For example, if journalists are fearful of an autocratic regime’s reaction to a critical story, they might hand their work over to a foreign publication to publish first. Then, after the story is distributed abroad, they can quote that source, giving themselves greater protection by hiding that they were actually the originator of the story.²⁷³ This has been a practice of Venezuelan journalists under that country’s authoritarian regime.²⁷⁴ This sharing might even happen within a country or region, if journalists believe some news organizations are more likely to be censored than others.²⁷⁵ For example, a journalist at a pro-Beijing news site in Hong Kong says that because his publication avoided publishing news that might offend the government, he and his colleagues feed their scoops to competitors.²⁷⁶

Likewise, journalists may need to rely on networks outside their country to publish in any form. For example, when one “relatively opposition-friendly newspaper” started in Serbia, it could not find a willing printer. In a bind, journalists located one in neighboring Croatia who would print the paper and send it back into Serbia.²⁷⁷

A technologically-enhanced version of this is now also playing out in Russia with exiled journalists trying to pipe news into the country despite a crackdown on the flow of information. For example, Alexey Kovalev, an editor at Meduza, the Russian independent news site, said that his organization has, for years, been educating its users about VPNs and has been transitioning to

²⁶⁷ *Id.*

²⁶⁸ Charles Lewis, *The Future of Journalism In Three Words: Collaboration, Collaboration, Collaboration*, THE GUARDIAN (April. 18, 2016), <https://www.theguardian.com/commentisfree/2016/apr/18/future-of-journalism-collaboration-panama-papers>.

²⁶⁹ *Id.*

²⁷⁰ *A New Deal for Journalism*, *supra* note 18, at 64.

²⁷¹ Newman, *supra* note 26, at 31.

²⁷² *A New Deal for Journalism*, *supra* note 18, at 51

²⁷³ Hem, *supra* note 78, at 26.

²⁷⁴ *Id.* at 25-26, 31.

²⁷⁵ *Id.* at 25; Somfalvy & Pleines, *supra* note 143, at 87 (“The factor most often mentioned to explain differences in censorship pressure is, in fact, the position of the owner...Moreover, as owners have different interests, censorship pressure does not lead to uniform media reporting.”)

²⁷⁶ Viola Zhou, *They Were Reporters in Hong Kong. Now They Drive Cabs and Sell Fried Chicken*, VICE WORLD NEWS (Jan. 25, 2022), <https://www.vice.com/en/article/akvj8/hong-kong-journalists-cabbies-fried-chicken>.

²⁷⁷ Andrew Higgins, *Eastern Europe Tests New Forms of Media Censorship*, *supra* note 114.

Telegram and its own app.²⁷⁸ “[I]t’s about diversifying,” he said. “If we only relied on our website, we would be completely snuffed out by now. But we are branching out.”²⁷⁹

2. INTRA-NEWSROOM COLLABORATION

American newsrooms also need not solely look abroad. Bonding together domestically, even within a single newsroom, and having an ongoing conversation about norms and values, is another essential way to collaborate.

One form this might take is unionization, which can effectively serve as a “roadblock” to fascism.²⁸⁰ Unionization is a counterweight to what philosopher Hannah Arendt called the “atomized” nature of the citizenry under fascism.²⁸¹ And it is a particular kind of counterweight because it does not simply link like-citizens to like-citizens. Rather, it has the potential to bond across class, race, gender, sex, and religious lines.²⁸² It is one of the best mechanisms that society has to make these connections.²⁸³ This is likely why authoritarians prioritize union busting.²⁸⁴

Again, in this sphere, the American press is making headway.²⁸⁵ In 2015, Gawker Media became one of the first major digital media company to unionize. Shortly thereafter, journalists at *HuffPost*, *Salon*, Vice Media, and the *Guardian U.S.* formed unions. Moreover, two large newspapers with a long history of anti-union owners—the *Los Angeles Times* and the *Chicago Tribune*—unionized relatively recently. *The New Yorker*, *New York* magazine, and *The New Republic* were also part of the recent wave of unionizations.²⁸⁶ Many of these union contracts—including those of *The New Yorker* and the *Los Angeles Times*—contain provisions aimed at increasing newsroom diversity—namely that a certain percentage of interviews for job openings will be granted to members of underrepresented groups.²⁸⁷

