AI, Algorithms, and Misinformation

Law, Politics, and Our Digital Futures

Jeffrey Layne Blevins



AI, ALGORITHMS, AND MISINFORMATION

This book examines how – in the 21st-century world of big data and social media – artificial intelligence and algorithms are being used to predict our economic, political, and cultural activity.

Drawing inspiration from the concept of a "minority report," as introduced in Philip K. Dick's 1956 short story, the book explores how the byproduct of digital content on social media often generates a collective perception of reality. This book breaks down how this collective perception is ultimately manufactured by cultural, political, and economic interests, and how additional issues – such as data errors, misinformation, and bias – can often render it false. Applying critical political economic analysis and cultural legal studies to these problems, Blevins emphasizes how we can do more to challenge the perceptions that pervade popular online discourse. Throughout the book, he demystifies the systems and processes that generate these information flows, enabling readers to better fight for remedies to the problem – legal and otherwise – and create a more just digital future.

This book will be of interest to students and scholars of media and communication studies, political science, sociology, and beyond who have an interest in understanding and addressing the impact AI, algorithms, and misinformation have on social media and society.

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which won the 2023 Next Generation Indie Book Award for Best Non-Fiction eBook, and *Social Media and Digital Politics: Networked Reason in an Age of Digital Emotions* (2025), which won the 2026 AEJMC Tankard Book Award. Both of his co-authored books are with James Jaehoon Lee. Blevins is a frequently consulted expert for national news media on social media, politics, and misinformation.

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PREFACE

This project takes its inspiration from Philip K. Dick's 1956 science fiction short story, *The Minority Report*, about a futuristic government that uses mutant beings with supposed precognitive power to predict criminal events, so that police can act before they occur. However, the mutant pre-cogs do not always see the same future, which produces a "minority report" (as opposed to a majority report, which is generated when two of the three pre-cogs have similar visions). The existence of a minority report suggests that precognition is not always accurate, and that the pre-cogs frequently differ in their own prospections. Thus, there are multiple possible futures, which indicates that the criminal justice system may be incarcerating people who would not have committed the future crime for which they were charged.

When the main character in *Minority Report*, John Anderton, who created and managed pre-crime is charged for a murder he has yet to commit, and one he denies that he would ever do, critics of the pre-crime system begin to sarcastically muse to him about whether it is the first time in history that pre-crime has gone wrong, and whether there are other innocent people who have been wrongfully convicted. Anderton later realizes the importance of the minority report in his case – that it might be the key to proving his innocence – as people who are aware of the consequences for their potential actions may alter their future behavior.

Similarly, in the 21st-century world of big data and social media, artificial intelligence and algorithmic computations are used to predict our economic and cultural activity and the byproduct of digital content on social

media generates a collective perception of reality. However, this broadly held view is manufactured by cultural, political, and economic interests, and reality, as well as the future, may very well be something else. While the problem in *Minority Report* for Anderton is a personal one, in our digitally managed society, the use and misuse of inaccurate and uncontextualized data have become political problems. Applying critical political economic analysis and cultural legal studies, this book argues that social media audiences specifically, and the public generally need to do more of their own intellectual labor and challenge the majority perceptions that tend to pervade popular political discourse. We each need to produce our own minority reports that better envision our individual and shared futures in digital spaces.

In the first chapter, I will lay out the main thesis of the book that although machine-learning and other algorithmic devices that comprise our data-based and social media environments may often be accurate, they are imperfect, subject to manipulation, and may sometimes produce falsity with significant consequence. Like Dick's novella implies: "The existence of a majority logically implies a corresponding minority."[1] However, in today's algorithmically churned and digitally platformed society, most data are presumed to be accurate and upon this assumption beliefs are held, and political and economic actions are taken. But what about the minority of this data production and its byproducts of decontextualized facts, misinformation, and other errors? If data are presumed to be accurate, what is the impact of inaccurate computations or outright falsity? How are we to discern reality or the simple truth in our digital environs? We must broadly examine the political and economic systems and their algorithmic processes that generate the information flows on social media platforms to describe *how* and understand *why* we get so much misinformation and falsity that is acted upon as truth. From there, we can engage in a process of critical analysis that reverse-engineers this process, so that we may more effectively suggest legal or other remedies to the problem and point to more just digital futures.

Before we can begin critically analyzing information on social media networks and its relationship to reality though, we must understand how data is produced from digital cypher. Chapter 2 defines a series of terms that will be analyzed throughout the remainder of the book. The chapter further describes their interrelationships, as well as how online platforms reproduce misinformation throughout the system. In addition to parsing the differences between disinformation, fake news, misinformation, and what has been termed as "bullshit"[2] on social media, the focus will be on how I will use the terms "artificial intelligence" (e.g., "AI") and

"algorithm," similar to Kenneth Wenger, to distinguish certain types of algorithms that engage in some form of machine learning.[3]

These types of machine learning algorithms are like the pre-cogs, who were considered the "treasured monkeys" of government agencies in *Minority Report*.[4] The three pre-cogs are referred to as "monkeys" as in the adage of "see no evil, hear no evil, speak no evil." While there are different views on the origin and meaning of this saying, it is of note here that a Japanese proverb refers to them as the three wise monkeys, while in Western culture, it often refers to looking the other way in the face of wrongdoing or shirking moral responsibility for impropriety.[5] Although these two interpretations may differ, they are both relevant to how we perceive machine learning algorithms in digital space, and the problems related to their misuse. AI is seen as wisdom, but there is a lack of accountability by the entities that employ it. Although the enforcers of pre-crime in *Minority Report* acknowledge the legal flaws with the system (as it confounds U.S. legal principles of habeas corpus and due process), they still accept the accuracy of prospection as a given truth.

Compounding the problem in *Minority Report*, the pre-crime division shares information it obtains from the pre-cogs with other agencies and for other purposes, without knowing or caring how that information will be used. Before being charged with a pre-crime himself, Anderton tells a newcomer to his office that much of the data that the pre-cogs produce is not relevant to their line of work, but it gets passed on to other agencies that trade data with his division.[6] The lack of complete information or uncontextualized data only furthers the likelihood that it may be missorted, miscalculated, and ultimately misrepresenting what exists in reality.

In Chapter 2, I will begin to explore the impact of systemic misinformation and other missorts of data within our digital networks. This will involve a descriptive and systemic critique of how conflict plays out phenomenologically between sets of internet media policy, data collection practices, algorithmic formulations, and social media experiences of political polarization. There will be two dimensions of analysis developed throughout the book, including how we can understand the impact of missorts, misinformation, and factual errors on the production of knowledge in society; and formulating prescriptions within the domain jurisprudential analysis, cultural legal studies, and critical political economic analysis about how to create a more socially just networked society.

However, a key point of intellectual departure to be described in Chapter 2 is from a body of literature that emphasizes data justice and injustices. This work is often centered around social justice in the use and applications of machine learning and algorithms and suggests that bias relating to race and gender is built into these systems. While I do not argue that

bias may be built into some systems, I instead shift the focus to the idea that there is error within these machine learning and algorithmic systems. This is an important distinction because if we assume that bias is merely encoded into these systems, it also suggests that they can be made perfect if we take out the bias. Rather, I assert that we must assume that there will always be error within these systems, and we should never assume that any data are perfect. This point is critical in forwarding a legal argument regarding data governance and privacy.

In *Minority Report*, Dick emphasizes the tension between how the three pre-cogs are perceived as "idiots" and yet the "analytical machinery" of the pre-crime division recorded and carefully listened to them.[7] Similarly, the ills of algorithmic formulations only occur when relied upon as an accurate representation of reality, or through calculated manipulation. In Chapter 3, through the critical lenses of political economic analysis, I will explore the machinery of media ownership and commercial interests in the use of AI and algorithms. From there, we can see how algorithmic sorting can be manipulated while also furthering political polarization. For instance, during the 2020 U.S. election cycle, troll farms in Eastern Europe produced the most popular pages for both Christians and Black Americans because of Facebook's algorithm, which favored engagement and pushed it into their users' news feeds.[8] This kind of process is also a significant form of data injustice because the Russian government targeted racial minorities in the U.S. via algorithmic methods in a broader campaign to suppress voting turnout in 2016.[9] Even without a political motivation, the product of troll farms is often divisive propaganda about hot-button political issues, which does not necessarily reflect the users that ultimately consume them. And, worse yet, these divisive tropes get repeated in a digital echo chamber, as Facebook pushes "engaging" content on pages of people who do not "follow" the source page, and then it gets shared on the news feeds of connected friends through likes, comments, and shares and gets spread even further. While the content in question here may be the product of financial motives (e.g., "engagement"), or political (e.g., "propaganda"), it is nonetheless not commensurate with the reality of social media audiences that it targets and thus, replicates misinformation, falsity, and error.

Chapter 3 is also in conversation with David Arditi's 2023 book, *Digital Feudalism* and what he described as the relationship between AI and "alienation" within consumption capitalism.[10] For instance, Arditi described how computer software, algorithms, and AI tend to create precarity when they are used in more and more sections of the economy, particularly the "metaverse" in which "the virtual world" is embedded into the daily lives of people through online engagements in what used to be human-to-human interactions.[11] While Arditi's concern is focused on the alienation

that occurs between workers when they are separated from the product of their labor, a similar sense of alienation could be applied more broadly. As an increasing number of industries move to the metaverse of AI, more and more information production and the type of knowledge it produces increasingly rely less on human engagement and oversight. From Arditi's observations, I will further argue that AI and algorithms have become the master of the knowledge and alienate humans from their own reasoning and knowledge creation. My argument in this chapter raises important questions about what happens when the algorithms fail to produce contextualized data, and how U.S. law is equipped (or not) to address algorithmic failure and its byproduct of misinformation and falsity.

In *Minority Report*, Anderton observed that the basic legalistic drawback to predictive methodologies was that the state was acting upon individuals, who have not actually committed the actions that were described by the pre-cogs. "But surely they will," says his new colleague Ed Witwer, who is certain of the accuracy of the prospection put before them.[12] Chapter 4 will use a cultural legal studies approach to explore the current U.S. regulatory environment, as well as other legal means to potentially interdict the range of false expression, ranging from factual errors, misinformation, fake news, disinformation campaigns, fraud, and lies. Heretofore, much media policy scholarship has focused on Section 230 of the 1996 Communications Decency Act (CDA), which holds interactive computer service operators legally immune from liability for content posted by their users (e.g., "third party content"). Proposals to reform Section 230 of the CDA have ranged from striking it from the law to revising it so that service operators would be accountable for their algorithms and their own content (but, still legally immune from third-party content posted on their networks). None of these proposals to address Section 230 of the CDA have come to fruition. The Biden Administration formed a "Disinformation Governance Board" in April of 2022 to protect national security from disinformation campaigns, but its operation was quickly paused after a few weeks amid intense backlash from Republicans, and the board was formally disbanded in August of the same year.[13] Interestingly, President Trump on his first day in office in 2025 signed an executive order accusing the previous administration of "censoring American's speech on online platforms … [u]nder the guise of combating 'misinformation,' 'disinformation,' and 'malinformation'."[14] The order also directs the Attorney General with investigating the previous administration.

To say that laws and policies cannot keep up with the pace of technology does not capture the essence of the problem, which is more politically complex. Through a critical legal and political economic analysis, we can see where legislators have political interests that are often served by

disinformation campaigns, as well as the algorithms that play upon divisions in society, as QAnon conspiracy theories, medical misinformation, and other wedge issues are often what their constituents thrive on. Politics is not about the truth, but about what works (much like algorithms). While Chapter 4 will show where U.S. statutory law and attempts at industry self-regulation have been inadequate to address the problems at hand, Chapter 5 will employ traditional jurisprudential analysis to suggest some remedies within the common law and civil litigation. However, civil remedies are limited and depend primarily on one's own financial wherewithal and thus, remain economically unjust. Moreover, the constitutional elements of U.S. law and its regard of free expression remain problematic and are addressed in more detail in the following chapter.

Chapter 5 also explores in greater detail the history of free expression as provided under the First Amendment to the U.S. Constitution, including the popular "marketplace of ideas" metaphor, which often justifies minimal government regulation of speech. Using critical legal and political economic analysis to understand the production and dissemination of false information, and more importantly to those whom it most often inaccurately describes and defines, we can see the limitation of the marketplace of ideas metaphor. For instance, factual speech may not have the same level of prominence as false speech, and instead we can see where there is a market failure in the digital dissemination of ideas. Inaccurate data, like misinformation, are easy to access, and convenient to believe, but not victimless. Accordingly, in U.S. jurisprudence, we must rethink the limited, absolutist notions of the First Amendment as merely a limitation of government power, and instead, conceptualize data accuracy as a matter of social justice. Consider the Supreme Court's 1992 ruling in *R.A.V. v. City of St. Paul*,[15] which found that a local hate speech law was a form of viewpoint discrimination. However, a concurring opinion by Justice Byron White argued against the majority ignored earlier jurisprudence "that certain categories of expression are 'not within the area of constitutionally protected speech.'"[16] This draws attention to certain categories of speech that the Court has held are outside the scope of First Amendment protection, such as obscenity and child pornography. Could false political speech fall into this category? The harm caused by patently false expression would outweigh the individual right to express false ideas. While words may not cause direct physical damage, false words in our news and information streams can have negative effects in our political and economic lives, just as courts have recognized that fraudulent expression has economic consequences; that child pornography that involves actual kids in its production hurts those children; and that libel (false defamatory speech) damages individual reputations. Words matter, expression has consequences, and

false information poisons our public discourse and injures our democratic self-governance. We must ask ourselves whether false information deserves the same kind of First Amendment protection as the truth, as well as what the effects of false speech are and whether or not those effects are bearable. Will U.S. democracy survive another January 6th? Another pandemic? What are the long-term epistemological effects of false information on our public discourse? What is the effect on the production and dissemination of knowledge? Taken altogether these questions ask us to consider the nature of reality and how it is being shaped by political and economic interests. In describing similar themes in the writings of Philip K. Dick, which inspired much of the thesis of this book, Emmanuel Carrere observed that

> reality could not be apprehended directly, because it gets filtered through each individual's subjectivity. What seems real is a deception. What rational beings agree on as constituting reality is merely and illusion, a simulacrum created either by the few in an effort to mislead the many or else by some external power intent on misleading everyone. Reality is not reality.[17]

Similarly, it is argued here that algorithmically produced data and the byproduct of digital content on social media generate a collective perception of reality, which is manufactured by political and economic interests, and reality, as well as the future, may very well be something else.

In Chapter 6, I will make the case for social media audiences specifically, and the public generally, to do more of their own intellectual labor and challenge the majority perception that pervades much of popular political discourse. We each need to produce our own minority reports to envision what our digital futures can be (separate from algorithmic churn) and avoid further epistemological crisis. There are sharp cleavages in our understanding of not just how knowledge is produced, but what in fact counts as knowledge. There are no common standards of evidence. Expertise and institutions of knowledge production are not just marginalized but viewed with hostility for knowledge when it conflicts with political interests or cultural world view. Empiricism and even simple inductive matters of fact, as well as rationalism and methods of deduction based on observation, are often dismissed by disputing the observations and asserting counter-claims without evidence. We need to do better.

This concluding chapter will also describe a process for how the public can do more of their own intellectual labor. Beyond the typically included list of fact-checking services, news ranking apps, and pleas for media literacy, we should be thinking about ways in which we can improve the

public's critical understanding of how media ownership, advertising, and politics and economic interests impact content. The more people have the ability to understand how the system of information production works, the more power they will have to correct inaccuracies or identify information that is patently false. The law should not assume that algorithmically churned data are more reliable than human witness, just as jurists and juries understand that human witness itself is not perfect. There is always a minority report to be considered.

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with James Lee, *Social Media and Digital Politics: Networked Reason in an Age of Digital Emotion* (Routledge, 2025).

James, whom I have co-authored two books with (our first project was published through the University of Cincinnati Press) has been a steady source of inspiration over the years for innovative approaches to studying social media and politics.[19] While he was at the University of Cincinnati we were also neighbors and I miss our happy hour stops on the way home from campus for cocktails and collaboration. I am also indebted to Liz Scarpelli during her time as Director of the University of Cincinnati Press. Liz is another inventive thinker with whom I have had the good fortune of collaborating. In fact, I originally discussed the idea of the proposal for this book with Liz before the University of Cincinnati decided to close its press. Nonetheless, her insight and feedback made it into this manuscript.

