

Press Benefits and the Public Imagination

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In an era when the press faces unprecedented challenges, from financial instability to declining public trust, those who believe in the importance of a free press find themselves playing defense. Press advocates have been forced to articulate, with renewed clarity and urgency, why the press is not merely important but vital to an effective democracy and why it needs to be saved from what has been described as a “death spiral”¹ and an “extinction-level event.”² These arguments often focus on the crucial role the press plays – the “press function,” as lawyers call it – in informing the public, holding power to account, and facilitating democratic discourse. Advocating for the press’s value has become an essential task because the survival of this indispensable institution depends on the public understanding and appreciating its necessity.

Scholars and commentators generally discuss the press function through one of two lenses. Legal scholars tend to describe the press function through existing Supreme Court doctrine in which the Court has told us that the press serves as a watchdog, an educator, and a proxy for the public. Political theorists, meanwhile, will situate the press within our overall democratic structure, explaining that a free press is integral to democracy because it maintains the public sphere and facilitates discourse.

These explanations are fundamental. But they are also insufficient, especially in an age when delegitimizing the press is a political tactic. To deliver the press from extinction, the public needs not only to *know* what the press does, it needs to *care*.

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¹ Pete Vernon, *Cuts at the Daily News Highlight a Local News Crisis*, COLUM. JOURNALISM REV. (July 24, 2018), https://www.cjr.org/the_media_today/daily-news-cuts.php.

² Clare Malone, *Is the Media Prepared for an Extinction-Level Event?*, NEW YORKER (Feb. 10, 2024), <https://www.newyorker.com/news/the-weekend-essay/is-the-media-prepared-for-an-extinction-level-event>.

This means that beyond conceptualizing the press function as a matter of doctrine and theory, press advocates must conceptualize it as a matter of rhetoric. Advocates should be rethinking how to describe what the press does when they are speaking to judges, legislators, and other citizens. These audiences can ensure – through enhanced First Amendment rights, public subsidies, public-media models, statutory protections, or subscription dollars – that the free press survives and flourishes instead of succumbs.

The act of naming is not a small thing. New language can persuade and motivate. Rethinking how we talk about the press – and press functions, in particular – could prompt Americans to care about the press and to find common ground regarding the reasons for this caring. Talking about the press in newly positive ways is also how the public might begin to envision a reinvigorated and dynamic institution. As communication scholar Mike Ananny writes, “[P]ress freedom is a normative and institutional product of any given era: it is what people think press freedom should mean and how people have arranged people and power to achieve that vision.”³ What the “people think press freedom should mean” is shaped by the language they use. As of now, that language often does not account for the true value of the press’s work. This needs to change.

This chapter outlines how press advocates can think rhetorically about press functions in the service of a reinvigorated press and democracy. First, it proposes a shift in terminology from the dry “press function” to a descriptor that is not just more inspirational but more apt: “press benefits.” Second, it goes a level deeper and examines two time-honored press benefits – the watchdog and proxy roles – and suggests how these benefits might be renamed and reconceptualized. Third, it describes how we might use rhetoric as a framework for naming other press functions, even aspirational ones, that the courts have not previously recognized. This framework can be a means of both supporting the existing press and transforming it into one that is ever closer to best supporting the collective flourishing of citizens. Finally, the chapter ends by sketching out methods for both dispersing updated press-benefits rhetoric around the world and continuing to generate that rhetoric.

9.1 FROM PRESS FUNCTIONS TO PRESS BENEFITS

In naming what the press does, the Supreme Court has settled on the word “function.”⁴ Sometimes the justices have made the reference a bit more grandiose by rendering it plural: “functions.”⁵ Academics (including me) have followed suit

³ MIKE ANANNY, NETWORKED PRESS FREEDOM: CREATING INFRASTRUCTURES FOR A PUBLIC RIGHT TO HEAR 3 (2018) (emphasis omitted).

⁴ See, e.g., *Houchins v. KQED, Inc.*, 438 U.S. 1, 8 (1978); *Pell v. Procunier*, 417 U.S. 817, 835 (1974) (Powell, J., concurring).