Speaking specifically to Arendt’s concern about atomization, unionization is especially important in this era of “Substack-ization” of journalism: the celebration of the individual journalist over a newsroom or institution.²⁸⁸ I call this phenomenon Substack-ization because the platform Substack has caused some hysteria in the news industry for its successful poaching of high-profile journalists away from newsrooms with the promise of lucrative royalties for niche

²⁷⁸ Suárez, *supra* note 48.

²⁷⁹ *Id.* In March, the *New York Times* also announced it was launching a Telegram channel to provide news about the war. See The New York Times, *The New York Times Launches a Telegram Channel to Deliver News About the War*, N.Y. TIMES (March 14, 2022), <https://www.nytimes.com/2022/03/14/world/europe/telegram-nyt.html>.

²⁸⁰ See STANLEY, *supra* note 1, at 170. “One roadblock to the kind of us/them described above is unity and empathy along class lines, exemplified in labor unions.”

²⁸¹ *Id.* at 172.

²⁸² *Id.* at 171 (“The labor union is the chief mechanism societies have found to bind people who differ along various dimensions.”).

²⁸³ See *id.*

²⁸⁴ *Id.* at 172.

²⁸⁵ Steven Greenhouse, *Newsrooms Are Unionizing Pretty Much “Non-Stop.” Here’s Why*, NIEMAN LAB (Jan. 19, 2022), <https://niemanreports.org/articles/newsrooms-labor-unions/>.

²⁸⁶ *Id.* (“In the six years since [Gawker’s unionization], spurred by layoffs, increasing workloads, and even the pandemic, more than 100 news organizations have unionized, swelling the ranks of The NewsGuild, which has added about 6,300 new members over the past four years, and the Writers Guild of America, East, which has organized about 2,400 journalists since 2016.”).

²⁸⁷ *Id.*

²⁸⁸ See Logan Moyneux, *A Personalized Self-Image: Gender and Branding Practices Among Journalists*, SOCIAL MEDIA + SOC’Y 1 (July-Sept. 2019), <https://journals.sagepub.com/doi/pdf/10.1177/2056305119872950>.

newsletters. This trend, some worry, could nudge journalists to prioritize self over profession and institution, accelerating a breakdown of the institutional press.²⁸⁹

Another benefit of amassing journalists is the sharing and improving of norms, which is itself inoculation against creeping autocracy. In *On Tyranny*, historian Timothy Snyder recounts the way in which Hitler used lawyers to carry out all of his plans—the implication being, that if they had had a stronger system of ethics, it might have made some difference. He writes, “Professions can create forms of ethical conversation that are impossible between a lonely individual and a distant government. If members of professions think of themselves as groups with common interests, with norms and rules that oblige them at all times, then they can gain confidence and indeed a certain kind of power.”²⁹⁰

There are ways in which the press is already making headway in this department, too. Journalists have vigorously discussed in recent years what objectivity means.²⁹¹ They have increasingly tried to ensure that it is not merely a default for white supremacy and patriarchy. Numerous news organizations and nonprofits are also doubling down on norms that ensure trust and promote transparency of journalistic method. For example, the Trust Project, an international consortium of news organizations, has created a list of eight “Trust Indicators” members must follow.²⁹² Those that do earn the right to feature a “Trust Mark” logo.²⁹³ The Trust Project indicators are even coded into news pages so that Google and Facebook can use the information to better surface reliable news.²⁹⁴

Norms also have a trickle-up effect. As political scientist Robert Dahl explained, “As a country moves from a nondemocratic to democratic government, the early democratic *arrangements* gradually become *practices*, which in due time turn into settled *institutions*.”²⁹⁵ Although, this Article is focused on movement in the opposite direction—from democratic to nondemocratic—it also is invested in the idea that democracy is a daily effort and that history is cyclical. In this way, arrangements, practices, and institutions are continually performed and remade. This is a time for the press to be discussing, improving, and broadcasting its methods. This in itself is a democratic practice and one that could better the institution regardless of political shifts.