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Lastly, I am dedicating this book to the memories of Vincent Mosco (1948–2024) and Robert W. McChesney (1952–2025), who were the two greatest influences on my own research program in the political economy of media, and sharpened my critical focus on how internet-based technologies would be formed by commercial interests. One of McChesney's core arguments was that most popular writing and scholarly assessments of the internet "fail to understand the importance of capitalism" in shaping the internet as well as the "crucial policy fights" that will determine its relationship to society.[20] Similarly, Mosco noted the "hyperbole that tends to accompany the arrival of a new technology" as revolutionary, but after its development ultimately provides nothing more than more marketing strategies for commercial purposes.[21] Sadly, both of these scholarly titans passed away during the course of my work on this book.

I came to know Mosco, or "Vinny" on a personal basis through email correspondence when I was the editor of *Democratic Communiqué* and he was a cornerstone member of its editorial board. Vinny was always thoughtful, kind, and helpful in our interactions. I was so honored that he included me in his list of critical communication scholars in the concluding "passing the torch" chapter of his last book, which was a personal memoir.[22]

I was a little more familiar with McChesney, and as I wrote once before, the first piece that I read by him "quite literally" changed my life by articulating an area of analysis that would become my intellectual home in the many years to come.[23] His article so succinctly explained the critical study of media political economy, and introduced me to the works of so many great scholars in the field.[24] In just a year after reading that item, I presented my first political economic analysis about the corporate colonization of cyberspace at a national journalism conference in New Orleans, and McChesney was assigned to be the paper discussant for my session.[25] He was generous in his comments on my paper, and his encouragement meant the world to me as a young scholar. I was happy years later when he wrote an external review letter in support of my application for tenure and promotion while I was at Iowa State University. "Bob," as I came to know him, graciously continued to correspond with me after the conference about various projects either of us was working on, and modeled the kind of networking that scholars can do to more broadly promote critically oriented research.

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Notes

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1

DATA, INFORMATION, REALITY, AND SOCIAL MEDIA NETWORKS

Algorithmic machine learning technology, more commonly referred to as artificial intelligence (or AI), has increasingly been utilized in business, healthcare, law enforcement, education, and several other industries. Even federal agencies in the U.S. have used AI, including the Department of Veterans Affairs, to process and automate medical diagnostic services.[1] AI programs have been used to determine credit ratings, diagnose medical patients, perform facial recognition for security and policing, generate lesson plans for teachers, and recommend movies on our streaming services. Many of us engage with AI on a day-to-day basis when we are on social media platforms, use an internet search engine, or shop online. The most popular and common use of AI among U.S. adults is to find information.[2] AI seems to be everywhere and most discussions about it tend to spotlight its novelty and ease of use.

OpenAI's second generation release of its social media app, Sora 2, which allows users to create videos from text commands, has garnered attention for its hyperreal AI videos. However, it has also drawn concern over the ability of this technology to create such persuasive fakes that erode public trust in what is real.[3] While unauthorized AI-generated images of celebrities (both alive and deceased) and copyright protected characters may violate intellectual property laws, the "biggest risk with Sora" (and other AI platforms), as Sam Gregory, executive director of the human rights organization, WITNESS, told the *Los Angeles Times*, is in the realm of broader public discourse as "it makes plausible deniability impossible to overcome, and … erodes confidence in our ability to discern authentic

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from synthetic … the real damage is a fog of doubt settling over everything we see."[4]

AI may be a powerful tool for political propaganda by fabricating hyper-realistic imagery and audio of people doing and saying things that they did not, or events that did not occur. For instance, Republicans in the U.S. Senate released a deepfake political ad during the government shutdown in October 2025 that used artificial images and audio of Chuck Schumer, the Democratic Minority Leader in their chamber, to animate some of his comments that were reported in a print media outlet.[5] While the words stated may be accurate, the vocal inflections and facial expressions shown in the ad were completely fake. In other examples, AI deepfakes have been used to further conspiracy theories, such as a video of what appeared to be former President Richard Nixon saying that the 1969 moon landing was faked.[6] Within the first few days of its release, the Sora social media app was used to create several other sorts of extreme disinformation on timely hot-button political issues, including ballot fraud, immigration arrests, and crime on city streets.[7]

Conversely, the capability of AI to create such convincing deepfakes makes it all too easy to dismiss real depictions of actual events and activities as having been faked, especially among the broad stream of information presented online. Recent research by Marina Tulin and colleagues at the University of Amsterdam has found evidence of a "deception bias" in which people tend to "judge online news as false rather than true," raising concerns about "undermining the believability of genuine news."[8] This kind of predisposition may be compounded by "confirmation biases" in which individuals actively seek out information that conforms to their own political views, while avoiding information that confronts it, especially when it involves emotionally charged content.[9] Altogether, AI's role in creating and furthering the spread of false and misleading information, along with the questionability and believability of information, makes it an existential threat to how knowledge is validated within democratic societies.

Although there are many real and potential negative effects related to how we use machine learning applications, there is comparatively little discussion of how we might mitigate them or regulate their use, especially in relation to their contribution to the spread of politically oriented misinformation and disinformation. These conversations tend to miss solid legal analysis and policy proposals. The Biden Administration's ill-fated Disinformation Governance Board formed in 2022 under the auspices of the Department of Homeland Security to address misinformation and disinformation as a national security concern, but did not directly address AI as part of the problem. The Disinformation Board paused activity less than

a month after being formed and was formally disbanded several months later after backlash from Republican lawmakers.[10] However, the Biden Administration did release an executive order the following year that seemed to call for a careful approach to the development and use of AI, and noted safety and security as key concerns, as well as AI's potential to exacerbate other societal harms, such as disinformation.[11]

In contrast, the Trump Administration has taken a decidedly different policy approach to both disinformation and AI. President Trump issued an executive order on the first day of his second administration, which claimed that the Biden Administration had only used concerns about misinformation and disinformation as a way to censor and "deplatform" speech that it did not approve of so that it could advance the government's "preferred narrative about significant matters of public debate."[12] Trump's executive order also charged the U.S. Attorney General to investigate these alleged activities; although, at the time of this writing at least, no charges have been brought forward. A subsequent executive order from the Trump Administration explicitly revoked the Biden Administration's more cautious policy about the development of AI while it set its own policy course for the technology.[13] That policy action plan was released later in 2025 and took aim at states with "burdensome AI regulations" and stated that the federal government would only contract with AI developers whose models are "free from top-down ideological bias."[14] Among its recommended policy actions, in the name of protecting "free speech and American values," the plan directs the National Institute of Standards and Technology to remove references to "misinformation," along with "Diversity, Equity, Inclusion, and climate change."[15] As James O'Donnell wrote for the MIT Technology Review, Trump's expressed vision for AI policy was nothing more than abolishing what it believed to be "woke" models that "suppress conservative speech."[16] While Trump's AI policy plan did note the risks associated with "malicious deepfakes," the irony was clearly lost on President Trump who had shared an AI-generated deepfake video falsely depicting former U.S. President Barack Obama being violently arrested days before releasing his plan to address such "malicious deepfakes."[17]

Algorithms and AI: From Sci-Fi to Real World Problems of Prospection

The purpose of the book you are about to read is to draw much needed attention to algorithmic imperfections and AI misuse, while emphasizing its political byproducts: the spread of misinformation and the degradation of how we produce knowledge. Additionally, I will show how our current laws and policies are ill-equipped to redress these problems and suggest a

more nuanced rethinking of U.S. legal philosophy about false information and inaccurate data.

As discussed in the preface, the use of precognitive mutant beings described in Philip K. Dick's science fiction short story, *The Minority Report*, created similar problems as the use of algorithmic machine learning does today. This connection inspired much of my analysis.[18] I am not the first scholar to draw inspiration from science fiction, or Dick's ideas, for real-world critical analysis. In his book, *Media Law through Science Fiction: Do Androids Dream of Electric Free Speech*, Daxton "Chip" Stewart explained why science fiction inspires so much critical legal scholarship, as "it offers a vast array of possibilities anticipating future communication technologies and their implications on human affairs."[19] Stewart, like Dick himself, distinguishes science fiction from mere "space adventure" because it "embraces both alternative worlds and future situations based on our own, with narratives driven by plausible advances in technology."[20] For instance, Joy Buolamwini, while working as a graduate student at the MIT Media Lab, developed what she called an "Aspire Mirror" that was influenced by a mood altering device and empathy box described in another of Dick's books, *Do Androids Dream of Electric Sheep?*[21] Incidentally, Buolamwini's project exposed significant problems with facial recognition software used in AI, and how it was programmed.[22] Meredith Broussard also analogizes the real-life problems of law enforcement using AI to create watch lists of people it considered future criminals to the 2002 film *Minority Report*, which was based on Dick's 1956 short story of the same name.[23] Broussard discusses the case of Robert McDaniel who was predicted to be involved in a violent crime (either as a perpetrator or victim) based on where he lived in Chicago. After being identified by the police, people in the neighborhood became suspicious of McDaniel, fearing that he may be an informant, which lead to him being shot. This kind of self-fulfilling prophecy is nearly parallel to the plot of *Minority Report* about police using precognitive humans to predict future criminal violence. However, the pre-cogs are not always accurate, and law enforcement does not understand that a prediction itself might alter the course of future events. In cases like McDaniel's, as Kenneth Wenger explained, AI is not really analyzing an individual person, it is looking at a potential person and situation based on its training data: "[t]he idea that people can change and that you can decide in a moment to change your life—that idea is gone."[24]

Just like in the *Minority Report* short story (and the movie), concerns about the accuracy of machine-learning prospection are often dismissed. Rather, as Broussard wrote, "[p]recognition is attractive" because there is "a sense that if we could get advance knowledge, we would be spared the pain and regret of tragedy," and thus the makers of crime prediction algorithms

and public officials become enamored with tools that they believe "will predict where crime will happen and who will commit it, so that police can intervene before the bad things happen."[25] Although the programmers, public officials, and police who deploy this crime-predicting AI may have the best of intentions, there are significant blind spots in their data, which are based on a history of incomplete data points that lack context and meaning. And it's not just machine learning programs in law enforcement that are problematic. Algorithmic computations forecast our economic value, daily activity, as well as our cultural and political proclivities – often with slight inaccuracies, yet with considerable individual consequence. For instance, in a critical analysis published ten years before this book, I showed how (despite all the detailing information collected by data miners) there were several cases where algorithms missorted individuals' personal data based on an incomplete set of facts, thus misrepresenting them with significant economic consequence.[26] It is not always just a matter of accuracy, but a matter of degree and impact. As Wenger noted, it is important that we consider the types of mistakes that algorithms make, especially so called "edge cases," which may be rare but have devastating consequences.[27]

In addition to Wenger, Cathy O'Neil has also surveyed the many other problems with the development of machine learning programs and misuse of the informational data they produce, while critical internet scholars such as Broussard, Ruha Benjamin, and Safiya Noble have provided thorough and illuminating analyses of how algorithms have been encoded with (and thus reproduce) racial bias, especially through AI facial recognition programs and predictive policing.[28] Informed by their work, the analysis presented here examines how algorithms are programmed to serve economic interests and are subject to manipulation by political forces; and directs critical legal attention toward the relationship between algorithms and the reproduction of false and misleading information, which shapes our shared societal knowledge and redefines our perceptions of truth. By bringing together different sets of literature from the political economy of media, critical legal studies, and philosophies of free speech and technology, this study endeavors to demonstrate the individual and collective societal harms caused by unchecked technological error and vapid efforts to redress the insidious politics of mis-and-disinformation within popular political discourse. Although this is a topic of global import, the analysis and arguments presented in this book will be based primarily on American legal principles. At the same time, there will be discussion of policies outside the U.S., particularly within the European Union, which may provide useful models for consideration in the U.S.

Broussard and others have propounded the need for "algorithmic accountability" when people experience the real harms derived from

technological error.[29] In addition to the individual damages caused through algorithmic error, this treatise broadens the scope of accountability to include the detrimental impact of algorithmic churn on the integrity of political information, including the spread of disinformation, misinformation, and patently false data points. If AI prognostications and algorithmically churned data are presumed to be accurate, what is the impact of inaccurate computations or outright falsity? Who is accountable for the errors and negative side effects – is it the programmers, vendors, or distributors of the information? Does AI or patently false information deserve absolute First Amendment protection?

The interactions between technology, information production, social media networks, and politics are certainly complicated and there is no simple policy solution or legal axiom to readily address the large problems caused by the byproduct of small errors. However, the time to address our digital futures is now. States and the federal government are beginning to tackle these issues related to free expression, algorithms, and AI in separate arenas without considering comprehensive policy. For instance, in 2025 Missouri's Attorney General began the promotion of new regulations requiring what he called "algorithmic choice" for the state's social media users.[30] The proposed new rule would make it unlawful in the State of Missouri to operate a social media platform without allowing "users the opportunity to select a third-party content moderator of their choice" instead of allowing the platform the exclusive right to moderate its own content.[31] The Attorney General's Office in Missouri seems to misconstrue "algorithms" with "content moderation." It also appears to misunderstand the Supreme Court's 2024 decision in *Moody v. NetChoice*. In that case, the Court unanimously sent two cases back to the Eleventh and Fifth Circuit Courts of Appeals for not weighing facial First Amendment concerns against state laws in Florida and Texas. These laws had tried to stop social media platforms from "deplatforming" political candidates and "censoring" user content based on their political viewpoint.[32] The Court's decision seemed to strongly suggest that the new laws in Florida and Texas would likely violate the First Amendment, as the Court has noted that curated and edited compilation of third-party speech is, in and of itself, a form of expression.

The Constitutionality of other state laws that prohibit the use of political deepfake images and videos (which generally require the use of AI) has also been challenged in federal courts. AI has been used to amplify political divisions, especially on the far-right by defaming public officials with fake images and videos, making them appear to do and say things that they did not do or say.[33] In April 2025, the social media company, X, filed a lawsuit in the U.S. District Court of Minnesota to challenge a 2023

Minnesota state law that prohibits the use of deepfake technology to influence an election.[34] A U.S. District Court in California blocked a similar state law in California in October 2024 that cracked down on the use of AI to create false images and videos in political advertisements.[35]

Political Differences on Deepfake Porn and Politics

Somewhat disparately in May 2025, the federal legislature overwhelmingly passed the "Tools to Address Known Exploitation by Immobilizing Technological Deepfakes on Websites and Networks Act" (known more broadly as the "Take It Down Act").[36] Among other things the law makes it illegal to knowingly publish intimate images, including AI-generated deepfakes, and imposes penalties on websites and social media companies that fail to respond in a timely manner to take down requests. It is interesting that while state laws attempting to prohibit the use of AI-generated deepfakes in politics are being challenged in federal courts, Congress has created a federal law regulating the same technology to produce pornographic deepfakes. Both political and pornographic deepfake content involve digital forgery that falsely defames individuals, and both require balancing the right of self-expression against the damage to personal reputations. Additionally, deepfake political ads may further harm the integrity of elections and democratic self-governance.

That being said – why did a bill regulating pornographic deepfakes receive such overwhelmingly strong bipartisan support, while several bills attempting to curb the impact of deepfake political ads stall in the Senate? Perhaps it depends on political affiliation. While there was broad bipartisan support for the deepfake pornography law, regulating deepfake political ads (which cause not only personal damage but also collective harm) has been a more partisan issue.[37] Democrats, especially U.S. Senator Amy Klobuchar of Minnesota pushed strongly for three bills alone in 2024.[38] Meanwhile, Republicans have been largely opposed to any attempts to curb political disinformation.[39] Although there was initially some bipartisan support in the Senate for Klobuchar's "Protect Elections from Deceptive AI" bill (including two Republican co-sponsors) in 2024, it failed to advance after the Republican Senate Leader Mitch McConnell opposed it.[40]

On another front, President Trump's so-called "One Big, Beautiful Bill" initially included a controversial proposal that would have prohibited states from enacting any AI regulations. While Democrats in Congress were against the moratorium, it was not removed from the final version of the bill until the eleventh hour, after Republican Senator Marsha Blackburn of Tennessee backed out of an agreement with fellow Republican

Senator Ted Cruz of Texas, who was a proponent of the provision. The moratorium's defeat may be an indication of a political shift about the risks of unregulated AI, as it has spurred calls for some comprehensive federal rules.[41] Furthermore, the Supreme Court's decision in *Free Speech Coalition v. Paxton* that was released in June 2025 may also suggest "a definitive end to the internet's laissez-faire era, handing lawmakers a new child-safety tool that will be used to shape popular platforms, including social media and artificial intelligence."[42] While the *Free Speech Coalition v. Paxton* case was not directly related to regulating AI, it did set a new precedent by lowering the standard of scrutiny applied to internet-based regulations that impact free speech, at least when it comes to pornographic content.[43] The strict scrutiny standard previously applied by the courts had stymied regulatory attempts for nearly three decades. This case and its impact will be discussed in greater detail in Chapter 5. Nonetheless, it appears that there may be a critical window of opportunity on the horizon for significant policy reform that involves some AI-generated content.