⁵ See, e.g., *Branzburg v. Hayes*, 408 U.S. 665, 725 (1972) (Stewart, J., dissenting); *Time, Inc. v. Hill*, 385 U.S. 374, 420 (1967) (Fortas, J., dissenting).

and adopted the term.⁶ The noun is accurate but uninspired. “Functions” are roles or purposes.⁷ They are not inherently good or bad. They have no moral valence. Functions are anodyne, workmanlike, serviceable.

The press requires better. The work of the American press is not a mere collection of humdrum or trivial tasks. The press provides us with feats, public goods, and achievements, like documenting catastrophic flooding, revealing the scope of migrant child labor, explaining how dementia progresses and impacts families, and humanizing prisoners.⁸

In doing this work, the press performs more than a function. It provides a *benefit*. A benefit is an “advantage, profit, good,” which, in the case of the press, redounds widely.⁹ “Benefit” seems an especially fitting word given that journalism’s calling is to assist with the perpetuation of democracy. As Bill Kovach and Tom Rosenstiel write in *The Elements of Journalism*, “The primary purpose of journalism is to provide citizens with the information they need to be free and self-governing.”¹⁰

This is not institutional self-aggrandizement. Countless political scientists, philosophers, and judges have described the tight tie between the press and government.¹¹ The Supreme Court, in bygone eras, understood this link and the press’s vital role in sustaining democracy well. Take Justice Felix Frankfurter, who wrote: “Without a free press there can be no free society.”¹² Or Justice Hugo Black’s Pentagon Papers concurrence that stated: “In the First Amendment, the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy.”¹³ Given this acknowledged importance of the press to democracy, it seems right to refer to its role as a benefit.¹⁴

By embracing the term “benefit,” press advocates would be using rhetoric in all three of the forms that law and literature scholar James Boyd White described as

⁶ See, e.g., Erin C. Carroll, *Platforms and the Fall of the Fourth Estate: Looking Beyond the First Amendment to Protect Watchdog Journalism*, 79 MD. L. REV. 529, 534 (2020).

⁷ *Function*, OXFORD ENGLISH DICTIONARY, https://www.oed.com/dictionary/function_n?tab=meaning_and_use#3559828.

⁸ These examples were taken from the winners of the 2024 Pulitzer Prizes. See 2024 Pulitzer Prizes: Journalism, THE PULITZER PRIZES, <https://www.pulitzer.org/prize-winners-by-year>.

⁹ See *Benefit*, OXFORD ENGLISH DICTIONARY, https://www.oed.com/dictionary/benefit_n?tab=meaning_and_use#23477071.

¹⁰ BILL KOVACH & TOM ROSENSTIEL, *THE ELEMENTS OF JOURNALISM: WHAT NEWSPEOPLE SHOULD KNOW AND THE PUBLIC SHOULD EXPECT* 7 (2021).

¹¹ See 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. 187, 188–89 (2005).

¹² *Pennekamp v. Florida*, 328 U.S. 331, 354 (1946) (Frankfurter, J., concurring).

¹³ *New York Times Co. v. United States*, 403 U.S. 713, 717 (1971) (Black, J., concurring).

¹⁴ With this said, press advocates may find that in making certain arguments, “function” remains the more useful and accurate term. This could happen, for example, when arguing specifically about what journalists *do*. For this reason, I don’t intend for “benefit” to supplant “function,” but to complement it.

comprising “constitutive rhetoric.”¹⁵ These include speaking the language of the audience, modifying and rearranging the language of the law, and creating a community around legal language.¹⁶ In using rhetoric in all of these forms, advocates can spark doctrinal and cultural change.

With respect to speaking the language of the audience and rearranging the language of the law, “benefit” has an emotional appeal that “function” lacks. This emotional resonance is fundamental to convincing Americans to care. Though lawyers often resist acknowledging the salience of emotion in advocacy, it is the appeal to pathos that rhetoricians from Aristotle forward have recognized as a key to persuasion.¹⁷ As one former New York Times op-ed page editor put it: When it comes to persuasion, “[f]eelings are crucial, much more important than facts.”¹⁸ “Benefit” appeals to humans’ deep-seated desire for that which is good. Making this change is a way of appealing to the language of the audience.