C. A PRACTICE OF CHASING DEMOCRACY INSTEAD OF DESIRE

This final section addresses a more recent press pathology: the tendency to preference the commercial imperative of satisfying consumer desire over the mission of promoting democracy. That is, as the siren song of reader data becomes increasingly alluring, journalism risks being a

²⁸⁹ See James Ball, *Substack: How the Game-Changer Turned Poacher*, THE GUARDIAN (May 2, 2021), <https://www.theguardian.com/media/2021/may/02/substack-how-the-game-changer-turned-poacher> (“By offering star writers a bigger payday for going it alone, people fret it might break up traditional newsrooms and make it impossible to do the kind of journalism that needs reporters, editors, fact-checkers and lawyers. Substack, they argue, is tearing apart that coalition of workers by ripping out the stars.”).

²⁹⁰ SNYDER, *supra* note 151, at 38-41 (wonder how unionization plays into this. Studies about correlation between unionization and democracy);

²⁹¹ See, e.g., Wesley Lowery, *A Reckoning Over Objectivity, Led by Black Journalists*, N.Y. TIMES (June 23, 2020), <https://www.nytimes.com/2020/06/23/opinion/objectivity-black-journalists-coronavirus.html>.

²⁹² *About Us*, THE TRUST PROJECT, <https://thetrustproject.org/about/>.

²⁹³ *The Trust Project Explained*, THE TRUST PROJECT, <https://thetrustproject.org/faq/>.

²⁹⁴ *Id.*

²⁹⁵ Dahl, *supra* note 3, at 187 n.1.

steady-stream of intoxicating liquor to unquenchable consumers. News organizations risk tilting their operations in favor of customer happiness (or, at least, the attempt at it).

This pathology is firmly rooted in the commercial nature of the press. And although eliminating commercial pressure is unrealistic, the press also needs to resist being entirely swept away by a journalism-of-desire. Instead, it needs to reignite and develop a practice of asking how it can best be an architect of public squares—democracy’s necessary spaces.²⁹⁶ Based on dispatches from journalists in autocratic regimes and given that journalism has largely been ousted by social media platforms from its gatekeeping function, this may mean shifts in how American journalism perceives of its role.

First, an explanation of what I mean by a journalism-of-desire and why it needs to be minimized. Until relatively recently, editorial decision making was driven by a combination of what journalists thought was important, what they wanted to write about, and to a far lesser extent, what they thought the reader wanted to consume. This was certainly an imperfect system, open to many critiques, including elitism, patriarchy, racism, and lack of transparency. But instead of improving on it, what has started to replace this process is rife with its own anti-democratic pitfalls.

In her book, *All the News That’s Fit to Click*, sociologist Caitlin Petre describes current iterations of the news-making process. Petre spent years studying how data impacts journalists and the process of making news.²⁹⁷ Today, Petre says, “journalists are often subjected to the kinds of production quotas and work speedups that are more typically associated with a factory floor or call center.”²⁹⁸ This intensification is driven by data—from page views to minutes spent on an article.²⁹⁹ “These tallies increasingly influence the way journalists’ work performance is evaluated,” Petre argues.³⁰⁰ Numerous other accounts by journalists echo Petre’s concerns.³⁰¹

This journalism-of-desire has anti-democratic tendencies in at least a couple of ways. First, practicing it is addictive and exhausting. In Petre’s ethnography of journalists working at Gawker Media, one journalist told her that ingesting the constant stream of analytics was akin to being “a cocaine addict on vacation in Colombia.”³⁰² Journalists at many news organizations are able to access a dashboard of data that is constantly feeding them gamified information about their relative success as measured against other journalists in the newsroom. In my own experience, I have routinely heard journalists at major news organizations dismiss the importance of their work because it didn’t get what they viewed to be sufficient traction on social media. So although there may be instances in which audience desire and democratic need overlap, where they diverge, journalists tend to get yanked toward desire.