Although Republican lawmakers have been more willing to consider regulation of deepfake pornography over deepfake political content, both are made possible through the misuse of algorithmic machine learning technology, and each raises the question about whether intentionally and patently false machine-generated content deserves absolute First Amendment protection, especially when it harms individuals and democratic self-governance. If the misuse of AI to falsely defame someone via pornography is on the political agenda now, then it is critically important for policymakers to consider at the same time the impact of deepfake political content that intentionally and untruthfully disparages individual candidates and collectively harms the integrity of our political discourse. If the political agenda is limited to only pornographic applications, and not the broader impact of algorithmic technology on politics, the window for more comprehensive policy for our digital futures may be lost.

A Critical Juncture for Comprehensive Policy on Algorithmic Misuses

In his pioneering work on understanding the agenda-setting process in U.S. politics, John Kingdon described windows of opportunities for important changes in public policy.[44] According to Kingdon, a "policy window" occurs when three process streams come together, which include problem recognition, policy proposals, and politics.[45] While there is growing recognition of the ills of AI-generated deepfake porn and political ads, as well as several state and federal policy proposals, there is also at least some political will to address these issues. Kingdon noted that these process streams

only come together at "critical times," and policy windows are only open for a short amount of time.[46]

The array of state laws and federal policies currently being promulgated around algorithms, AI, and misinformation lacks consistency and may work at cross-purposes; however, there is still potential for comprehensive and fundamental change to how they affect the overall U.S. media system. As the late Robert McChesney described, we are at a "critical juncture" in history in which dramatic systemic changes to media policy are being considered, and possible.[47] According to McChesney, "critical junctures" occur during at least two of the three following sets of circumstances:

1 "There is a revolutionary new communication technology that undermines the existing system."
2 "The content of the media system, especially the journalism, is increasingly discredited or seen as illegitimate."
3 "There is a major political crisis—severe social disequilibrium—in which existing order is no longer working, dominant institutions are increasingly challenged, and there are major movements for social reform."[48]

All three of these situations are occurring now. Algorithmic data collection and AI have transformed nearly every aspect of media and communications in the U.S., including how we see search results and social media feeds, as well as the rise of AI-produced informational content in both pink-slime journalistic outlets and legacy news media.[49] Sports websites employed algorithms that turned information, which used to appear on the sports agate page of newspapers, into narrative articles. Even major newspaper chains like Gannett used AI to report on high school sporting events.[50] In higher education, students use AI for research and writing, while some professors rely on AI to grade student papers. This undermines the essential human elements of learning and assessment. Students are submitting papers they did not write, and their teachers will not read or grade them. Meanwhile, attorneys are using AI to create legal briefs that cite non-existent court cases that judges may not realize are fake.[51] Meanwhile, political interests and online bots churn mis-and-disinformation online that is spread by users lacking critical media literacy skills to assess the validity and credibility of what is curated in their social media feeds.

While the use of AI discourages the production of real knowledge and algorithms undermine the development and use of critical media literacy, there is also a broad distrust in the institution of journalism. The political right has long bemoaned the so-called "liberal media" with hyperbolic claims of "liberal bias," perhaps most notably in the early 1990s.[52]

While conservatives have complained for decades about perceived liberal bias in news media, it was not until after Donald Trump launched his first presidential campaign in 2015 that journalists became personally demonized. During his rallies Trump frequently goaded his supporters into booing and harassing the news media personnel who were there covering his campaign. The catcalling steadily became louder and harsher with obscenities and obscene gestures, leading some reporters to abandon the media pen and remove their credentials for fear of being targeted.[53] Trump would fiercely make unsubstantiated claims about the news media, stating they were part of a "global conspiracy" with former Secretary of State and Democratic rival Hillary Clinton to undermine his candidacy.[54] These types of assertions and disparaging shots at journalists – that they were "biased," "dishonest," and "sleaze" – tended to enrage many of his supporters, including one man who wore a shirt at one of Trump's rallies that stated: "Rope. Tree. Journalist. SOME ASSEMBLY REQUIRED."[55] Trump's attacks on the news media reached a crescendo in an infamous tweet on February 17, 2017, when he called the press "the enemy of the people."[56] Trump even turned the term "fake news" on its head by using it as a pejorative to describe legitimate reporting that he found unfavorable to him personally instead of the actual fake news stories online that were favorable to his campaign.[57] Within Trump's MAGA movement, the real news was dismissed as fake, and the fake news was believed to be real. Overall, trust in news media has been in steady decline, and by 2025, it had reached its lowest point in five decades, especially among Republicans throughout the Trump era.[58]

Together, the revolutionary use of AI, the algorithmic churn of mis-and-disinformation, and the delegitimization of journalism as a trusted American institution have led to an epistemic and political crisis. To be clear, the argument proffered here is not that machine learning algorithmic technology nor Trump alone have created this situation, but rather that they are exacerbating it. The news industry has faced rapid decline that has dovetailed with the growth and popularity of online communications. As McChesney described, the shrinkage of legacy news media, along with the number of foreign correspondents as well as federal and state-house bureaus, has had devastating impact on the quantity and quality of political journalism.[59] Before the mid-2010s, the U.S. was already in a political crisis of existential dimensions.[60] The point being made here is that no matter how exactly we got to this point, how our society produces and uses knowledge – along with its ability to thoughtfully exercise democratic self-governance – is in crisis, and it is rapidly getting worse. Fake news, mis-and-disinformation would not be as problematic if we had a mutually agreed-upon empirical system to resolve disputes over facts.

The institutions of science, universities, journalism, and expert government agencies would ideally fulfill this epistemic function. However, the political left and right have become increasingly polarized and no longer share common standards of evidence, especially on the far right, which tends to view scientists, university professors, and journalists with open hostility.[61] In this kind of ideological environment, the validation of truth is relative to one's own personal and political biases.[62] This new era of "post-truth" has been defined as "circumstances in which objective facts are less influential in shaping public opinion than appeals to emotion or personal belief."[63] Post-truth is an unprecedented predicament. While it is beyond the scope of this book to solve the entirety of political polarization and the decline of journalism, it does endeavor to provide a legal and policy argument about how we can stop making it worse through the algorithmic churn of mis-and-disinformation. The concern is more than just a matter of quantity over quality of information; it is accuracy over imprecision and truth over falsity.

Information Integrity in the Information Age, and What We Can Do about It

In a ground-breaking trilogy of books, Manuel Castells defined the "information age" as a period beginning in the 20th century in which the economy, society, and culture are shaped by information technologies.[64] Now in the first quarter of the 21st century, Wenger has noted the paradox of this epoch in which humans have access to more information than at any other point in our history, yet lack the ability to make sense of the data.[65] However, the power to control how algorithms, data, and AI are used and applied within society and the economy is still within our grasp, so long as we are willing to assert our authority and address their ill effects. Instead of thinking of AI as some mystical force, as Wenger stated, we need to see that "the harm is completely self-inflicted" when we do not understand and use algorithmically produced data in appropriate ways.[66] Moreover, "each of us can influence our collective future" such as influencing policy decisions when we vote.[67] That does not mean that one needs to know everything about algorithmic formulations or machine learning. Conversely, we can understand the impact that these technologies have on our social, political, and economic lives and make informed decisions about the laws and policies to support, and the political processes that produce them.

The central goal of this book is to simplify a complex problem about information integrity and the production of knowledge by critically applying a set of core legal principles about free expression and technology. However, there is no single or easy fix through state action or blind reliance

on industry self-regulation, which is why the focus here is on how we as individuals can take responsibility for adapting ourselves to the distorted reality produced by algorithmically churned, so-called "intelligence." Individually, and then collectively, we must learn how to process information differently in our digital futures than we did in the days of legacy media to distinguish truth from falsehoods and appreciate context over simplified, emotionally triggered exaggeration. I will argue that social media audiences specifically, and the public generally, need to do more of their own intellectual labor and challenge the majority perceptions that pervade popular political discourse. This is necessary not only to produce our own "minority reports" but also to realize a collective digital future that is more epistemically sound.

The political, economic, and cultural effects of algorithms and AI, as well as the proliferation of misinformation and disinformation online, are timely and critically important topics, particularly in relation to electoral politics and political discourse. In the next chapter, we will look at how algorithms work, how they are programmed, and how they generate data and errors. We will also look at the role that fake news, disinformation campaigns, misinformation, and conspiracy theories play in pervading online spaces and eroding the epistemic quality of our political discourse, in addition to why algorithms tend to feed these lesser sorts of information. Altogether the interrelationships among social media users, political interests, social media companies, and algorithmic formulations impact our mediated discourse and perceptions of reality.

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2

CRITICALLY ANALYZING INFORMATION INTEGRITY AND REALITY ON SOCIAL MEDIA NETWORKS

Before critically analyzing information integrity and reality on social media networks, I need to define a series of terms that will be discussed throughout the remainder of the book. There are important distinctions between algorithms and AI. The words misinformation and disinformation are often used interchangeably; however, they refer to different concepts. While defining these terms and several others, I will describe their interrelationships, and how they tend to reproduce errors as well as false or misleading information throughout online networks.

Additionally, this chapter explores the broader nature of misinformation and other missorting of data within our digital networks, which is necessary to provide a descriptive and systemic critique of how conflict over information plays out phenomenologically between sets of internet media policy, data collection practices, algorithmic formulations, and social media experiences of political polarization. There will be two dimensions to follow in this book: (1) understanding the impact of data missorting, misinformation, and factual errors on the production of knowledge in society through critical political economic analysis; and (2) formulating prescriptions within the domain of cultural legal studies and jurisprudential analysis, about how to foster a more informationally sound networked society.

A key point of intellectual departure to be described in this chapter is from a body of literature that emphasizes systemic biases within online data networks. This work is often centered around social justice in the use and applications of algorithmic and machine learning systems, and suggests that bias relating to race and gender is built into them. While I do

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not argue that in many ways bias has been built into some systems, I instead shift the focus to the problem that there are simple errors (often with significant impacts) that occur within the processes of data collection and information distribution. For example, there have been hundreds of federal lawsuits in recent years where AI has confidently put out erroneous data that were used for tenant screening systems.[1] AI authoritatively presented incomplete, outdated, or sometimes wholly inaccurate information as true. In some cases, a prospective renter was matched with a different person, which resulted in the inclusion of criminal records, eviction cases, credit reports, and other information that belonged to a different person with a similar name. While these errors disproportionately affect racial minorities, simply "adjusting the algorithm" will not correct the totality of the problem.[2] This is an important distinction because if we assume that bias is intentionally or unintentionally encoded into these systems, it also suggests that the system can be made perfect if we can identify and take out every single form of bias. Rather, we should assume that there will always be at least some error within these systems, and that data are never fully accurate, especially when they are generated through the processes of algorithmic churn, machine learning, or so-called artificial "intelligence." This point is critical in forwarding a legal argument regarding data governance, privacy, and free expression.

Algorithms and AI

Algorithms and AI are somewhat distinct in what they describe, although certain types of algorithms can engage in a form of machine learning, which is often referred to as AI.[3] At the same time, AI is a subfield of computer science, and within AI, there are several other subfields, with machine learning being the most popular right now.[4] Algorithms are formulas that make calculations based on the inputs of data, and they are an essential part of how all computers are programmed. AI is a type of algorithm that may involve machine learning, and there are other types of AI as well, including deep learning and neural networks.[5] Warren McCulloch and Walter Pitts introduced the basics of algorithmic artificial neurons in 1943 that included a node with binary inputs of either 0 or 1 and a firing threshold if the aggregate of the input values into the neuron matched or exceeded the threshold.[6] This type of binary "logic gates" were improved upon by Donald Hebb in 1949 by including weighted values to accompany the connections to the neurons. This means that the neural network is not just dictated by inputs alone; instead, the connections between the neurons themselves are strengthened or weakened through a learning process as the weights affect how much input value a neuron puts into that connection.[7] Frank Rosenblatt refined this process in 1962 with the development of

the perceptron, which modified applied weighted input connections to the basic neuron model.[8] This created an engaged algorithm that calculates the output of a perceptron by performing a weighted sum over the inputs, and what is more commonly now referred to as machine learning.[9] However, the weights are originally random numbers and they are adjusted through batches of training examples. The neural networks learn through advanced calculus, rather than any rational rules or human reasoning.

It is also important to keep in mind that humans are the ones programing the weights in machine learning. Algorithms process an input with predetermined weights through a neural network to produce a result. As Kenneth Wenger puts it, the end product from such neural networks is merely a "prediction" as the algorithm calculates "a value that has a certain probability of being correct," based on previous data from its training.[10] The way machine learning algorithms make predictions based on probabilities is similar to how Philip K. Dick described the pre-cogs in *Minority Report* as "treasured monkeys" that generate highly valued data, but nonetheless lack full context, and may even be passed on to other companies or agencies and applied in networks in ways beyond their original intended use.[11] But even within the scope of their intended use, when machine learning networks solve classification problems (that is, predicting the likelihood that an input belongs to a particular category), context is still the key. To address this problem with context, human programmers create training datasets or examples of inputs that match the classification criteria.[12] The programmers encode data as numbers to represent information, and neural networks are nothing more than mathematical systems that process numbers as inputs and outputs. Monikers like artificial *intelligence* and *neural* networks may infer some divine quality to these algorithms, but it is important to keep in mind, as Wenger said, that "they are simply mathematical constructs consisting of simple operations, mostly multiplications and additions that are organized in sequential steps."[13] Meredith Broussard further noted that AI and neural networks are "poorly chosen names because it sounds like there's a brain inside the computer."[14] However, computers do not learn in the same way as humans, especially when it comes to processing inputs that are not accounted for in the training data. The scenarios in which AI tries to process something that is outside its normal realm are referred to as "edge cases," and while humans may be able to manage unfamiliar situations, computers are not.[15]

Sentiment Analysis and Social Media

When information is represented as numbers, it may often lack context and create classification problems, especially if the information is in human language. The raw data may not encompass or have any relationship with the actual sentiment of what the language was meant to express. In

this case, the algorithm will need to attempt to learn semantics.[16] Sentiment analysis is a branch of machine learning that scholars in several academic fields, such as psychology, computational linguistics, and sociology, have employed to better understand people's opinions (or sentiments) about an array of topics and issues.[17] It was most notably used in business and economics research about consumer opinion, and subsequently adopted by social scientists to study emotional content within cultural and political discourse as it takes shape on social media platforms.[18] For instance, sentiment analysis of internet-based data has been used "to place social media content on a spectrum of sentiment that spans positive, neutral, and negative valences of human emotion."[19]

However, extracting and analyzing data in sentiment analysis can be problematic when considering contextual issues, such as understanding sarcasm, slang, and mixed languages within user posts. There can be other types of misclassification errors as well based on "noise" within the data, including advertisements, bot-generated content, and other issues.[20] To cite one example, internet search engines' algorithms can be manipulated by a flood of low-quality, quick-and-easy-to-produce blogs that help marketers get their products to appear at the top of AI-generated searches.[21] These kinds of AI-generated searches tend to summarize lower-quality web content in a given category, rather than curating and ranking higher-quality content. Fixing these kinds of errors requires the meticulous oversight of human researchers to sift through the data, and larger datasets require even more painstaking human work. And even with such an effort, it is either highly problematic or impossible to rely solely on machine-generated classifications to understand meaning. For example, a previous study of political discourse and emotional content on social media used a combination of machine learning algorithms and social network analysis.[22] Although an unsupervised machine learning algorithm was used to cluster language in that study, it also included a fine-grained ethnographic analysis of individual user posts. The researchers "did not use machine-based methods to infer meaning or significance from [the] computational models," but rather, "applied a humanistic method of rhetorical analysis as a way to make sense of models and their underlying layers of meaning through a careful textual description of language use shaping the interactions between users, in what can be described as digital ethnography."[23] Humans are capable of extracting the literal definition of something within its context by considering its purpose, while AI is not able to innovate in the same way when particular cues are not readily present.[24]

It is such a lack of ethnographic detail and nuance where bias and other errors can occur within algorithmic machine learning. While classification problems, like sentiment analysis, are problematic, regression problems that

involve prediction based upon historical data are even more susceptible to being tainted by bias, which then gets replicated in future calculations. A classic example of this kind of phenomenon occurred in the 1978 Boston Housing Price dataset. One of the data points counts the number of Black people living in a geographical area, which "implies that there is a relationship between the number of Black people in a town and the value of the houses."[25] This form of racial bias then gets reproduced when that dataset is used as a training model for neural networks. This is not to say, of course, that AI is inherently biased. Rather, we must bear in mind that bias is encoded by humans as a data point. It is human programmers who determine what the data points are and the algorithms employed merely replicate that bias.