Using “benefit” is also an example of constitutive rhetoric’s creation of community. The idea that the press provides benefits in service of democracy could help establish common ground among Americans who might otherwise remain polarized.¹⁹ It is what legal scholar Joseph W. Singer calls a “public reason.”²⁰ In the context of persuasion, public reasons are those ideas “that could or should be accepted by people with differing perspectives, religious traditions, moral frameworks, and experiences.”²¹ If Americans can agree that the press is an engine of democracy, there is a basis for the “shared factual assumptions” and “shared values” that White describes as drivers of a rhetorical community.²² If we can assemble this community, we have exponentially improved the chances of protecting and promoting the press.

¹⁵ See James Boyd White, *Law as Rhetoric, Rhetoric as Law: The Arts of Cultural and Communal Life*, 52 UNIV. OF CHICAGO L. REV. 684, 688 (1985).

¹⁶ See *id.* at 688–90.

¹⁷ See Kristen Konrad Tiscione, *Feelthinking Like a Lawyer: The Role of Emotion in Legal Reasoning and Decision-Making*, 54 WAKE FOREST L. REV. 1159, 1168–69 (2019) (describing Aristotle’s belief that rhetoric was based “in the invention, arrangement, style, and delivery of artistic appeals to *logos* (reason), *pathos* (emotion), and *ethos* (credibility)”).

¹⁸ TRISH HALL, WRITING TO PERSUADE: HOW TO BRING PEOPLE OVER TO YOUR SIDE xii (2019); Joseph Blocher, “*The Road I Can’t Help Travelling*”: *Holmes on Truth and Persuadability*, 51 SETON HALL L. REV. 105, 116 (2020) (“Scholars writing on cultural cognition and motivated reasoning have powerfully – heartbreakingly – argued that people are not moved by facts and ‘ideas’ in the sense that most marketplace of ideas theorists probably conceptualize them.”).

¹⁹ This creation of community through press-benefits rhetoric could complement the ways in which the press, as an institution, already creates community with its audience. See RonNell Andersen Jones, *Press Speakers and the First Amendment Rights of Listeners*, 90 UNIV. OF COLORADO L. REV. 499, 548 (2019) (“The press is not a mere conduit between other speakers and listeners. It is a unique institutional speaker itself, with a uniquely symbiotic relationship with listeners.”); David A. Anderson, *The Press and Democratic Dialogue*, 127 HARVARD L. REV. F. 331, 333 (2014) (“News outlets sift, select, and package the news, and in so doing create a community.”).

²⁰ See JOSEPH WILLIAM SINGER, PERSUASION: GETTING TO THE OTHER SIDE 9 (2020).

²¹ *Id.*

²² See White, *supra* note 15, at 694.

It is this degree of sentiment and synergy that could help push through the inertia surrounding legislative efforts and legal strategies to protect the press. In Congress, press advocates have repeatedly fallen short of passing press-protective legislation.²³ Meanwhile, in the Supreme Court, this inertia is manifest in a sort of Press Clause paralysis – a refusal by the Court to read any meaning into the First Amendment’s explicit reference to the press – and a more recent failure by the justices to speak positively about the press at all.²⁴

At its root, the idea is that language evokes caring – a creation and realization of shared ground and community and ultimately an action in service of the thing (here, the press) about which the community cares. This action should plow back into improving the press, making it that much easier to care about. A shift in language can jumpstart this cycle and then fuel it.

9.2 RENAMING AND RETHINKING THE WATCHDOG AND PROXY BENEFITS

Beyond the adoption of “benefits,” a relabeling and rethinking of some of those benefits themselves is in order. This effort is vital not simply so that we can describe the press more inspirationally but because it is long overdue. The Supreme Court opinions that set out the key press benefits are now about a half-century old – penned at a time when newsmen pounded out stories on typewriters in newsrooms ripe with the smell of stale cigarette smoke.