Second, chasing desire itself isn’t anti-democratic—democracy depends on the will (or the desire) of citizens. Yet, a desire that is inflected through algorithms and platforms may very well be anti-democratic. “Churnalism” is due, in part, to journalists being unsure just what drives

²⁹⁶ GESSEN, *supra* note 10, at xxviii (indicating that avoiding and surviving autocracy “has to be a project of revitalizing public space to enable an ongoing public conversation”).

²⁹⁷ CAITLIN PETRE, *ALL THE NEWS THAT’S FIT TO CLICK: HOW METRICS ARE TRANSFORMING THE WORK OF JOURNALISTS* (2021).

²⁹⁸ Caitlin Petre, *To Improve the News, Focus on Journalists’ Working Conditions*, *THE AMERICAN PROSPECT* (Jan. 14, 2022), <https://prospect.org/politics/altercation-why-journalism-isnt-conveying-the-threat-to-democracy/>.

²⁹⁹ *Id.*; Erin C. Carroll, *Making News: Balancing Newsworthiness and Privacy in the Age of Algorithms*, 106 *GEO. L. J.* 69 (2017).

³⁰⁰ Petre, *To Improve the News, Focus on Journalists’ Working Conditions*, *supra* note 298.

³⁰¹ See, e.g., FRANKLIN FOER, *WORLD WITHOUT MIND: THE EXISTENTIAL THREAT OF BIG TECH* 144–45 (2017).

³⁰² PETRE, *ALL THE NEWS THAT’S FIT TO CLICK*, *supra* note 297, at 49.

high traffic.³⁰³ That means journalists are not simply just trying to discern audience desire. They are trying to discern it as inflected through “the whims of the mysterious and ever-changing Facebook algorithm” (which, in turn, tries to measure audience wants and desires).³⁰⁴ And the commercial imperatives of platforms distort and bend that desire in ways that are anti-pluralist. Much research suggests that platform users are pushed to incendiary and extreme views.³⁰⁵ Social media platforms are built to provide users more of what they like. All of this can lead to a uniformity of thought, the *pensée unique*, a necessarily anti-pluralist viewpoint.³⁰⁶

There is, of course, another significant impediment to rejecting a journalism-of-desire, and that is economics. The press is ostensibly using metrics to drive profit, and with the economics of news still in decline, this is understandable. But to what degree should desire drive the game? And at what cost? I am not such a purist or Luddite as to suggest that the press needs to reject data or technological tools in building journalism. Data can have benefits; but it has become too all-encompassing, too much of an addiction, and too distracting from journalism’s democratic mission.

But then comes another hard set of issues and choices. Even if the press were to reject chasing a journalism-of-desire, how might it engage in a practice of chasing democracy? This is a big question. I will start with the Supreme Court’s answer. In a series of press cases in the 1960s and 1970s, the Court established that the press’s key roles in our democracy were to be a watchdog, an educator, and a proxy for the public. The Court saw the press as a gatekeeper of a marketplace of ideas where debate was “uninhibited, robust, and wide-open, and . . . may well include vehement, caustic, and sometimes unpleasantly sharp attacks.”³⁰⁷

Now, after many decades of silence from the Court on the role of the press, this list has become dated and incomplete. Today, we have a public square that is vehement and caustic. It is called social media. But the press no longer controls this square. The press’s energy is better spent elsewhere. Perhaps a reinvigorated press is an architect of public fora within a public square that look quite different and even, to our eyes, quite unfamiliar.