Furthermore, there may be other encoded data points that are not necessarily bias, but simply error based on small (or not representative) sample sizes for training data, such as the early development of Handwritten Character Recognition (HCR) programs that post offices use to translate handwritten zip codes.[26] It is not only a matter of removing bias (such as the 1978 Boston Housing Index) – it is also trying to account for all sorts of possible errors, including innocuous ones, which is essentially impossible, especially when the algorithm is producing a *probability* score. Thus, we should not take at face value that any dataset is complete and perfect, but rather, is likely to have some form of contextual error, which also makes for a vexing policy problem in the sorting (and missorting) of data.

Panoptic Missorts of Big Data

While small sample sizes can lead to problematic probability calculations, even large datasets may contain errors or be missorted through algorithmic processing. Political economist Oscar Gandy defined what he called the "panoptic sort" during the early days of large-scale consumer data collection, wherein individuals were sorted by their presumed economic value based on how their personal information was assessed, primarily through credit authorization.[27] Although Gandy described this process as "the all seeing eye" of "cybernetic triage," he noted that the lack of contextualization in analyzing the data tended to reproduce biases related to race, class, and gender. In the age of big-data collection, one might expect the aggregators of the vast amount of information mined from our social media apps, web browsing, and search engine queries to be able to make highly accurate inferences about the individuals under their surveillance. Data brokers in the U.S. collect over 2.5 quintillion bytes of data per day and use that information to make all sorts of inferences about individuals' religious and political affiliations, medical history, sexual orientation, as well as other sensitive aspects of ones' personal life.[28] These companies

curate lists of people with alcohol, gambling, or sexual addictions, as well as gay and lesbian adults, or people with sexually transmitted diseases (among other sensitive categories), and vend that information to other entities. However, it is unclear whether that information is wholly accurate and fully representative of the individuals it purports to represent, as algorithms can "tell a story based on a certain set of facts," but the tale they tell may likely "be incomplete or lack proper context."[29]

Even more bothersome, perhaps, is that the people whose personal information is being collected and sold have no idea who is buying that information and what it is being used for. This occurs because the data are considered proprietary and belong to the companies who gather and process them. Political economist Vincent Mosco noted how social media companies in the early 2010s became the prime avenues for the flow of big data and critiqued their use as a form of "panoptic knowledge" that conflates data with knowledge.[30] We may further question the relationship between data-based information, understanding of its meaning, and how and why it should (or should not) be used. The "contextual integrity" of data collected in one setting may shift when interpreted within another one.[31] Thus, changing the context can change the meaning of the data, even if it was originally gathered using solid collection practices.

While the panoptic sort described by Gandy still produces important biases, another disturbing byproduct in the algorithmic churn of big data is "panoptic missorting." This occurs through imprecision and lack of contextualization in the processing and reprocessing of data that purport to represent individual humans, as well as other social and political phenomena.[32] While these sorts and missorts of data raise important concerns about personal data privacy, we should also consider other problems with information integrity that algorithms and AI might exacerbate.

Information Integrity: Understanding Fake News, Pink-Slime Journalism, Disinformation, Misinformation, Conspiracy Theories, Bullshit, and AI Slop

The growth and spread of all sorts of false, misleading, inaccurate, and uncontextualized content on social media have raised doubts about the integrity of our informational environment. Whether it's called fake news, misinformation, disinformation, or just plain bullshit, there is a lot of unreliable information on social media or what may even appear to be legitimate news websites. Nonetheless, there are important distinctions about the types of content these terms refer to, the motivation behind the messages they send, how and why people consume them, as well as the ways in which algorithms may spread them.

Fake News

The term "fake news" is best defined as "the deliberate creation of pseudojournalistic disinformation," in which its content is made to look like it was produced by a legitimate news organization.[33] For instance, one of the most widely shared fake news stories during the U.S. presidential election campaign in 2016 came from WTOE5NEWS.com and included the headline, "Pope Francis Shocks World, Endorses Donald Trump for President, Releases Statement."[34] What makes the source of this story devilishly clever is that "WTOE5NEWS" looks like the call letters and channel number for a broadcast television station in the U.S., although a search of the Federal Communication Commission's television station database at FCC.gov would show that no television license has been issued with those call letters. However, there is a radio station with those call letters that broadcasts on 1470 AM in North Carolina. While one may assume that non-Catholics might not be aware that the Pontiff is not accustomed to endorsing U.S. presidential candidates from the Vatican in Rome, it may even be easier to fool an average media consumer that this information was being reported by a legitimate, legacy news source. At the same time, automated software programs known as "bots" can boost the spread of fake news posts as well as content from other imposter social media accounts, giving the illusion of viral information spread.[35]

According to a BuzzFeed News study by Craig Silverman, the fake news story about Pope Francis endorsing Trump was the top fake election news story spread on Facebook three months prior to the election, followed by other false reports that Hillary Clinton (Trump's opponent in the 2016 election) had sold weapons to ISIS.[36] The same study also found that the top fake election stories generated more user engagement on Facebook than all the real major news outlets combined. Although it may be difficult to discern the ultimate impact of these kinds of fake news reports on individual voting choices, the repetition and regurgitation of this kind of content (particularly when it skews heavily in favor of one set of political interests over another) is especially troubling as social media is dominated by a small group of popular platforms, such as Facebook and Instagram (both of which are owned by Meta, along with Threads), as well as TikTok, X (formerly Twitter), and YouTube.

The rise of fake news sites that dominated social media during the 2016 presidential election should not be confused with the faux journalistic comedy programs popularized on Comedy Central cable network since the late 1990s, such as The Daily Show with Jon Stewart (although its host and correspondents were often referred to as "fake" newsmen).[37] Interestingly, a comparative study of broadcast network television news and The Daily

Show found that the latter provided the same amount of substantive political coverage of the first presidential debate and party conventions during the 2004 election cycle.[38] The only difference is that the broadcast news networks' coverage focused more on hype than substance, while The Daily Show featured more humor than substance. Fake news of this variety was characterized by humorous commentary on substantive political issues.

However, Donald Trump has used the term "fake news" in a contrary way since his initial run for the U.S. presidency in 2016 when he used the phrase as a pejorative to describe traditional news media outlets (such as *The New York Times*, CNN, and ABC) when he believed their reporting on him or his administration was unfavorable. In his denigrating attacks on news media and some individual journalists, Trump frequently described the press as "dishonest," "scum," "horrible people," "sleaze," and "the enemy of the people."[39] While these kinds of slurs are troublesome by their nature alone, they are even more problematic in that they further muddle the waters about what is and is not fake news or a credible source of information. Trump and his first administration (2016–2020) also employed "alternative facts" (even with trivial matters) to counter factually based reporting from news media that did not reflect favorably on him.[40] For example, Trump frequently exaggerated crowd size at his rallies, and even after photographic evidence clearly demonstrated that a much larger crowd turned up for President Obama's inauguration than his, Sean Spicer (Trump's first press secretary) falsely claimed that 2017 "was the largest audience to ever witness an inauguration."[41] Trump's habit of dismissing mainstream news reporting as "fake news" also applied to more serious matters, such as the coronavirus pandemic, when he, along with far-right political pundits and conspiracy theorists, derided reporting by the so-called "liberal media" for exaggerating threats about contracting COVID-19, leading many people in the U.S. to ignore warnings by public health officials.[42] In the lead up to the 2020 election, Trump continued to attack fact-checking by news outlets about his claims regarding potential voter fraud associated with mail-in ballots.[43] Trump's steady drumbeat of attacking legitimate news as fake, along with spreading baseless claims of election fraud, would ultimately culminate in the infamous Capitol riot on January 6, 2021 when a critical mass of his supporters ultimately accepted his version of what should be considered fake news.[44]

Nonetheless, in this book, fake news refers neither to news satire nor criticism of mainstream news media, but instead describes false information that is disseminated from what might otherwise appears to be a legitimate journalistic outlet. Fake news defined this way is also distinct from what has been called "pink slime journalism."

Pink-Slime Journalism

In a 2002 email to his colleagues after touring a beef production facility, food safety and inspection agent Gerald Zimstein called the byproduct of ground-up connective tissue created from the processing of cattle into beef, "pink slime."[45] However, the name "pink slime" (and concerns about its use as a beef filler) did not become popularized until an ABC news report ten years later.[46] Journalist Ryan Smith first used the term "pink slime" in 2012 to describe exceptionally substandard journalism produced at low cost after he realized that he was working at such an outlet the year before.[47] Pink-slime news outlets (at their best) are poorly resourced and rely on unqualified reporters or AI to generate news content. They often exist as websites with no reporters in the local area they purport to cover and are likely to thrive in "news deserts" – rural or low-income communities that have little access to traditional news media.[48] While some outlets, like Hoodline, may have good intentions to fill these news deserts, their use of AI-generated articles has raised concerns about their lack of credibility and potential to spread misinformation.[49]

At their worst, pink-slime news produces extreme political disinformation, misinformation, or highly politicized content. According to a study by Columbia University's Tow Center for Digital Journalism, most pink-slime news outlets (over 1,100) are part of the Metric Media network of "conservative and pro-business advocacy groups, funders, and political candidates" that distribute "content aligned with their interests across a range of websites, social media ads, and printed mailers framed as local news."[50] However, the study also noted that few pink-slime news outlets actually have locally produced content, as most stories are generated algorithmically, while original partisan content is strategically pushed out during election cycles or referenda on hot-button political issues.

For example, one of Metric Media's affiliated outlets, The Buckeye Reporter, even published a special print issue and delivered unsolicited copies to Ohio residents during a special state election in August 2023, which further muddled the waters about who was in favor or opposed to a controversial measure that was already difficult for many to understand.[51] There was referendum vote on Issue 1, which if approved (among other things) would have made it harder to change the state's constitution by requiring 60 percent of votes cast to approve any future amendments, rather than the 50 percent (plus one) margin that was required at the time. However, the ballot measure was widely seen as a preemptive move by state Republicans and anti-abortion advocates to move the goal posts for another referendum vote later that year (in November) to amend the Ohio Constitution and enshrine reproductive rights, including abortion (up to

the point of fetal viability), as well as contraception, fertility, and miscarriage care.[52] The November referendum, also (and confusingly) known as Issue 1 was expected to (and did) pass with a majority of nearly 57 percent of voters (but would have failed if the previous Issue 1 had prevailed). The special issue of The Buckeye Reporter reported favorably on Republican proponents of the August vote that would raise the threshold for amending the Ohio Constitution, while characterizing its opponents as Communists, Black Lives Matter Activists, LBTQ advocates, and drag queens, among other groups that are unpopular on the political right.

People who identify as Republican are likely to be more susceptible to these kinds of pink-slime journalistic campaigns, especially as President Trump frequently berates mainstream news media as "fake news."[53] According to a Pew Center study in 2020, over 60 percent of Republicans (or Republican-leaning independents) believe that the news media are intentionally misleading (compared to 32 percent of Democrats).[54] Moreover, an investigative report published in *Mother Jones* magazine in 2025 showed that a group of wealthy donors channeled millions of dollars through the Informing America Foundation (IAF) to conservative-oriented pink-slime outlets to push right-wing narratives and conspiracy theories while smearing democrats.[55] While early pink-slime outlets were typically poorly resourced, IAF has infused outlets within its broader "ecosystem" to help repackage and promote its dis-and-misinformed content across an audience of more than 50 million people.[56] Perhaps, even more impactful is that such a large audience is connected through a less-than-obvious network of what may otherwise appear to be locally oriented and unaffiliated outlets. This creates a surreptitious online echo chamber of disinformation or misinformation, similar to how bots help spread fake news.

Disinformation

Another similarity between pink-slime journalism and fake news is that they may both produce and disseminate disinformation or misinformation.[57] However, disinformation and misinformation are not interchangeable terms. Disinformation specifically refers to the intentional spread of false information or grossly unsubstantiated rumor for political purposes, whether it is to help or harm a particular organization, group, cause, candidate, party, or person. Along with fake news sites and pink-slime outlets, individuals and organizations can produce and distribute disinformation. Additionally, disinformation can come in the form social media posts, AI-generated videos, memes, as well as fake news content and pink-slime reporting.

Although disinformation was rarely a primary subject of scholarly analysis until the aftermath of the 2016 U.S. presidential election, it has

become (along with fake news, pink-slime journalism, and misinformation) "*the* defining political communication topic … in the digital age" [emphasis in original].[58] As Deen Freelon and Chris Wells have forcefully argued, disinformation is a dangerous weapon in information warfare, and its use should be a cause of concern for any society that values democratic self-governance because its use is "intended to subdue adversaries rather than reason with them."[59] In politics, disinformation can be strategically employed to unfairly create "panic surrounding certain groups or major political events."[60] Over the past couple of decades, the deleterious social impact of disinformation has become ever more real. For instance, after the horrific Sandy Hook Elementary School shooting in 2012, Alex Jones without any evidence called it a "false flag" operation staged by Democrats, thus retraumatizing the parents of the victims who had already suffered unimaginable loss; and in 2016, a gunman stormed D.C. pizza parlor because he believed a baseless conspiracy theory that Hillary Clinton was hiding sex slaves there.[61] Perhaps, most notably, the stream of baseless claims of election fraud fed a mob of rioters to storm the U.S. Capitol on January 6, 2021, who believed the presidential election had been stolen from Donald Trump.[62] Over 140 police officers were injured during the violence that ensued that day, while 8 people (including police and protesters) died in its aftermath.[63] In each of these cases, individuals were stirred to make accusations or take matters into their own hands based on patently false assertions that were intended to stir emotions.

The impact of disinformation can be compounded when it is supported by visuals. These can be real images taken out of context, or completely fabricated through AI. Visual information is more eye-catching and tends to be more emotionally captivating.[64] Even more so, "visual disinformation may have a stronger impact on political judgments than textual disinformation."[65] The effect is further exacerbated when repeated by influencers in government or media. For example, a video of then House Speaker Nancy Pelosi speaking at the Center for American Progress in 2019 was slowed to make it appear that she was drunk, and the altered version spread across social media platforms, including Facebook and YouTube.[66] The day after the video went viral, Fox Business Network aired a segment that featured another video of Pelosi that had been edited together in a way that made her to appear to stumble over words and repeat herself.[67] Panelists on the program speculated about Pelosi's competence based on the video, while President Trump and his attorney Rudy Giuliani had shared the video on their Twitter accounts with disparaging and questioning comments about her health.[68] Within just a couple of days, the manipulated videos had received millions of views on social media.

Although other news outlets and fact-checking services later reported that the videos of Pelosi were manipulated, the damage was likely already done, especially if people received the disinformation prior to any subsequent information. As "veracity bias" suggests, people are likely to believe that incoming information is truthful.[69] In one online experiment, for instance, audiences who were targeted by deepfake content often found the material credible, and even more troubling, it also affected their political opinions.[70] While AI-generated deepfakes have already been used to defame public officials with fake videos making them appear to do and say things that they did not, the problem is likely to get worse. As more advanced and more user-friendly AI tools like Sora 2 emerge, it will become easier to produce and broadly distribute disinformation on hot-button political issues, such as ballot fraud, immigration arrests, and crimes on city streets.