We can start with the watchdog. If there is a press function that has been most lauded by the Court and journalists themselves, it is the watchdog.²⁵ It is the concept that the press’s primary purpose is a structural one – it exists as a check on the other three branches of government²⁶ as well as a check on private power.²⁷ Its primary role is to expose and attack government actors for bad behavior.²⁸

²³ See, e.g., Jim Magill, *Congress May Soon Pass Federal Shield Law. It’s Been a Long Time Coming*, QUILL (Mar. 14, 2024), <https://www.quillmag.com/2024/03/14/congress-may-soon-pass-federal-shield-law-its-been-a-long-time-coming/> (describing how press advocates have been trying to get reporter’s shield bills passed since the 1970s).

²⁴ See RonNell Andersen Jones & Sonja R. West, *The U.S. Supreme Court’s Characterizations of the Press: An Empirical Study*, 100 N.C. L. REV. 375, 428–29 (2022) (“Our large-scale empirical study shows an especially stark abandonment of positive judicial depictions of the press in the last fifty years.”).

²⁵ See RonNell Andersen Jones, *What the Supreme Court Thinks of the Press and Why It Matters*, 66 ALA. L. REV. 253, 258 (2014) (noting that, of the positive roles the Supreme Court assigns to the press, the Court “overwhelmingly” characterizes the press “as a watchdog”).

²⁶ See Vincent Blasi, *The Checking Value in First Amendment Theory*, 1977 AM. BAR FOUND. RSCH. J. 521, 527 (1977); Potter Stewart, “Or of the Press,” 26 HASTINGS L.J. 631, 634 (1975).

²⁷ See Sonja R. West, *The Stealth Press Clause*, 48 GA. L. REV. 729, 754 (2014) (noting that the Supreme Court has recognized that the press checks private power and not just government power).

²⁸ Erin C. Carroll, *The Violence of Free Speech and Press Metaphors*, 81 WASHINGTON & LEE L. REV. 87, 133–34 (2024).

This structural role is important, even necessary. But the watchdog label is flawed, and the prevalent belief that to be a watchdog is the press's *raison d'être* is also problematic. The watchdog metaphor is an unnecessarily violent one, especially for an entity providing a public good and service.²⁹ Watchdogs exist to sniff out wrongdoing and to pounce.³⁰

The violent overtones of the metaphor are also evident in the way journalists routinely describe their role as hard-hitting and aggressive.³¹ Watchdog reporting has been dubbed by some scholars as the “journalism of outrage” – designed to “prick[]” and “provoke.”³² Without it, these scholars argue, journalism would be “sterile” and “bloodless.”³³ Given the way that metaphor functions, there is a chance that clinging to this violent metaphor is actually preventing journalists and citizens from conceiving of the press in ways that are not so pugilistic.

Instead of describing the benefit that the press provides when it checks government wrongdoing as “watchdogging,” an alternative is to describe it as “independence.” This word eliminates the violent overtones of the watchdog yet preserves the idea that the press is acting, as New York Times publisher Adolph S. Ochs wrote in 1896, “without fear or favor.”³⁴ An independent press can be both a monitor and a collaborator as situations demand. With its patriotic overtones, “independence” also aligns well with a reconceptualizing of press functions as benefits in service of democracy.

A relabeling of the watchdog function might also help lead to deeper, and overdue, thinking about the parameters of this particular press benefit. For example, as it stands, journalists conceive of the watchdog role in much the same way that First Amendment theory has traditionally thought about free speech – that more is better and that its virtues are almost without bounds. But just as recent changes in our political and speech environments have demonstrated that sometimes too much speech may have costs (see, for example, the damage done by “troll armies,” “flooding” tactics that distort or drown out other speech,” or the “deployment of propaganda robots”),³⁵ it is also worth examining whether there should be limits on the press's watchdog role. For example, one recent study conducted by researchers from the American Press Institute and the University of Chicago found that conservatives may be less likely to embrace the press's watchdog role.³⁶ If this is right, the

²⁹ *Id.* at 133–41.

³⁰ *Id.*; see KOVACH & ROSENSTIEL, *supra* note 10, at 218 (describing the “prosecution” function of watchdog journalism).