For example, in a practice of globalism, American journalists might start by looking beyond their borders toward institutions that have promoted free expression even in autocratic spheres. One example is the newspaper *Novaya Gazeta*, whose editor Dmitri Muratov was the co-recipient (along with Maria Ressa) of the 2021 Nobel Peace Prize. As Masha Gessen writes, “It’s not quite precise to describe *Novaya Gazeta* as a newspaper. It is not what, say the *Times* or even the lefty investigative magazine *Mother Jones* would be under more trying circumstances. Imagine, rather, the *Village Voice* of the nineteen-eighties crossed with a mutual-aid society, but run, at times, like Occupy Wall Street. *Novaya Gazeta* is a community and a humanitarian institution, and it is very messy.”³⁰⁸

In its messiness, its journalists have even taken on the role of hostage negotiator and aid-giver. In 2002, when a group of Chechens took more than 900 hostages in a Moscow theater, a *Novaya Gazeta* journalist served as a negotiator and convinced the hostage takers to provide juice and water to hostages. That same journalist, Anna Politkovskaya, was poisoned two years

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ See, e.g., Zeynep Tufekci, *YouTube, The Great Radicalizer*, N.Y. TIMES (Mar. 10, 2018) (describing some of this research) <https://www.nytimes.com/2018/03/10/opinion/sunday/youtube-politics-radical.html>.

³⁰⁶ APPLEBAUM, TWILIGHT OF DEMOCRACY, *supra* note 9, at 16.

³⁰⁷ *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

³⁰⁸ Masha Gessen, *Can Russia’s Press Ever Be Free?*, THE NEW YORKER (Nov. 22, 2021), <https://www.newyorker.com/magazine/2021/11/22/can-russias-press-ever-be-free>.

later when she was en route to Beslan, in Southern Russia to perform a similar task after more than a thousand children and adults were taken hostage at a school. She survived, only to be shot dead in 2006. As one of her *Novaya Gazeta* colleagues told Gessen, “This paper was created to help people ... Not humanity but people—and not by informing them but by getting them actual help.”³⁰⁹ Since Russia invaded Ukraine in late February, 2022 and cracked down on the domestic Russian press, the future of *Novaya Gazeta* has become tenuous and uncertain. On March 4, it discontinued reporting on Ukraine.³¹⁰ But as of the time of this writing, it was still publishing.³¹¹

To be fair, I am not suggesting that all journalists prepare to become hostage negotiators or terrorist targets. Yet, a shifting political climate may require a shift in practices to preserve freedoms. As Lippmann said, “the present crisis of western democracy is a crisis in journalism.”³¹²

Journalists may also find, in chasing democracy, that one of their roles must be unearthing ways to resurrect the trust that Americans have lost in each other and in their institutions. Sociologists have, for decades, viewed the press as a creator of communities.³¹³ Perhaps that role now needs to be less theoretical and more concrete. Perhaps the press needs to spark what philosopher Robert A. Talisse has called “civic friendship.” This is the kind of kinship between citizens in which, even in our uber-politicized world, politics—and discussion of it—is beside the point. It is an attempt at a union over pursuits apart from politics. It may be that this friendship is fundamental to public fora that promotes deliberation, collaboration, and listening.

What might this look like? This need not be a salon-style gathering of elites or slickly-designed events with big names like *The Atlantic Festival*³¹⁴ or *The New Yorker Festival*.³¹⁵ Rather, I’m talking about the Marfa, Texas *Big Bend Sentinel* that shares building space with a café/bar that subsidizes it.³¹⁶ According to the newspaper’s managing editor, pulling the Marfa community into this nouveau-public square is “a great way to keep my finger on the pulse and get new leads and find stories.”³¹⁷ Such collaborations also do not need to be three dimensional. In November of 2021, the *Los Angeles Times* created a stunning digital version of a Día de Muertos altar, and invited readers to populate it with photos and tributes.³¹⁸ As an accompanying article explained, “In a year marked by grief and isolation, Día de Muertos can be a chance to process and remember.”³¹⁹ These small efforts can serve to weave together a social fabric.

³⁰⁹ *Id.*

³¹⁰ *Russia’s Novaya Gazeta Cuts Ukraine War Reporting Under Censorship*, REUTERS (Mar. 4, 2022), <https://www.reuters.com/world/russias-novaya-gazeta-cuts-ukraine-war-reporting-under-censorship-2022-03-04/>.