Misinformation

While disinformation involves the intentional spread of false or misleading information for political purpose, misinformation refers to false or misleading information that is spread by someone who may believe that it is true. For example, when the COVID-19 outbreak hit the U.S. in March 2020, there was a cacophony of discourse on social media from politicians, celebrities, rank conspiracy theorists, and many others who were not well qualified to speak knowledgeably about critical issues related to the pandemic.[71] Consequently, there was a lot of misinformation about what caused the virus, how it was spread, potential treatments and cures, as well as speculation about whether or not it was real or a hoax perpetuated by the media. Although some posters may have intentionally meant to spread false information, such as Russia's disinformation campaigns about vaccines in the 2010s, it is likely possible that the targeted groups in the U.S. may have unwittingly reposted that content thinking it is true, and which may have caused the misinformed groups to create original posts about vaccines during later crises (such as the coronavirus pandemic in 2020).[72]

Telling the difference between disinformation and misinformation can be difficult because intention can be hard to infer, although a growing body of research has begun to provide some scholarly clarity.[73] While both work in tandem as part of a larger epistemic crisis in the U.S., each creates a different kind of political and policy problem. Disinformation can be regarded as a national security issue, especially when it is perpetuated by foreign actors. Misinformation, on the other hand, invokes more First Amendment issues and its perpetrators may also be considered a victim

group of sorts, especially if they have been misinformed by others or targeted by a disinformation campaign. Disinformation and misinformation can both be spread from either the "bottom-up" when social media users create and share it on their own, or from the "top-down" when political actors create and/or share it with their followers.[74] The latter is particularly vexing when it is shared by influencers, authority figures, or government officials, as it may appear more credible or supports a particular political point of view. For instance, a once-fringe conspiracy theory about a plan to bring non-white immigrants into the U.S. to replace the influence of white voters has become a mainstream belief in the Republican party after repetition among several of its leaders, including President Trump.[75]

Conspiracy Theories

Conspiracy theories are based on the belief that some person or group is secretly engaged in or responsible for some event or phenomenon. Although conspiracy theories can involve a blend of disinformation and misinformation, not all disinformation or misinformation necessarily forms a conspiracy theory. One of the most enduring conspiracy theories is known as the "great replacement." Although it is believed to have its roots in an early 20th century French nationalist movement, it started to become more popular after Renaud Camus' (2011) book, *Le Grand Remplacement*.[76] The general premise of great replacement theory is that non-white immigrants are seeking to disenfranchise and replace white populations. In the U.S, some on the far-right believed that former President Biden's immigration policies were part of a political conspiracy to replace white conservative voters with migrants who will vote for Democrats, and several Republican lawmakers have essentially implied the same thing without specifying race. For example, in what he described as an "invasion" of immigrants, then U.S. Senate candidate J.D. Vance told Fox News that Democrats "have decided that they can't win reelection in 2022 unless they bring a large number of new voters to replace the voters that are already here."[77] In less veiled language, Tucker Carlson said, "demographic change is key to the Democratic Party's political ambitions" during a commentary about how native-born Americans were being "disenfranchised" and their power "diluted."[78] By 2022, an Associated Press-NORC Center for Public Affairs Research at the University of Chicago found that one in three Americans believe in some version of Great Replacement Theory.[79]

For conspiracy theories (like disinformation and misinformation) to take hold, however, requires repetition through social media and digital virality. Anecdotal sayings, such as "what a lot of people are saying," somehow become truth without any substantive confirmation.[80] However,

digital echo chambers are not always organic; algorithms can be manipulated to push fringe ideas into mainstream discourse.[81] The algorithms employed by social media outlets and other online platforms are programed to keep users engaged, feeding them varying content based on what kept them most involved in the past. Engagement is measured by what content users seek out, how long they stay with the content, and whether they like, share, and make a comment. What tends to keep most individuals actively engaged is emotionally charged content (especially when it affirms their pre-existing political inclinations), which algorithms will continue to put in front of users guided only by the logic of capitalism because engagement generates more data and more value.[82] How the system gets manipulated is only in the sense that right wing political rhetoric, especially on the extremes, is typically more emotionally charged, which users consume, and the algorithm continues to feed, but not because the algorithm has a political interest in and of itself.[83]

Internet memes are a potent and efficient means of spreading conspiracy theories and disinformation as they can compress somewhat elaborate ideas into easily digestible content, while at the same time powerfully expressing views with emotion, fear, and grievance.[84] Richard Dawkins coined the term "meme" while describing how certain aspects of culture replicate through imitation, similar to how DNA works in biology.[85] In general terms, memes are cultural ideas or symbols that are spread through imitation. Internet memes are spread mostly through social media platforms, usually with some combination of visual images and written text. Extremist groups have utilized memes online as a low-cost and effective way to spread ideologies, conspiracy theories, and often disinformation, while also normalizing extremist rhetoric. This kind of memetic tactic often consists of sophistic (plausible, but misleading) ideas in the form of text and image combination.

The broader problem is that conspiracy theories, like disinformation, misinformation, fake news, and pink-slime journalism do more than just mobilize attention and engagement. False or misleading information erodes the epistemic quality of political discourse. As Nicole Curato and Sofia Tomacruz said, conspiracy theories

> sow confusion in the public sphere by putting forward emotionally manipulative claims that do not withstand epistemic scrutiny. They corrupt agenda-setting in public deliberation by diverting people's attention from important matters to captivating hyperpartisan narratives based on assertions with no epistemic justification. Conspiracy theories harm deliberative democracy by compromising processes and institutions that build a polity's capacity to make intelligent decisions.[86]

Although Curato and Tomacruz were referring to conspiracy theories in particular, their observation can be similarly applied to all sorts of disinformation and misinformation, and just plain bullshit.

Bullshit and AI Slop

The late philosopher Harry G. Frankfurt presented a theory on "bullshit" beginning in the 1980s, which culminated in his 2005 book, *On Bullshit*. Frankfurt's central distinction between lies and bullshit was that a bullshitter merely tries to persuade without any real concern for truth or falsity, whereas a liar tries to conceal the truth.[87] As Frankfurt explained, "bullshit … is invariably produced in a careless or self-indulgent manner" and is never finely crafted, but "merely emitted."[88] A good illustration of this occurs in the 1980 musical-comedy film, *The Blues Brothers*, when Jake Blues (after being recently released from prison) is dismayed to learn that his brother Elwood had not kept up with their bandmates as his brother talked about while he was locked up. "You lied to me," Jake says, to which Elwood responds, "It wasn't lies, it was just bullshit."[89] Elwood had a few leads about where their former bandmates were, but there was no certainty about getting the band back together so easily. Elwood's defense is that he "took the liberty of bullshitting" him in hopes of keeping his morale up while in prison. As Frankfurt would likely explain, the problem is not that Elwood was intending to be misleading; rather, he was never even trying to be accurate in the first place.

In politics, pundits and politicians alike tend to espouse a lot of bullshit in order to feed a convenient narrative that fits their interests, and too often news media fail to call it out.[90] During the first few weeks of the coronavirus outbreak in the U.S., President Trump promoted the use of hydroxychloroquine as a treatment for COVID-19 (even though it had not been studied or considered as a potential therapy at the time). Trump likely saw the pandemic as a political problem for his administration, rather than a public health issue, and took the liberty of bullshitting the public about speculative treatments that originated from QAnon-affiliated social media accounts in hopes of quelling fears about the virus (and perhaps, what he thought might be blame directed toward his administration).[91] Although Trump was engaged in a discourse about which truth and falsity would matter, he was arguably taking no substantive interest in the truth-value of what he was communicating, but was instead focused on the impact of his message. As Frankfurt put it, bullshitters "try out various thoughts and attitudes … in order to discover how others respond," while at the same time not being committed to what they say.[92]

However, bullshit can also involve clinging to a belief that false information might be true, especially if it fits one's preconceived political narratives.[93]

For instance, a fake *Time* magazine cover that appears to be from 1977 with a headline about an impending ice age has been shared numerous times over the years on social media by skeptics of climate science. One of the more infamous memes consists of a fake *Time* cover next to an actual cover from 2008 that features a headline about global warming. The text across the top of the two images reads: "WHEN THE EXACT SAME GROUP OF 'EXPERTS' WHO CLAIMED IT WAS GLOBAL COOLING IN 1977," and text under the two images states: "NOW CLAIM ITS GLOBAL WARMING YOU CAN EASILY SEE WHY I'M SKEPTICAL."[94] As reported by Politico, when a White House official was confronted about the fake image (about global cooling) being presented to President Trump next to another real one (about global warming), as if both had actually been published, the person's response was that the fake magazine cover was "fake but accurate," adding that although the "specific cover is fake, it is true that there was a period in the '70s when people were predicting an ice age … [t]he broader point I think was accurate."[95] In other words, neither the meme nor the assertion of a fake magazine cover is a lie; it is just bullshit. Not only was the magazine cover not real, but the myth that the community of climate scientists predicted an ice age in the 1970s is also false.[96] However, it is convenient to exaggerate a claim by a small minority of researchers at the time with a fake magazine cover because it fits a certain political narrative.

For that matter, politicians are not the only ones espousing or clinging to bullshit on social media. As Rasmus Kleis Neilsen has argued, most of the content that is posted on social media is bullshit.[97] Not only is most content posted without any real regard for truth or falsity of the matter asserted, but people using these platforms are often insufficiently informed about what they are posting, or they are making claims without any agreed-upon forms of justification. This phenomenon is epistemologically troubling because all sources of information are weighted equally (at best), no matter whether they are from a subject matter expert or a politician who is bullshitting.[98] Moreover, "[w]hile 'disinformation' may have a more negative connotation than 'misinformation' because it implies intentionality in making false claims, 'misinformation' like 'bullshit' is arguably more problematic because it obscures the very essence of epistemic reasoning."[99] If everything is bullshit, then nothing can be true or false, and how is AI supposed to know the difference?

Not to be outdone though, AI also generates its own form of bullshit, which is more commonly known as AI slop or hallucinations. These hallucinations occur when an AI model "produces an output that looks like it could be true but isn't."[100] In some cases, it may be incorrect or inaccurate information, something that is completely made up or just nonsensical.

Sounds familiar? Remember, the essence of bullshit is not that it is false, but that it is fake or phony from the beginning, and the bullshitter merely tries to gauge the impact of their own output. And if the audience accepted the response, what is the harm? In Frankfurt's treatise, most bullshitting takes place in contexts that involve little to no responsibility or consequences for the truth.[101] To the contrary, in the realm of AI applications across health, the economy, and politics, the difference between truth and falsity matters a lot, and the effects for getting it wrong can be severe. Most often AI hallucinations seem to occur with the creation of scholarly works or other books that do not exist. Several popular AI models, including ChatGPT, Google's Gemini, Microsoft Copilot, and others have faced criticism for generating incorrect or sometimes even completely fabricated archival references.[102] Just two months after laying off over one-fifth of its staff, the *Chicago Sun-Times* was embarrassed by its May 18, 2025 publication of a feature article written by a syndicated freelancer recommending summertime leisure reading, which included 10 books on a list of 15 that did not exist.[103] How did this occur (besides the fact that the author, his syndication service, or no one at the *Sun-Times* bothered to fact-check the piece)? The author relied on AI to generate the list, and as previously noted, AI models are first trained to predict. But AI programs then draw information from an imperfect internet, and they have no built-in sense of truth or falsity (only what is likely).[104] Algorithmically churned bullshit is a byproduct of AI that is programmed to generate plausible outputs with no regard for truth or falsity.

What is worse is when humans accept AI-generated outputs without any oversight. In a case that is meta-comical, a *New York Times* report found that a non-fiction book about the impact of AI on truth contained quotes that were, in fact, made up by AI.[105] But the incident is not only embarrassing for the author and humorous to cynics; it suggests greater harms that may occur when AI produces errors that are believed by the public.

Data Injustices of Other Sorts

While a substantial body of critical scholarship has focused on racial or gender-based biases that have been encoded into AI programs, our survey of fake news, pink-slime journalism, disinformation, misinformation, conspiracy theories, and bullshit has illustrated important concerns about data injustices, including the targets of disinformation campaigns, groups that tend to believe dis- and misinformation, and the overall impact on how we produce and distribute knowledge. Certainly, algorithmic racism continues to have serious societal implications and consequences, but focusing only on the elimination of biases leaves these other significant

problems unaddressed. No matter what or how many biases are removed from the system, there will always be some error (large or small) generated by algorithms programmed to make predictions and keep users engaged, especially without a sensor for truth or a filter for falsity.

Furthermore, racial biases that are encoded into algorithms lead to economic exclusion and discrimination, which is a separate problem from when minorities (and other groups) are targeted by disinformation campaigns, especially by foreign entities for political purposes. For instance, the Russian government used algorithmic methods to target racial minorities in the U.S. via Facebook as part of a broader campaign to suppress voter turnout.[106] Russian trolls also targeted Black Americans and other U.S. demographic groups thought to be susceptible to antivaccine discourse in a social media-based disinformation campaign that appeared to be intended to stoke racial and class divisions.[107] Although the disinformation vaccine content was initiated by foreign bot accounts, it was spread further as misinformation by regular social media users in the U.S., distorting health science and sowing mistrust. In cases like these, algorithms can be manipulated by bots and trolls because they lack context and nuance. An algorithm can never really know why certain correlations in its data churn exist, nor understand who is using them, to what effect, and why.[108]

Some of the more disturbing disinformation efforts have included discourse that is racially charged, misogynistic, or falsely attacks cultural and political figures. Social media platforms have struggled to curtail the spread of such harmful content because it is engaging, and users are often motivated to spread it (without first considering accuracy) because it evokes strong emotions of anger and outrage.[109] Disinformation and misinformation create another sort of victim – not only the targeted groups, but also the individuals who believe the false or misleading information to be true (or who are left confused about what to believe). In addition to racial minorities, several social scientific studies have shown that political conservatives are disproportionately targeted by disinformation campaigns.[110] Other studies have also shown that the political right is also more likely to believe and further disseminate disinformation after exposure.[111] For that matter, we may also consider the intended audience of disinformation campaigns as casualties of the information warfare. It is their consumption and spread of this content, especially on the political right, that "has cultivated a distrust in fundamental democratic institutions and processes"[112] Much of the disbelief has surrounded real journalism organizations at a time when they could be most useful in facilitating more informed discourse. However, fake news and other forms of disinformation confuse their intended audiences with competing narratives about what is true, thus stoking cynicism toward traditional news outlets.[113] The goal of sophistic persuasion is not

necessarily to tell the truth, but to win the argument.[114] Unfortunately, disinformation seems to be dominating much of our online discourse, and AI is not refereeing the debates in any way that privileges the truth.

The Political Economy of Post-Truth

When policymakers, technocrats, and scholars concentrate attention on improving and perfecting AI programs, they seem to imply that all problems, including accuracy and truth-telling, can be addressed through better programming. However, more critical attention needs to be brought to bear on who is exploiting algorithmic programs and to what effect. We may also critically question whether AI could (and should) ever be the ultimate epistemic authority, especially when it is prone to manipulation by dishonest actors and subject to the will of unbridled capitalism.

Rather than focusing on AI programming alone, the larger political and economic context of our capitalistic democracy needs to be explored to understand the societal impact of disinformation. While technocrats may debate the finer aspects of AI coding, critical and legal scholars need to address the broader system of the information economy that lends itself to manipulation and disrupts our moral autonomy.[115] That social media platforms and their algorithmic engines have only furthered the spread of dis- and misinformation and deepened their harm should give us pause to consider who ultimately benefits from this infrastructure. Meta, which owns some of the most popular social media apps, including Facebook, Instagram, WhatsApp, Messenger, and Threads, boasted over $200 billion in annual profits during 2025 – a 22 percent increase from the previous year – and is heavily investing in more AI infrastructure.[116] It is doubtful that Meta's goal is to further generate ever more harmful disinformed content. However, if that type of content is what generates engagement (and thus, more profit), there is no incentive to train its algorithms to do anything else except more of the same. And, until we rethink the infrastructure that generates harmful disinformation, including the social, political, and economic practices around these systems, the problem will not get better.[117] The alternative epistemology forged by AI determinists will only enrich its investors and empower political forces to abuse it. A post-truth era with an alternative epistemology will also generate an alternative reality.[118] Is that reality one we should accept?

Everything we do in the course of our day-to-day digital lives generates data, which are collected, processed, and vended to make predictions about our preferences for future activity. In essence, algorithms build a "model" of us as individuals, and collectively by demographic groups.[119] However, models of this variety are not duplicates or clones. Rather, models are

artificial: a fetishized version of our consumer habits and our most vulnerable emotions of fear and anger. Worse yet, they can be grafted together by dis- and misinformation, as well as other inaccuracies. This ultimately damages our collective ability to generate and distribute knowledge, which is essential to the process of democratic self-governance. In the chapter that follows, I will look at how these algorithmic ills contribute to political polarization and set a course to look at these phenomena through political-economic analysis, cultural legal studies, and jurisprudential examination.

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3

ALGORITHMIC EXPOITATION, POLITICAL POLARIZATION, AND EPISTEMIC ALIENATION

Understanding the Political Economy of Post-Truth

Through the critical lens of political economic analysis, I will now examine in greater detail how algorithmic exploitation, media ownership, social media influencers, and others contribute to the political polarization and epistemic alienation in the post-truth world. Similar to how the state's analytic machinery listened to the pre-cog prophecies in *Minority Report*, I will show in this chapter how forces within the political and economic system around AI and algorithmic data processing manipulate and use algorithmically produced outputs. Additionally, we will see how the by-products of political polarization and epistemic alienation emerge within this system.