³¹ *Id.* at 138–39.

³² DAVID L. PROTESS ET AL., JOURNALISM OF OUTRAGE v, 5 (1991).

³³ *Id.* at vi.

³⁴ David W. Dunlap, *Looking Back: 1896 – ‘Without Fear or Favor’*, N.Y. TIMES (Aug. 14, 2015), <https://www.nytimes.com/2015/09/12/insider/1896-without-fear-or-favor.html>.

³⁵ See Tim Wu, *Is the First Amendment Obsolete?*, 117 MICH. L. REV. 547, 548 (2018).

³⁶ In a study examining the relationship between people's “moral values” and the “core values” of journalism, researchers found that those “who most value loyalty and authority are much less

press's emphasis on it may contribute to the public feeling alienated by the press and, as a result, failing to support it.³⁷

Framing this inquiry in terms of “independence” suggests that there may be times and ways in which press independence may need to vary depending on the circumstances.³⁸ For example, historically, journalists have staunchly opposed any sort of public funding precisely because of its potential to erode the press's independence. Yet, at a moment like the present, when the press's very existence might depend on public funding, press advocates are examining ways to publicly fund the press while ensuring that journalists retain editorial independence. In other words, “independence” can be nuanced. It is not all or nothing.

In addition to the watchdog role, another press benefit that could be relabeled and, in the process, rethought is the role of the press as a proxy. The term “proxy” has been used to refer to the press's role as a literal stand-in for the public, for example, when journalists witness newsworthy events and then report on them.³⁹ As the Supreme Court has written, “[I]n a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations.”⁴⁰ Journalists have also long indicated that their proxy role involves gathering information from far-flung locales and bringing it to the public's doorstep. As journalist Walter Lippmann wrote in 1922, “[T]he real environment is altogether too big, too complex, and too fleeting for direct acquaintance.”⁴¹ Instead, he wrote, we “must have maps.”⁴² The press, in its proxy role, creates those maps.

But, like “function,” the “proxy” label is uninspiring. Plus, it is perhaps not as accurate as it once was. Although there are still situations in which physical access to spaces is limited, the public now often has virtual access to newsworthy events. Meanwhile, today, serving as a proxy for the public on the world stage is an increasingly impossible feat given the rate of global information generation and sharing. Thus, what the public needs from today's press is to act not so much as a proxy than as a “curator.”

likely than others to endorse the idea that there should be a watchdog over those in power,” and about 86 percent of those in the study who valued loyalty and authority identified as conservative or moderate. See ASSOCIATED PRESS-NORC CTR. FOR PUB. AFFS. RESCH. & AM. PRESS INST., A NEW WAY OF LOOKING AT TRUST IN MEDIA: DO AMERICANS SHARE JOURNALISM'S CORE VALUES 1, 4 (Apr. 2021), <https://www.americanpressinstitute.org/wp-content/uploads/2021/04/Media-Insight-Project-Study-Report.pdf>.

³⁷ The same report concluded that “[t]o woo subscribers, the media will need to vary its messaging beyond traditional appeals about journalism being a watchdog.” *Id.* at 4.

³⁸ See LORRAINE DASTON & PETER GALISON, OBJECTIVITY 42–50 (2007) (tracing the shifting meaning of “objectivity” in the sciences).

³⁹ See *Houchins*, 438 U.S. at 8 (describing how the press acts “as the ‘eyes and ears’ of the public”).

⁴⁰ *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 491 (1975).

⁴¹ WALTER LIPPMANN, PUBLIC OPINION 8 (Courier Corp. 2012) (1922).

⁴² *Id.*

By being a curator, the press surveys, selects, distills, prioritizes, and contextualizes.⁴³ It does this work by adhering to the evolving tenets of journalism. This process stands in stark contrast – and its value becomes especially clear – when compared to the most dominant method by which the information that so many of us ingest today is sifted and presented: content moderation by social media platform algorithms.