³¹¹ See <https://novayagazeta.ru/> (last visited March, 17, 2022).

³¹² LIPPMANN, *supra* note 221, at 4-5.

<https://archive.org/details/libertynews00lippuoft/page/n5/mode/2up?view=theater>.

³¹³ See MICHAEL SCHUDSON, *THE SOCIOLOGY OF NEWS* 24 (2011).

³¹⁴ *The Atlantic Festival*, THE ATLANTIC, <https://www.theatlantic.com/live/atlantic-festival/>

³¹⁵ *Events*, THE NEW YORKER, <https://www.newyorker.com/tag/events>.

³¹⁶ Sasha von Oldershausen, *Marfa’s Answer to the Collapse of Local News: Coffee and Cocktails*, N.Y. TIMES (Feb. 20, 2020), <https://www.nytimes.com/2020/02/20/style/marfa-newspaper-big-bend-sentinel.html>.

³¹⁷ *Id.*

³¹⁸ *Our Digital Día de Muertos Altar Celebrates Your Loved Ones*, L.A. TIMES (Nov. 1, 2021), <https://www.latimes.com/projects/contribute-dia-de-muertos-altar-la-times/>.

³¹⁹ Jessica Roy & Karen Garcia, *Anyone Can Make a Día de Muertos Altar. Here’s How*, L.A. TIMES (Oct. 25, 2021), <https://www.latimes.com/lifestyle/story/2021-10-25/heres-the-story-behind-dia-de-muertos-altars-and-how-you-can-build-one>.

CONCLUSION

This Article demands more from the press than is fair. The press is economically weakened, distrusted, and targeted with violence. How can it do more? But it must; my demand is necessitated by the world we have created for ourselves. Depleted, uncertain, and even fearful, we still need to muster up the energy to connect with others, listen, and embrace complexity.

This is the work of individuals, but it cannot only be their work. It also needs to be the work of professions like journalism and institutions like the press. Only if the effort is collective can we enjoy a politics that celebrates these same values. The work of journalists and the very essence of the press function—to gather information and to help us communicate, think, and act—is fundamental to how we govern ourselves. The press and politics are inseparable. Exercises of press freedom will necessarily help propel us toward a freer politics.

With autocracy expanding and freedom waning, now is a time of institutional reckoning. The press can be one of our greatest levers of freedom. But it can only be this by continuing to reimagine and remake itself in fundamental ways. This metamorphosis needs to account not just for the economic pressure on the press but the political one.

If the American press grapples with the way in which autocracy is impacting it—and how it is implicated in a shift toward autocracy—hopefully it will shift its practices. It may choose not to lean on the federal government for financial assistance, but instead look for stability elsewhere including through tighter bonds with colleagues nearby and worldwide. Undoubtedly, this work will be arduous. The press needs to overcome some long-held pathologies. Doing so will require a curiosity and humility that the American press has not historically shown.

Practicing press freedom and building resilience may require working in new spaces, developing new laws and language, and collaborating on and expanding journalistic methods. It will mean repeating and tweaking these things. And then repeating again.³²⁰ This cyclical and repetitive nature of these acts may not come easily to Americans. We are accustomed to the upward trajectory—a straight line jutting indefinitely into the future. We are, by the geography of our birth, addicted to linear progress.

But freedom is worth little if it exists somewhere beyond the horizon. Freedom is richer if it is, “an unending present practice, something already going on” rather than just a “future achievement.”³²¹ Instead of being resentful or anxious about the work ahead, we could choose to be grateful. As Maggie Nelson writes, “the practice of freedom—i.e., the morning after, and the morning after that—is what, if we’re lucky, takes up most of our waking lives.”³²² Along with journalists and the press, let us open our eyes and get on with it.

³²⁰ Voltmer, *supra* note 65, at 233.

³²¹ NELSON, *supra* note 7, at 6.

³²² *Id.* at 7.