Although there appeared to be political motivations behind the Russian government's targeted campaign toward racial minorities to suppress voter turnout in the 2016 U.S. presidential election, they may not always be as distinct or as easy to discern. The Russian propaganda model frequently employs social media and amateur journalism among other things to create informational chaos through a "firehose of falsehood" that engages and confuses its targeted audience.[1] However, it is the manipulation of algorithms that favor engagement and push content into users' news feeds that makes them more effective, such as the Eastern European troll farms that produced all 15 of the most popular pages for Christians and 10 of the top 15 pages targeting Black Americans by October 2019 in the lead-up to the 2020 presidential election cycle, and reached nearly half of all Americans overall at the same time.[2] These troll farms are "professionalized groups that work in a coordinated fashion to post provocative content, often propaganda, to social networks" and they can build a massive

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audience through their network of Facebook pages, reaching 140 million users in the U.S. per month, including 75 percent of those users who were not even following any of the troll network pages.[3] Even without an explicit political motivation, the product of troll farms is often divisive propaganda about hot-button political issues, which does not necessarily reflect the users that ultimately consume them. Worse yet, these polarizing tropes get repeated in a digital echo chamber, as Facebook pushes engaging content on pages of people who do not follow the source page, and then it gets shared on the news feeds of connected friends through likes, comments, and shares and gets spread even further. While the content in question here may be the product of financial motives (hence, engagement) or political propaganda, it nonetheless is not commensurate with the reality of social media audiences that it targets and thus replicates misinformation and falsity.

Because misinformation is not always spread with political motivation, and sometimes with financial incentive, we need to engage political economic analysis to draw a complete picture of the phenomena. The political economy approach "traces connections among wealth, discourse, social influence, and power," making it an ideal framework to study the varied profiteers of misinformation, including "establishment media, corporate interests, politicians, social media grifters, and Big Tech."[4] As the late and great political economist, Robert McChesney explained, political economic analysis "should be the organizing principle" for evaluating digital revolutions as commercial energies will be key to understanding how the internet "has developed and is likely to develop" in the future.[5] Algorithmic formulations and AI are now driving the ongoing digital revolution, and their use will shape the future of our informational environment online. One of the functions of legacy media outlets, such as newspapers and television news, is that content is fully directed by the supplier, which puts content in front of an audience that they were not necessarily looking for (as they turn the pages of a newspaper or watch live program segments). However, online information networks "generate demand-side economies of scale related to the capture of customers," as audiences search for specific content through search engines, websites, social media, and other apps.[6] Unseen in this audience-driven experience, though, is the role of AI and algorithms that present and structure content from user queries and online activity. As such, further consideration of the commercial and political interests that shape their use is warranted.

The political economy approach used in this chapter, as well as the subsequent analyses in the chapters that follow, is somewhat specialized. While maintaining the critical moral philosophy derived from the Frankfurt School to understand the role of media ownership and commercial interests in the

formation and use of AI and algorithms, I will also incorporate elements of cultural legal studies to examine government regulation and industry self-regulation of these technologies, in addition to jurisprudential analysis of relevant case law that may affect their future development.[7] Scholarship of this variety allows a broader examination of the interconnected powers of technology, capitalism, politics, public policy, and the law. The political economy approach alone cannot answer all the questions about the relationship between AI, algorithms, and misinformation spread, but it enables us to ask the most significant ones about politics and power. Furthermore, a critical political economic perspective provides context and insight for those most important questions, as it "evaluates media … systems by determining how they affect political and social power" and whether they support or hinder "democracy and democratic self-government."[8] The insights gathered from this chapter's political economic analysis of algorithmic exploitation, political polarization, and epistemic alienation will apply to the following chapters that focus on potential remedies to these ills in public policy and the law.

Algorithmic Exploitation

Many popular fears about the development of AI involve scenarios in which the machines become self-aware like what happens in the sci-fi movie *2001: A Space Odyssey* and the *Terminator* film series. However, some AI researchers are more troubled by how humans will misuse the technology by prioritizing political and economic self-interest over broader societal concerns.[9] For instance, in 2015, Twitter failed to delete a mass of over 36,000 Russian and Ukrainian spam accounts spreading political disinformation in the lead-up to the 2016 presidential election because the company was concerned about losing user traffic while competing with Facebook and other social media platforms.[10] Twitter was prioritizing its business interests and revenue over the integrity of information on its platform and the potential effect on a federal election. Although Twitter began policing misinformation on its platform during the COVID-19 pandemic in 2020 and permanently suspended several purveyors of disinformation, including President Trump, after the events of January 6, 2021, its approach to content curation fundamentally changed after Elon Musk acquired the social media outlet in 2022 and changed its name to "X" in 2023.

Since then, research has revealed that X's algorithmic feed promotes conservative content and demotes posts from traditional news media.[11] Moreover, the same field experiment also showed that exposure to X's algorithm led users to follow more conservative political activist accounts

while shifting users' attitudes about Trump's criminal investigations and the war in Ukraine toward conservative positions on those topics. At the same time, X's valuation and profitability have dramatically declined under Musk's ownership.[12] Whereas Twitter allowed its algorithm to be exploited by outside political actors for the sake of preserving its own financial interests, X has swayed its algorithm for political purposes while likely negatively affecting its profitability as a result.

A December 2025 report has also shown that bot networks, or botnets, have manipulated algorithms to inauthentically promote select political posts by rapper and conservative influencer Nicki Manaj or her X account (@nickimanaj).[13] Not coincidentally, Manaj is a MAGA enthusiast and an ally of President Trump, as is Musk. The study showed that a coordinated group of over 18,000 fake accounts was used to praise Manaj's posts, including one day when over 56 percent of comments on her political posts were generated by bots. The fake accounts most frequently amplified Manaj's posts when they included personal attacks, slurs, or threats. Additionally, the study found a notable overlap in discourse between Manaj's posts and content produced by Turning Point USA. Although it is not clear from the report if the botnets were programmed to amplify what the study termed as "toxic" discourse, previous research has shown that emotionally charged content on social media tends to drive more engagement than less affective commentary without artificial amplification, which may account for the heightened amplification in Manaj's case.[14] For that matter, the amplification of Manaj's invective posts may serve both as political and commercial interest for Musk, as audience engagement helps drive profitability.

Algorithms can also be used to suppress content that their owners and programmers disfavor. At least, that is what several TikTok users claimed after their attempted posts criticizing the killing of Alex Pretti, a Minneapolis nurse who was shot in the back at close range while he was on the ground and faced away from the Immigration and Customs Enforcement Official (ICE) who fired the first of several rounds.[15] Video of the shooting quickly spread across social media and traditional news outlets, clearly contradicting the Trump Administration's narrative of the events.[16] Commedian Megan Stalter along with several other TikTok users expressed frustration over their commentary (condemning ICE for the killing) not posting on the platform.[17] Although TikTok claimed that "tech issues" were to blame for the posts not loading, the timing and selectivity of which content would not post is curious, to say the least, as the Trump Administration had just a week before led an arrangement that transferred ownership of the platform from a Chinese company to U.S. investors, including Larry Ellison who is a close affiliate of President Trump. Another social media influencer, a book author with over 4.5 million followers on

TikTok alone, Jen Hamilton (@_jen_hamilton_) told CNN that her post about a separate ICE-related incident was not visible to her followers on the platform, and afterward subsequent posts would not upload either.[18] However, "algorithms are proprietary" and there is no way to independently "investigate how they are trained and function."[19] So, no matter the number of anecdotes or the credibility of the source of the complaint, there is no way to know with absolute certainty how their content recommendation systems work.

Nonetheless, the confluence of events – a highly questionable killing of an American citizen by federal agents, a presidential administration whose version of the shooting was broadly contradicted by video evidence, and the suppression of commentary condemning government agents on a social media platform that just changed ownership to interests closely aligned with the president – left many with the impression that there was an effort (albeit an ineffective one) to gaslight them. Although cases such as the Pretti killing in Minneapolis may not persuade everyone to accept a particular narrative of events, it is a clear example of the polarizing nature of contemporary political discourse and illustrates the way in which algorithms may contribute to the problem.

Political Polarization

While there has always been ideological differences among political parties, the growing feelings of dislike and distrust between these groups in the U.S. have become ever more affectively polarizing.[20] The impact of emotion in political discourse has been especially notable in the age of post-truth when opposing sides cannot even agree on basic facts.[21] Social media platforms foster this kind of political polarization through their algorithmic feedback loops, as algorithms are inclined to direct users to familiar content, rather than varied perspectives.[22] For instance, a field experiment strongly suggested that Facebook's algorithm limited individual users' exposure to news content that does not vary from their own political attitudes.[23] But no matter the political proclivities, the goal of a commercial algorithm is to maximize traffic and engagement, which drives profitability. This is not to say that social media companies and their proprietary algorithms are the source of political polarization, as traditional media networks and political programming deeply affect how individuals feel about issues such as the economy.[24] However, social media platforms and their algorithmic formulations are significant facilitators and intensifiers of political polarization.[25]

For that matter, politically oriented celebrities and pundits contribute to the broadening polarization on social media when they stoke anger,

resentment, and fear in emotionally charged posts. The cultural-political styles of some of the more niche social media influencers are more about attracting dedicated audiences through identity solidarity, rather than informed discourse, which may also further spread dis- and misinformation.[26] And when popular figures on social media use emotion, rather than reason in posts that touch on political issues, they tend to garner more attention and subsequent activity on the network. As one social network analysis of political discourse on Twitter throughout the coronavirus pandemic in 2020 demonstrated, there is a "power law behavior" in which a relatively small number of nodes are central to the network.[27] This type of network effect is similar to "Metcalfe's law" about how the value of a telecommunication network like the internet "increases in proportion to the square of connections."[28] Applied here, the central nodes of a network will often continue to grow in popularity, and the gap between select central nodes and those on the edge moves further apart.

In economic terms, Metcalfe's law means that the financial value of "a network increases at an accelerating rate as you add each new person to it."[29] Accordingly, there is a financial incentive for individuals to grow their social networks on social media platforms, as well as for the platforms themselves and other web entities to increase their audiences, which pushes a broader array of political discourse into the margins. The forces of capitalism have started to constrain the digital marketplace of ideas (that was originally called the World Wide Web) from an expanse where users sought out content to a realm of internet-based apps that push select content and experiences to audiences.[30] Another illustration of Metcalfe's law can be seen where political and commercial interests intersect at the spread of misinformation. For instance, Nick Shirley, a political-right social media influencer posted a video in December 2025 with incendiary allegations that Somali immigrants in Minneapolis were fraudulently collecting federal subsidies by running fake childcare centers. Although inspectors later disproved these claims, the viral video and its false accusations had already spread, leading right-wing media and others to target Somali-run daycare centers across the country with similar unsubstantiated allegations.[31] Shirley's YouTube account boasted over 1.7 million followers at the time and a network of right-wing news outlets connected to Center Square furthered the spread of misinformation unfairly attacking Somali-owned daycare centers in other U.S. cities.

The Center Square is a politically right-leaning news service, and even though it might be considered an advanced form of pink-slime journalism, it is believed to reach over 245 million readers through 1,000+ media partners, including the Sinclair Broadcast Group and its 185 television stations across 85 U.S. markets.[32] Founded in 2009, the Center Square has already

emerged as the second largest news wire service and aims to eventually overtake the mainstay Associated Press, which was formed in 1846. Although the Center Square thrives in news deserts and offers its content for free "to cash-desperate local news outlets," it should not be dismissed as a conservative alternative to Associated Press.[33] The size of its networked audience has a significant political value for its conservative donors.

This leads us to consider another important point about Metcalfe's Law: "those *excluded* from a network face an accelerating cost of exclusion" [emphasis in original].[34] In this case, the integrity of our informational environment will suffer from the diminishing presence of quality journalism. As large news media organizations, such as Gannett and McClatchey, move away from the Associated Press for cheaper content options, just as smaller local outlets have done, where are they likely to eventually go to fill the void and what will be the impact?[35] For nearly three centuries, the Associated Press has been one of the oldest and most prestigious institutions of American journalism, as it maintains the utmost standards for verification and accuracy in reporting, and its style guide has been a staple of university journalism programs. The Center Square is a network for enhanced politically oriented pink-slime news.

The algorithmic favor for promoting engaging content not only furthers the transmission of polarizing narratives but also *transmutes* more reasoned and contextualized discourse on information networks. In this sense, I am using the term *transmute* to describe the opposite of *transmit*, which includes the prefix *trans* (meaning across) and *mit* (meaning to send) and thus means *to send across*. By *transmute* then, I mean *mutes across*, which is different than the normal definition of the verb that describes a change in the form of a substance. Therefore, what I am positing here is that more credible sources of information will be muted across networks in which algorithms are programmed for engagement, and the effect of this phenomenon is the separation of humans from the acquisition of knowledge.

Epistemic Alienation in the Post-Truth World

In the age of post-truth, political ideology and emotion (especially when combined) have become more powerful in shaping perceptions of reality. Networked discourse within and among varying political factions is often rooted in fear and resentment about other groups, rather than reason – an ever-deepening divide facilitated by commercial algorithms that push emotionally charged content for engagement. In this digital maelstrom of social media posts, memes, and online videos (real or fake), opposite sides of the political spectrum do not abide

by a common set of epistemic rules in public discourse. Consequently, the polarization of political sides is also alienating society from shared epistemic institutions. Rather than knowing things through commonly accepted expertise from science, university researchers, or journalistic institutions, the post-truth digital realm facilitates a sophistic kind of epistemological reasoning in which an "alternative fact," clever meme, or AI-generated image can provide an explanation consistent with one's political views or self-interest and avoid reasoned discourse.[36] This effect is most noticeable among political conservatives whose distrust of core knowledge-producing institutions in American society, such as universities, science, and journalism has continued to grow since the 1970s.[37]

David Arditi's (2023) book about consumption capitalism, *Digital Feudalism*, also considered the relationship between AI and "alienation." Arditi described how computer software, algorithms and AI tend to create precarity when they are used in more and more sections of the economy, particularly the "metaverse" in which "the virtual world" is embedded into the daily lives of people through online engagements in what used to be human-to-human interactions.[38] For one example, he noted having to scan a QR code at a sit-down restaurant to see the menu and placing your order via a mobile phone. While Arditi's concern is focused on the alienation that occurs between workers when they are separated from the product of their labor, a similar sense of alienation could be applied more broadly. As an increasing number of industries move to the metaverse of AI, more and more information production and the type of knowledge it produces increasingly rely less on human engagement and oversight. Rather, AI and algorithmic formulations become masters of the knowledge they produce and alienate the humans who created and use them. For instance,

> YouTube creators aren't employees of the platform, but rather work as independent contractors. This amplifies the precarity of their labor.… In practical terms, creators have no say in how their content is used by the platform, they receive no salary or benefits, algorithms change without their knowledge affecting their views, and policies can change how YouTube monetizes their content. YouTube creators are considered users by YouTube as much as people who watch videos. By being considered users, content creators only have recourse for grievances through YouTube's Terms of Service Agreement.[39]

To extrapolate this example further, now consider the totality of all social media and online content creators. Algorithms do not match context

and nuance of all posts and may over-transmit falsity and error (so long as it triggers engagement) while transmuting (as I have defined the term earlier) more credible and accurate information because of its lack of engagement. The ultimate product of what is presented and available online and via social media does not represent the totality of what a varying array of humans posted on to those networks, let alone any semblance of common knowledge that could be derived from the consumption of shared facts.

However, it is the tendency to trust the output of algorithmic formulation that works by analyzing data, especially if it is called *intelligent*. There is an "ingrained acceptance" of machines to outperform humans, and as a society, we seem to have "developed an element of complacency over time."[40] The unquestioned reasoning seems to be that algorithms do not have agendas because "all they do is analyze data;" however if there are concerns, the algorithms are proprietary, making it practically impossible to investigate how they are programmed and operate.[41] At the same time, the platforms that employ these algorithms also position themselves as neutral actors. As Scott Timcke explained in his 2021 book, *Algorithms and the End of Politics*:

> Whereas conservative media entities like *Fox News* or *Breitbart News* tend to be unapologetic about their political agendas, platforms like Google and Facebook deploy a rhetoric that positions them as infrastructure companies rather than media companies. Part of this positioning is to avoid responsibility for, and thus regulation of, the content circulated and consumed on their platforms.[42]

For that matter, it is also not in the business interests of social media companies to restrain disinformation or manage misinformation on their platforms because "[d]oing so would acknowledge that they view themselves as responsible for third-party content."[43] Under Section 230 of the Communications Decency Act, interactive internet service providers, including social media companies, are immune from liability for any third-party content posted on their platform.[44] Accepting responsibility for harmful user content would risk losing that protection.