To be clear, I am not suggesting that the watchdog or proxy roles are unimportant. But when we rely on these metaphors to describe the press's work, we limit the public's conception of that work, at times in unproductive ways.⁴⁴ Using new language to describe the press's benefits could broaden our understanding of the press's potential and, in time, even transform the institution to fulfill that potential.

9.3 PRESS RHETORIC AND THE PUBLIC IMAGINATION

So far, this chapter has discussed renaming press functions – that is, finding new ways to label press functions that the law has already recognized with different descriptors. But there may be additional, and even more powerful, ways to use rhetoric to bolster the press. We could employ rhetoric as a framework for generating language to describe press benefits that the law has failed to recognize or has not yet even imagined. In fact, this type of communal envisioning may be the very essence of conceptualizing law as a branch of rhetoric.⁴⁵ As James Boyd White wrote, “It is the true nature of law to constitute a ‘we’ and to establish a conversation by which that ‘we’ can determine what our ‘wants’ are and should be.”⁴⁶

Now is the right moment to be engaged in this process. Along with institutions generally, the press is neck-deep in crisis. It lacks the public's trust and support.⁴⁷ This may be for good reason. Communication scholars Barbie Zelizer, Pablo Boczkowski, and C. W. Anderson have critiqued today's press as elitist, entrenched, and self-congratulatory.⁴⁸ They write, “Journalism finds itself less socially, politically and culturally relevant than it ought to be, and certainly less relevant than it thinks it is.”⁴⁹

But this crisis could be reframed as an opportunity for reimagining the press, starting with press benefits. Yes, as discussed, the press is a bulwark of democracy,

⁴³ See RonNell Andersen Jones & Lisa Grow Sun, *Freedom of the Press in Post-Truthism America*, 98 WASHINGTON UNIV. L. REV. 419, 464 (2020) (describing the press's role prioritizing and curating information); Andersen Jones, *supra* note 19, at 536 (discussing the importance of the press's role as a curator); Anderson, *supra* note 19, at 333 (discussing how journalists “sift, select, and package the news”).

⁴⁴ See GEORGE LAKOFF & MARK JOHNSON, *METAPHORS WE LIVE BY* 12–13 (1980).

⁴⁵ See White, *supra* note 15, at 684 (conceptualizing law as a “branch of rhetoric”).

⁴⁶ *Id.* at 698.

⁴⁷ See Megan Brenan, *Media Confidence in U.S. Matches 2016 Record Low*, GALLUP (Oct. 19, 2023), <https://news.gallup.com/poll/512861/media-confidence-matches-2016-record-low.aspx>.

⁴⁸ BARBIE ZELIZER ET AL., *THE JOURNALISM MANIFESTO* 36–37, 46, 113 (2022).

⁴⁹ *Id.* at 113.

but in what ways? How does the press inform, create communities, and empower? To borrow Mike Ananny's wording, are the press's "institutional arrangements" such that they will "produce expansive, dynamic, diverse publics"?⁵⁰ If not, how might we change them? What publics do we want, and how do they differ from what we have? How might the press better help with solving collective problems? How might the press better connect with and serve various communities? Is the press promoting communal flourishing? What type of democracy is our press a bulwark for? Is this the type of democracy we want and need?

In trying to answer these questions, we might both discover and imagine all sorts of ways that the press is benefiting citizens or, conversely, is not benefiting them and needs to be. For example, we could focus on the role of the press as a facilitator and convener of the public square. In this role, the press creates the shared epistemic foundations that are necessary for democracy.⁵¹ We might also recognize the press's role as a historian, creating vital records through which future generations will be able to study and build upon our generation's thoughts, advances, and missteps. We could imagine the press as a community storyteller, a preserver of traditions. We could envision the press as a sentinel and observer whose very presence improves outcomes. Perhaps we see the press as creating a kind of poetry – language grounded in fact but allowing us to see possibility.⁵² We might aspire to a press that tends to communities through care-based practices.⁵³ Or we might decide these roles are too big or too many for the press, and we might think about how to distribute them or what other institutions or organizations or arrangements might fulfill them.

Even in the short term, this use of rhetoric and these conversations could help to create the kind of dynamic institution that some press thinkers argue is a productive path forward. Harnessing the public imagination is key. According to communication scholar Stephen D. Reese, "institutions are worth defending to the extent they contribute to a moral purpose and bind together historically the aspirational values they embody, connecting members to their society – past, present, and future."⁵⁴ As part of creating that worthy entity, Reese argues that we should think about the press as a "hybrid institution" – an entity that blends old and new and is constantly engaging, evolving, and emerging.⁵⁵

⁵⁰ ANANNY, *supra* note 3, at 4.

⁵¹ See Erin C. Carroll, *Beyond the Watchdog: Using Law to Build Trust in the Press*, 3 J. OF FREE SPEECH L. 57, 65 (2023).

⁵² See PICO IYER, *THE HALF-KNOWN LIFE: IN SEARCH OF PARADISE* 21 (2023) ("[P]oetry is the form that shimmers between fact and fiction, a world of suggestions that does not allow one to settle into certainties").

⁵³ See Sue Robinson & Patrick Johnson, *Rectifying Harm Through Care-Based Practices: How Journalists Might Tend to Disengaged Communities*, 25 JOURNALISM STUD. 99, 100 (2024), <https://www.tandfonline.com/doi/full/10.1080/1461670X.2023.2289889>.

⁵⁴ STEPHEN D. REESE, *THE CRISIS OF THE INSTITUTIONAL PRESS* 58 (2021).

⁵⁵ See *id.* at 17–19.

The key to Reese's hybrid institution and to employing rhetoric more generally is not doing so with the goal of arriving at definitive answers to the questions posed. More important is the dialogue – the community it creates and the changing institution that the community can sustain. This is, at its core, the messy work of democracy. As philosopher Jason Stanley writes, democratic citizenship “demands a great deal of all of us. There are easier ways to live.”⁵⁶ It may be that these conversations about the press prompt citizens to think about democracy in new ways. Our current press is a product of our particular American brand of liberal democracy, but different types of democratic government might demand other press benefits, roles, and forms.⁵⁷ And regardless of what shape our future democracy takes and what the needs of that democracy might be, building rhetorical frameworks to support the press both normatively and practically is a crucial task.

9.4 WHERE TO USE PRO-PRESS RHETORIC

As a new language around press functions is generated, the beauty of this rhetoric is that it can be deployed without cost and in abundance. It can take numerous forms and be directed at a variety of audiences.

Let's start with the judiciary. Given the judiciary's ability to shape the parameters of the press and invest it with power, it is critical that judges understand the value of the press's work. One direct way to demonstrate this value is through briefing. Press advocates can advance their cause by adopting updated language about the press in their merits briefs and in the numerous amicus briefs they file. As constitutional law scholars Eric Ruben and Joseph Blocher write, rhetoric is at the heart of legally instigated change: “Constitutional doctrine is shaped by the rhetorical moves that litigants, commentators, scholars, and judges make. Such rhetoric can become embedded in popular and legal understandings of constitutional rights.”⁵⁸

Advocates might also speak this language to legislators. Both at the federal and state levels, legislators convene hearings on the state of the press as well as draft and debate press-related legislation. Pro-press rhetoric in testimony and advocacy can find its way into law and policy.

Journalists, as public figures, must also become more accustomed to using their megaphones to bring attention to press benefits. Institutionally, the press has a bias against itself being at the center of the news.⁵⁹ Other than having a byline, some

⁵⁶ JASON STANLEY, *HOW FASCISM WORKS: THE POLITICS OF US AND THEM* 184 (2020).

⁵⁷ See C. Edwin Baker, *The Media That Citizens Need*, 147 *UNIV. OF PENN. L. REV.* 317, 320–40 (1998) (describing various democratic theories and their corresponding media).

⁵⁸ Eric Ruben & Joseph Blocher, “Second-Class” Rhetoric, Ideology, and Doctrinal Change, 110 *GEORGETOWN L.J.* 613, 623 (2022) (examining the role of rhetoric in shaping Second Amendment rights).