Mark Zuckerberg, founder and CEO of Meta Platforms, which include popular social media outlets like Facebook, Instagram, WhatsApp, and Threads, among others, has stated that his companies "shouldn't be the arbiter of truth of everything people say online."[45] Of course, Zuckerberg may have been responding to political pressure at the time, as President Trump had just issued an executive order after (then) Twitter had tagged two of his tweets (falsely alleging that mail-in ballots would lead to massive election fraud) with a "get the facts" message that provided links

to accurate and contextualized information about voting by mail.[46] Although Twitter, and not Meta platforms, was the particular target of the President's ire at the time, it was in Zuckerberg's interest to keep it that way. Zuckerberg's statement in 2020 somewhat contradicted his 2018 testimony before Congress, when he said that "it is inevitable that there will need to be some regulation" for internet-based companies like Facebook.[47] This occurred after the Cambridge Analytica scandal, in which it was revealed that a data-mining firm working with Trump's 2016 election campaign had obtained the personal data of Facebook users to deliver targeted political messages to voters based on their psychographic profile.[48] However, Zuckerberg would later disavow responsibility, for a second time, for policing dis- and misinformation on Meta platforms. Two weeks before Trump took office again in 2025, Zuckerberg announced that Meta would discontinue its fact-checking program, which Trump and other Republicans had alleged was censoring conservative ideas.[49] Whether Zuckerberg has caved to political pressure or genuinely believes that social media companies should have no responsibility to curb the ills of dis- and misinformation on their platforms, there is no denying that social media platforms – even by vending third-party content – have a significant form of political power. Although his and other platforms may position themselves as neutral operators in information distribution, this assertion necessitates further critical consideration.

Power and Post-Truth Ideology

Scholarship in the 2000s described algorithms as a neutral form of power that let go of politics and diminished the relevance of hegemony as a core ideological concept in cultural studies.[50] Years later, however, after the rapid growth in both AI and social media, Timcke suggested that a discussion about the role of ideology and political description is merited when considering the unquestioning trust in the veracity of algorithmic output and acceptance of social media platforms as neutral purveyors of third-party content.[51] I posit here that algorithmic and information-based networks are not neutral platforms of power when they serve the business and political interests of certain groups in society over others. Accordingly, it is important to include the notion of hegemony as it describes "the ways in which a class or faction comes to gain the power to lead a social structure," as well as how their power is expanded and reproduced.[52] Referencing Antonio Gramsci's proposal of hegemony, Timcke noted that "cultural practices and institutions generate and induce the consent of subordinate classes."[53] In this sense, unquestioningly accepting algorithms and social media platforms as neutral arbiters is a hegemonic form of power for those

who are exploiting them for political gain. Dis- and misinformation is not just an unfortunate byproduct of algorithmic churn and free expression absolutistism about information networks. Rather, I argue here that dis- and misinformation, as well as the entire post-truth ethos, disproportionately empower the cultural-political class that stands to benefit the most from the state of epistemic alienation, as well as the hegemonic ideology that the system which creates it is somehow neutral.

Keep in mind the way that algorithmic content recommendations systems are programmed to maximize time and engagement on a given platform. The impact of these recommender systems are digital echo-chambers in which users are politically divided into groups of other like-minded people and types of content, and therefore kept away from differing opinions and facts.[54] Beyond political polarization, this is also where dis- and misinformation, far-right extremism, and conspiracy theories can take shape. For instance,

> [i]f you start searching for flat-earth ideas, you will progressively get more stories or comments about flat-earth conspiracies. But what's interesting is that you will also get more suggestions to read about other conspiracies, like Big Foot or Pizzagate. Eventually, some people fall down the rabbit hole of conspiracy theories, and because the same algorithms have found other people with similar proclivities for conspiracies, they all start building on each other's comments, and there is no one in the group with a different opinion to offer some perspective. The algorithm is also not going to suggest material disputing flat-earth idea because the goal of the algorithm is not to teach or to differentiate between facts and fiction. The goal of the algorithm is to maximize traffic.[55]

Algorithms are also reinforcing how users tend to aggregate into communities of similar interests, fostering more confirmation bias and political polarization.[56] These kinds of echo-chambers are even more distinct when it comes to promoting conspiracy theories.[57] Furthermore, maximizing traffic means maximizing profitability, even when an algorithm is promoting harmful content. Take for instance, the *Wall Street Journal*'s expose called "The Facebook files," which was based on internal documents and reports, as well as whistle-blower statements and showed that Facebook was aware that its algorithm was spreading hate speech, anti-vaccine content during the coronavirus pandemic in the U.S., and other sorts of misinformation.[58] Separate reporting by the *Washington Post* described how Facebook's algorithmic formula fostered rage and misinformation.[59] Programmers used reaction emojis as signals to push more emotional, angry,

and provocative content. Facebook data scientists confirmed that posts that sparked angry reaction emojis "were disproportionately likely to include misinformation, toxicity and low-quality news."[60] Similarly, another report in the *Washington Post* showed that Facebook's algorithm helped spread hateful content, especially anti-Muslin hate speech, and misinformation in India.[61]

Although some on Facebook's integrity teams reportedly raised red flags about the human cost associated with the proliferation of anger and misinformation on its content ranking system, others justified it. Algorithms in and of themselves are not aligned with the well-being of humans, and even when humans define algorithmic goals, they are not always aligned with our well-being either.[62] And while misinformation and political polarization are not new problems after the development of social media and algorithms, the current problem has to do with scale.

> As … algorithms become more powerful and more capable of tuning into our fears and insecurities to drive our behavior, the more profound their influence will be … compromising our ability to discern fact from fiction.[63]

The scale grows increasingly larger when political interests realize that certain types of messages are resonating more than others. For instance, troll farms have a strategy of reposting the most engaging content because Facebook pushes its most engaging content onto the pages of users, regardless of whether they follow the page where the "engaging" content originated from, and the "more a page's content is commented on or shared, the more it travels beyond its followers," which gives these operations an oversized ability to reach new audiences.[64] Collectively, across the network, as the volume gets ever higher, the eventual outcome is not the result of an independent algorithm or neutral informational mediary. Instead, it creates a post-truth ideology driven by emotions and misinformation.

Beyond the social media platforms and other third-party interactive services that are profiting commercially, it is important to consider which users are reaping the most political benefits in this environment. But to answer this question, we first need to look at the impact of the proliferation of emotionally-based dis- and misinformation online; an ever-growing body of social scientific research continues to show that it is disproportionately affecting people on the political right. In the U.S., conservatives have demonstrated a uniquely "lesser ability to distinguish between true and false claims across a wide range of political issues."[65] Conservative social media users are significantly more likely to be exposed and follow disinformation accounts.[66] People who identify as Republican users also tend to pay more

attention to false and misleading information and are more likely to share fake news on social media.[67] Because conservative-leaning social media users are more likely to engage with and disseminate fake news content, there is a partisan dimension to the spread of misinformation, resulting in more false and misleading content on social media that favors the political right.[68] To answer the question initially posed here, it becomes clear that, more often than not, dis- and misinformation promote the interests of the political right. As such, post-truth is not a neutral ideology, nor is social media's algorithmic contribution to the spread of misinformation and the growth of post-truth ideology a case of good intentions with bad results.

Revolutionary communication technologies often come with unintended consequences, and "the more significant the technology, the greater the unintended consequences."[69] While the effect of Facebook's angry emoji may have been unintentional at first, it became purposeful in driving engagement, and its exploitation by trolls and other political interests was intentional. For social media companies, in general, the intention was profit, and the result has primarily favored the interests of the political right. Even prior to its acquisition by Musk, Twitter admitted that its algorithms promoted right-wing politicians and news media over those from the left.[70] This admission followed Twitter's efforts to prohibit misinformation related to COVID-19, and the events on January 6, 2021, when the platform suspended roughly 70,000 QAnon-related accounts, as well as President Trump's, for spreading conspiracy theories and misinformation about the 2020 presidential election.[71] Under Musk's ownership, the feed algorithm for Twitter (now "X") leads users to more politically conservative activist accounts.[72] Although there have not been any published studies on TikTok's algorithm since its ownership changed in January 2026 to a group led by a close affiliate of President Trump, several anecdotes suggest that shortly after the transfer, the platform suppressed content that was critical of ICE agents in Minneapolis and reflected poorly on the Trump Administration. Of course, Trump's own Truth Social platform prioritizes content by Trump himself and other right-wing politically oriented content.[73]

Taken altogether, it is easy to see the influence of the political right on some of the most popular social media platforms, and the effects are likely to become even stronger. Lesser-educated individuals and those on the political right tend to find politicians who spread even blatant disinformation to be as credible as other, better-informed sources.[74] Consequently, politicians on the political right can spread disinformation to their advantage without harming to their own reputation in the process. With no consequences for a lack of accuracy or truth, political figures can bullshit with whatever is opportune to say and easy for their partisan constituents to believe. This is likely because, as earlier psychological research on

the effects of misinformation has shown, misinformation can continue to influence individual beliefs even if those individuals are later presented with additional accurate information.[75] As a result, bullshitters have more freedom in political discourse because they are not bound by any points of truth that emerge after their original statement.[76] Moreover, individuals may become skeptical of accurate information and distrustful of the institutions that are trying to correct the misinformation, even credible sources such as scientific bodies, government agencies, or mainstream journalism. The study further noted that people are more likely to pass on information that evokes a strong emotional response, meaning that emotionally-based misinformation is more likely to persist and further frustrate corrective efforts from traditional epistemic institutions, as "challenges to people's worldviews tend to elicit highly emotional defense mechanisms."[77] This may also suggest that repeated exposure to conflicting information, especially in the post-truth realm, can create confusion and cynicism or encourage individuals to retreat to more familiar partisan or emotionally appealing narratives.

The Politics of Dis- and Misinformation Policy

Fake news, dis- and misinformation, pink slime, and other low-quality news exploit our emotions, polarize our political discourse, and alienate our society from more credible institutions of knowledge. At the same time, they are easy to access, and social media algorithms are fueling their spread. After the rise of fake news during the 2016 election cycle, neither social media companies nor lawmakers altered policy to mitigate the threat. By the 2020 campaign season, the problem became more sophisticated, as "disinformation dominated the 2020 US elections, particularly content that aimed to delegitimize the electoral process and result."[78] Research showed that misinformation on Facebook drew more clicks than factual news, which researchers blamed on the platform's algorithm for not promoting more trustworthy sources of information.[79] Although Facebook claimed that the study's result measured engagement and not reach, perhaps suggesting that misinformation happens to be popular and thus, not the algorithm's fault, the company suspended the personal accounts of the researchers from the platform. Also, it is Facebook's policy to not allow researchers to download data and share with other researchers, which means that other scholars are unable to replicate their findings – an essential element of social scientific research.[80]

However, a separate study showed that Facebook's advertising authorization process, which is supposed to protect the platform's own policy on curbing election disinformation, and Meta's own policy about who is

allowed to place political ads to prevent election interference by foreign entities were both easy to circumvent.[81] This was despite Meta's and other social media platform's pledge to remove any misinformation about voting or delegitimizing election results.[82] We should also keep in mind that algorithms and AI can only exacerbate the social ills created by humans, who themselves are more likely to spread false news and do so more quickly.[83] Social media and its algorithms are feeding neoliberal capitalism, highlighting our antisocial proclivities of emotion, fear, and grievance.[84] Inaccurate data, fake news, disinformation, misinformation, pink-slime journalism, and conspiracy theories are easy to access, may be convenient to believe, and the problem of their expanse continues to get worse. Social media are not the only platforms where this kind of content can thrive. As chatbots become increasingly prevalent sources that are consulted for information, a 2025 audit by NewsGuard (a journalism-based resource that rates the reliability of news sources) found that the most popular ones, including ChatGPT, Grok, and Google's Gemini, spread false claims when asked about controversial news topics 35 percent of the time, which was an increase of 18 percent from the year before.[85] In the next chapter, we will turn our attention to the current regulatory and public policy environment in the U.S. to assess potential solutions that may redress the range of dis- and misinformation that is plaguing our public discourse. This will also include an assessment of contemporary industry standards and self-regulation, as well as the current political climate in Washington, DC and across the country for major policy reform.

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4

REGULATION AND PUBLIC POLICY FOR AI, ALGORITHMS, DISINFORMATION, AND MISINFORMATION

As the narrator mused in *Minority Report*, "the basic legalistic drawback to precrime methodology" is that we are "taking in individuals who have broken no law."[1] Similarly, when considering the social and political ills of disinformation, as well as the ways in which AI and algorithms contribute to these problems, we are faced with the fact that no one is breaking the law. In the novel, Anderton who founded and headed pre-crime enforcement explains to his new assistant that the political problem with action based on prediction is that it confounds legal principles of habeas corpus and due process. The same could be said for predictive analytics, algorithms, and AI, as well as for balancing the value of free expression against false and harmful media content. This chapter will explore the current U.S. regulatory and public policy environment, as well as other means, such as industry self-regulation to interdict or mitigate the effects of disinformation, misinformation, fake news, as well as AI-generated false information.

Heretofore, much media policy scholarship has focused on Section 230 of the 1996 Communications Decency Act (CDA), which holds interactive computer service operators legally immune from liability for content posted by its users (e.g., "third party content"). Proposals to reform Section 230 of the CDA have ranged from striking it from the law to revising it so that service operators would be accountable for their algorithms and their own content (but, still legally immune from third-party content posted on their networks). To date, none of these proposals to address Section 230 of the CDA have come to fruition. Likewise, the Biden Administration's proposed "Disinformation

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Governance Board" was disbanded before it ever got to work. To say that laws and policies cannot keep up with the pace of technology does not capture the essence of the problem, which is more complex. Applying cultural legal studies and political economic analyses, we can see where legislators have political interests that are often served by disinformation campaigns, as well as the algorithms that play upon divisions in society. QAnon conspiracy theories, medical misinformation, and other wedge issues are often what their constituents thrive on. Politics is not about the truth, but about what works (much like algorithms). Consequently, this chapter shows where U.S. statutory law and attempts at industry self-regulation have been inadequate to address the problems at hand and suggests some remedies within the common law and civil litigation. However, civil remedies are limited and depend primarily on one's own financial wherewithal and thus, remain economically unjust. Moreover, the constitutional elements of the U.S. law and its regard of free expression remain problematic and are addressed in more detail in the following chapter. In this chapter though, the focus will be on the state of policy now.

Disinformation Governance Debacle

The first and only attempt by the executive branch to officially address the issue of disinformation was merely the formation of an advisory board to the Department of Homeland Security (DHS) in 2022 under the Biden Administration. The Disinformation Governance Board was created to protect U.S. national security interests, primarily from disinformation campaigns coming out of Russia related to U.S. elections and the war in Ukraine, as well as misinformation about immigration, as smugglers are known to build up their business by spreading inaccurate information about U.S. border policies.[2] The Board was part of President Biden's agenda to address misinformation on social media, especially in the wake of the coronavirus pandemic. President Biden blamed misinformation for stalling vaccination rates, as then surgeon general Vivek Murthy issued an advisory that misinformation was an "urgent threat" to public health.[3] The surgeon general later requested that social media companies and other tech platforms, such as search engines, submit data and analysis about the types of misinformation on their platforms, as documented by the Centers for Disease Control and Prevention (CDC).[4] A Russian-based campaign had fed U.S. influencers' social media accounts with disinformation about vaccines.[5] The Biden Administration viewed disinformation as a national security and public health interest, and its policy was to engage with social media companies to mitigate the problem.

That policy, however, drew the ire of many Republicans, especially after the formation of the Disinformation Governance Board. Although the board was an internal agency working group in an advisory, rather than an operational role, it was widely criticized by Republican lawmakers as an infringement of conservative's free speech rights.[6] Moreover, the board was announced with few details about how it would operate, which also raised concerns from some Democrats.[7] Under intense criticism, including some from civil society organizations like the Electronic Frontier Foundation, the board paused operations just three weeks after its announcement.[8] Although DHS chief Alejandro Mayorkas acknowledged that the board's roll-out had been less than optimal, the department later stated that the "board's purpose had been grossly and intentionally mischaracterized."[9] Nina Jankowicz, the board director until her resignation – which led to the board's work being paused – was the primary target of attack by conservative political pundits and some conspiracy theorists, who grossly misrepresented some of her statements before being appointed to the board and claimed that she planned to personally edit posts made by everyday Twitter users.[10] Even worse, Jankowicz (who was in the late months of a pregnancy and then mother of a newborn at the time) was harassed and threatened online and at home, in addition to being routinely disparaged on Fox News programs.[11] In just five months since its announcement, DHS formally disbanded the Disinformation Governance Board on August 24, 2022.[12]

While the formation of the board may have had intentions for meaningful interdiction of foreign-based disinformation campaigns, its announcement and subsequent fallout were a debacle. The lack of detail and clarity about its advisory role within DHS made it an instant target for condemnation, and not just from the political right but also from democrats and non-partisan civil society organizations. In the absence of clearly articulated vision for the board, political fear and grievance swooped in and sparked misinformation and conspiracy theories, which is something that dis- and misinformation experts should have at least anticipated. As already discussed in this book, disinformation and conspiracy theories are often stoked by political interests. However, this is not to say that the board's detractors did not have legitimate concerns about how the board's work might infringe the exercise of free speech. But without a clearly defined announcement and ready refutations of (what at least should have been anticipated) political blowback, the loudest criticisms of the board were hyperbolic and speculative in nature, and ultimately won the day. There was a dearth of serious analysis of balancing the board's effort to protect national security without violating the First Amendment. Furthermore, the board's failure underscored how the political right would begin

to recast the terms of disinformation and misinformation in the same way that President Trump was able to redefine fake news.