⁵⁹ See Kevin Smith & Karen Grabowski, *SPJ Cautions Journalists: Report the Story, Don't Become Part of It*, *SOC'Y OF PRO. JOURNALISTS* (Jan. 22, 2010), <https://www.spj.org/news.asp?ref=948>

journalists want to disappear behind their stories. Traditionally, this is part of the feint of “objectivity” – or the so-called “view from nowhere.”⁶⁰ But as the premise of objectivity has come under fire, perhaps, too, should the norm among journalists to keep relatively mum about the fate of their profession. As one journalism professor recently wrote in the *Columbia Journalism Review* about convincing conservative audiences of the press’s value, “If local journalism is really to be revived, those who hope to revive it will need to try something more ambitious: they’ll need to interject in the conversations about journalism within conservative networks, and offer a compelling new explanation of who local journalists are and why conservatives might want to listen to them.”⁶¹

Employing pro-press rhetoric in these public ways and spaces is crucial both as a means of dispersing it and of continuing to germinate conversation about the press. In addition, it can perhaps blunt the effects of the rabidly anti-press rhetoric that has become a hallmark of numerous conservative politicians. To date, no one has effectively countered the populist rhetorical tirade against the press. To do so, we need both a reinvigorated language around the press and people willing to speak it.

9.5 CONCLUSION

In many ways, the American public has forsaken the press. This is obvious from vitriol – like the January 6 rioter who wrote “MURDER THE MEDIA” on a door of the U.S. Capitol.⁶² But the more pernicious acts have been banal acts of omission, such as failing to provide financial support to the thousands of local news outlets that have gone dark in the past two decades.⁶³

This unintentional forsaking is perhaps understandable. The press survived, and profited, for most of America’s history without significant public intervention.

(cautioning that “injecting oneself into the story or creating news events for coverage is not objective reporting”).

⁶⁰ See CANDIS CALLISON & MARY LYNN YOUNG, RECKONING: JOURNALISM’S LIMITS AND POSSIBILITIES 4 (2020) (critiquing the “view from nowhere” and the notion of journalistic objectivity).

⁶¹ Doron Taussig, *The ‘Fake News’-ification of Local News – and What to Do About It*, COLUM. JOURNALISM REV. (Apr. 16, 2024), https://www.cjr.org/tow_center/the-fake-news-ification-of-local-news-and-what-to-do-about-it.php.

⁶² See Angela Fu, *Reporters Covering the Capitol Attack Were Used to Harassment and Heckling. But Wednesday Was Different*, POYNTER (Jan. 13, 2021), <https://www.poynter.org/reporting-editing/2021/reporters-covering-the-capitol-attack-were-used-to-harassment-and-heckling-but-wednesday-was-different/>.

⁶³ See Elisa Shearer et al., *Americans’ Changing Relationship with Local News*, PEW RSCH. CTR. (May 7, 2024), <https://www.pewresearch.org/journalism/2024/05/07/americans-changing-relationship-with-local-news/> (noting that only 15 percent of people surveyed had paid or given money to any local news source in the past year); Penelope Muse Abernathy, *The State of Local News: The 2023 Report*, NORTHWESTERN MEDILL LOCAL NEWS INITIATIVE (Nov. 16, 2023), <https://localnewsinitiative.northwestern.edu/projects/state-of-local-news/2023/report/> (indicating that about 2,900 American newspapers have closed since 2005).

It amassed power through the wealth it reaped from advertising. For the most part, it has not demanded much of citizens. But that heyday has passed. If Americans want a functioning press (which is to say, if Americans want a functioning democracy), we have to learn to do the work of supporting it.

One way we can all contribute is with rhetoric. As philosopher and novelist Iris Murdoch wrote, “[L]anguage itself is a moral medium, almost all uses of language convey value.”⁶⁴ Ensuring we have a free press has significant moral stakes; how we talk about the press needs to convey its value. If we can conjure the language that describes the press we need and want, we come closer to bringing that press into being.

⁶⁴ IRIS MURDOCH, *EXISTENTIALISTS AND MYSTICS: WRITINGS ON PHILOSOPHY AND LITERATURE* 27 (1999).