Trump 2.0: Redefining Disinformation Discourse

On his first day in office during his second term in the White House, President Trump signed an Executive Order that charged the U.S. Attorney General to investigate the Biden Administration's efforts to curb disinformation by asserting that it was an excuse to censor speech that was opposed to the previous administration's policy preferences. The order stated:

> Over the last 4 years, the previous administration trampled free speech rights by censoring Americans' speech on online platforms, often by exerting substantial coercive pressure on third parties, such as social media companies, to moderate, deplatform, or otherwise suppress speech that the Federal Government did not approve. Under the guise of combatting "misinformation," "disinformation," and "malinformation," the Federal Government infringed on the constitutionally protected speech rights of American citizens across the United States in a manner that advanced the Government's preferred narrative about significant matters of public debate.[13]

In this narrative, disinformation and misinformation are no longer matters of national security or information integrity, and efforts to curb them are nothing more than a ruse to censor political speech. Under the Trump Administration, federal policy would reverse from encouraging social media companies to police disinformation and misinformation, while recasting any such endeavors to limit dis- and misinformation as an infringement of free speech.

Trump's executive order follows the arguments made by plaintiffs in *Missouri v. Biden* (2023).[14] Two states, Missouri and Louisiana along with five social media users sued several Executive Branch officials and agencies under the Biden Administration claiming that the government pressured private platforms to censor content in violation of the First Amendment. Although on appeal in the case (refiled as *Murthy v. Missouri*, 2024), the U.S. Supreme Court rejected the limited injunction imposed by the lower court and held that the plaintiffs did not have standing, nor did they demonstrate a substantial risk that would cause them injury.[15] In dicta, the Court noted that private social media platforms have their own incentives to engage in content moderation of speech they deem to be false and misleading, and that the plaintiffs' "right to listen" theory was overly broad in trying to sue over another party's alleged censorship.[16]

After the case was remanded to the Fifth Circuit, there was a change in presidential administration, and the Department of Justice under President Trump ended litigation on the merits. Rather than entertaining a settlement agreement, it entered into a consent decree with the plaintiffs.[17] The decree appears curious in its principles and what it prohibits. For instance, the decree states that the parties "agree that government, politicians, media, academics, or anyone else applying labels such as 'misinformation,' 'disinformation,' or 'malinformation' to speech does not render it constitutionally unprotected," which is so obviously true that the statement's inclusion seems weirdly unnecessary.[18] Although the "government" and "politicians" are lawmakers, they of course work within a system of governance in which the U.S. Supreme Court is the ultimate arbiter of what is and is not constitutionally protected under the law. More notably, "media" and "academics" are not lawmakers at all, and any such statement made by these entities would have absolutely no force to make something unconstitutional, which makes their inclusion in the statement absurd.

The decree permanently enjoins the "Surgeon General, the Centers for Disease Control and Prevention (CDC), and the Cybersecurity and Infrastructure Security Agency (CISA)" from threatening social media companies with some adverse action for not removing or suppressing certain content or for "altering their algorithms."[19] Additionally, the decree asserts that the enjoined defendants shall not "unilaterally direct or veto social media content moderation decisions" by social media companies.[20] The language here is oddly hyperbolic in that the plaintiffs in the case, along with Supreme Court Justice Samuel Alito's dissenting opinion, said that the perceived threats from government officials was implied and not specific.[21] Moreover, the consent decree states that the "prohibition does not extend to providing Social-Media [*sic*] Companies with information that the companies are free to use as they wish."[22] In that case, as the Supreme Court found, the Biden Administration did the latter and not the former. The Court plainly said, "[w]e reject this overly broad assertion" that there was a pressure campaign or a threat for refusing to adhere to governmental directives and added:

> the platforms moderated similar content long before any of the Government defendants engaged in the challenged conduct. In fact, the platforms, acting independently, had strengthened their pre-existing content-moderation policies before the Government defendants got involved. For instance, Facebook announced an expansion of its COVID–19 misinformation policies in early February 2021, before White House officials began communicating with the platform. And the platforms continued to exercise their independent judgment even after

> communications with the defendants began…. Moreover, the platforms did not speak only with the defendants about content moderation; they also regularly consulted with outside experts.[23]

Given the incongruity in the consent decree between what was alleged in the suit and what is now prohibited, as well as the strange inclusion of non-parties in the suit (that is, "the media" and "academics"), it seems that the agreement is more about political presentation than legal substance. That said, the decree is not without political effect.

The social media companies mentioned in the complaint were applying their own content moderation policies not only to COVID-related information but also to misinformation about the 2022 mid-term elections. Trump has contended (despite the lack of evidence) that the 2020 presidential election was somehow "rigged" against him and has asserted that the only way Democrats win elections is by manipulating them.[24] The consent decree gives him a token victory of sorts by showing that the DOJ and a federal trial court believe that the Biden Administration "coerced" social media companies into suppressing content that was unfavorable to Biden and Democrats.[25]

The irony, however, is that the Trump Administration has sought to punish media companies through the power of government for content that it dislikes, especially on television. For instance, the Federal Communications Commission (FCC) has launched an investigation into ABC television and questioned the license renewals of its owned and operated stations after Trump called for the firing of late-night comedian Jimmy Kimmel for jokes that were critical of the First Lady, Melania Trump.[26] Trump's White House spokesperson, Taylor Rogers, also warned that ABC television's program, *The View*, could be "the next to be pulled off the air" after one of its hosts criticized President Trump.[27] ABC's parent company had previously temporarily suspended its *Jimmy Kimmel Live!* show after FCC chairperson Brendan Carr had informally, but publicly threatened to investigate the network and Disney, while their local stations could face fines and license revocation for broadcasting "garbage" programs like Kimmel's.[28] Trump has also sued Paramount (parent company of CBS News), the *Wall Street Journal*, the *New York Times*, as well as other news media while in office for varying grievances.[29] While it is beyond the scope of this book to explore all of these cases in detail, it is worth noting that Trump is the only U.S. president known to personally sue a news media outlet while in office.[30] Moreover, this kind of behavior, along with using federal administrative agencies to pressure media companies into censoring content that the Trump Administration deems unfavorable and threatening to punish those that do not comply, is exactly what his DOJ accused

the Biden Administration of in the *Missouri v. Biden* consent decree, and it is antithetical to the free speech absolutism professed therein.

Even more notably, the Trump Administration has completely redirected and redefined policy discourse on disinformation. Rather than seeing dis- and misinformation as problematic and encouraging social media companies to self-regulate through their own content moderation policies, the Trump Administration has redefined disinformation, misinformation, and the like as nothing more than a ploy for news media and academics to curtail conservative speech. Furthermore, the Administration accuses online platforms of censorship when they do exercise their own content moderation policies, or when news rating service and fact-checking services label certain content and outlets in ways that it finds politically unfavorable. For instance, the Federal Trade Commission (FTC) initiated several separate actions against Media Matters, NewsGuard, and Apple within the first year of the second Trump Administration. The FTC first launched an investigation into Media Matters, a progressive media watchdog group, over a report it published in 2023 (during the Biden Administration) about the placement of advertisements on the X social media app next to pro-Nazi, antisemitic, and other objectionable content.[31] NewsGuard, a news rating and fact-checking service, was also targeted by an FTC investigation and a demand for the company to hand over reporters' emails, text messages, and notes since the founding of the company in 2018.[32] The FTC also issued a warning letter to Apple asking that it review its curation of news articles to determine if it is freezing out politically-right media and to take "corrective action" if so.[33] Both Media Matters and NewsGuard sued the FTC for infringing on their First Amendment rights. The Media Matters case was settled in May 2026,[34] and the FTC subsequently withdrew its demand from NewsGuard, rendering that lawsuit moot.[35] Nonetheless, the series of attacks by federal administrative agencies against media companies over their content and curation policies is unprecedented.

At the same time, the Trump Administration has also cancelled federal grants for scientific research that studies online misinformation at universities across the U.S.[36] Compared to the coverage of Trump Administration's assault on diversity, equity, and inclusion (DEI) policies at American universities, little attention has been given to its attack on misinformation research, although it is being targeted at the same level. The National Science Foundation (NSF) statement on funding priorities as of April 18, 2025, terminated its support for "misinformation/disinformation" research along with "DEI" and "environmental justice."[37] While Trump and other Republicans have claimed that misinformation research is politically motivated, research studying "false information about cancer" was also summarily cancelled.[38] That Trump, who has frequently indulged conspiracy

theories, disinformation, and misinformation to suit his political aims, is now defunding social-scientific research into those phenomena would be meta-ironic in a sardonic comedy.

In reality though, the presentation of patently hypocritical ideas as somehow reasoned is more like an Orwellian, self-executing virus: speech about disinformation is censorship, while censoring research about disinformation is free speech. Right-wing politicians and pressure groups, such as the so-called "Alliance Defending Freedom" are perpetuating a conspiracy theory that dis- and misinformation researchers are part of a "censorship industrial complex."[39] The premise of the censorship industrial complex conspiracy theory is that government agencies (under the Biden Administration), academic researchers, social media companies, and other organizations work in concert to identify and suppress disfavored speech under the pretense of studying and rectifying disinformation and misinformation. The theory was explicated most notably in a U.S. House of Representatives Judiciary Committee chaired by Republican Jim Jordan of Ohio.[40] The theory also roots in Project 2025, which started after Trump's infamous 2020 election loss in which he refused to concede defeat. Part of Project 2025's plan was to target social media companies, government officials, academic researchers, and civil society organizations "with retaliation for trying to address election misinformation" and dismantle the work being done by the CISA and the Federal Bureau of Investigation (FBI) to document and redress "false narratives about the election process and voting."[41] Another meta-irony is that the very epistemic institutions studying conspiracy theories, disinformation, and misinformation have become the object of a conspiracy theory and misinformation themselves. Moreover, their work is being attacked at the height of the post-truth era when it is needed most.

Trump 2.0: A National Policy Framework for AI

Besides its dis- and misinformation policy, the second Trump Administration's plan for AI development has also sharply diverged from bipartisan efforts in Congress and several states. Out of the gate, its remarkably named "One Big Beautiful Bill" included a section that would strip away and prevent states from enacting their own rules for AI for a period of ten years.[42] Whereas the Biden Administration had set out a more cautious approach to AI, including an AI Bill of Rights based on the European Union's (EU) example, and encouraged states to evaluate the risks associated with AI, the Trump Administration was moving headfirst into AI development. Trump's approach was also in alignment with the tech industry's argument that regulations would slow innovation.[43] However,

some Republicans, including Senators Josh Hawley of Missouri (a known critic of "Big Tech") and Marsha Blackburn of Tennessee, logged their concerns about the unbridled policy style proposed in the bill.[44]

While some state laws sought to curb AI-generated deepfakes and disinformation, Trump's proposed national policy would again go in a different direction, but with some interesting contradictions. For instance, section IV of the White House's National Policy Framework for Artificial intelligence, which was unveiled in 2026, invoked similar concerns as it did in the *Missouri v. Biden* consent decree, stating that the U.S. government should not coerce "technology providers, including AI providers, to ban, compel, or alter content based on partisan or ideological agendas."[45] Given the Trump Administration's concurrent actions against Media Matters, NewsGuard, and Apple that were discussed earlier, it would seem that it is violating its own policy. However, the likely implication is that the Trump Administration would not see its own actions as censoring speech but promoting it, as Section IV also states that "Congress should provide an effective means for Americans to seek redress from the Federal Government for agency efforts to censor expression on AI platforms or dictate the information provided by an AI platform."[46] The Administration would argue that the FCC and FTC were acting on behalf of the public based on the assumption that media platforms were censoring conservative-oriented speech. However, this argument forgets the First Amendment to the U.S. Constitution only prohibits ***the state*** from "abridging the freedom speech, or of the press."[47] The Constitution does not inhibit private entities from constraining the expression of others on their own property, which would include social media platforms. Rather, compelling a private entity to include or constrain expression that it does not wish to would be a clear violation of the First Amendment, which is exactly what the Trump DOJ accused the Biden Administration of doing in the *Missouri v. Biden* consent decree and why a federal court enjoined the Trump's FTC from doing the same against Media Matters, and why the FTC had to drop its case against NewsGuard.[48]

Section VII of White House's national AI policy went in direct opposition to the cautionary approach of the previous administration, as well as nascent state laws and bipartisan bills in Congress that sought to address both pornographic and political deepfakes. It instead proposes a federal policy that would "preempt" what it considers to be cumbersome state AI laws that would hinder "innovation."[49] In broad language, section VII also assumes that the federal government, rather than the states, is better suited to oversee AI policy and indicates that the states should not act contrary to "national strategy to achieve global AI dominance," without articulating what that "dominance" might look

like in practice.[50] Moreover, as former FCC chairperson Tom Wheeler and former antitrust enforcer for the DOJ and FTC Bill Baer noted, the Trump Administration's plan has one significant omission, "the policy is devoid of any meaningful discussion of the responsibility and accountability of those whose decisions created the very issues it seeks to address."[51] Wheeler and Baer go on to describe how the White House's plan essentially concentrates all the power into a few corporate hands, namely Big Tech, with no meaningful oversight and accountability. In the process, the Trump Administration's AI policy framework knee-caps efforts by states and federal lawmakers to address AI's contribution to disinformation and misinformation spread, by not-so-subtly suggesting that any policy aimed at curbing these ills would be viewed as infringing speech.

Trump 2.0: Preempting State Laws on AI

Since Trump's proposed moratorium on state AI regulations was excluded from the "One Big Beautiful Bill" in 2025, the states have continued their individual endeavors to address concerns about AI in the absence of a comprehensive federal policy. Each of the 50 U.S. states introduced some form of AI legislation in 2025, with several bills becoming law.[52] President Trump sought to preempt those efforts through an executive order in December of 2025 that called for the formation of an AI Litigation Task Force and charged the Secretary of Commerce, the FTC, and the FCC to directly challenge state AI-related laws, especially those that the Administration viewed as having "ideological requirements."[53] Section 1 of the order makes the assumption that state laws "are increasingly responsible for requiring entities to embed ideological bias within models," but only cites Colorado's ban on "algorithmic discrimination" as one example.[54]

However, Colorado's 2024 landmark law did not include any mention of "ideology" and was aimed at reasonable care requirements to avoid algorithmic errors that would substantially impact decisions related to areas such as employment, housing, health care, and basic government services.[55] In fact, the law defined "algorithmic discrimination" as an "unlawful differential treatment or impact that disfavors an individual or group of individuals" on the basis of such things as age, race, gender, religion, or veteran status, and specifically states that "algorithmic discrimination does ***not*** include [emphasis added]" such things as "expanding an applicant, customer, or participant pool to increase diversity or redress historical discrimination."[56] As such, it was clear that the law was not designed to promote DEI, but rather to curb unlawful discrimination. It is difficult to see how it could reasonably be conflated with anything affecting

"ideology" or "ideological bias."[57] The law was not about encoding bias, but instead intended to avoid discrimination based on factual error.

The preemption strategy laid out in the executive order was set to begin with the formation of an AI Litigation Task Force in January of 2026, whose "sole responsibility" was to "challenge State AI laws" that were "inconsistent" with the Administration's policy.[58] In Section 4, the order also directed the Secretary of Commerce to publish an evaluation no later than March 2026 that identified state laws in conflict with the Administration's AI policy, "or require AI models to alter their truthful outputs, or that may compel AI developers or deployers to disclose or report information in a manner that would violate the First Amendment."[59] While it is more easily understood what would violate the First Amendment – any governmental action that censors or compels expression – the order's language about not altering their "truthful outputs" is unclear, and curious. Does it assume that algorithms and AI are always accurate and thus, "truthful," or is it another reference to what seems to be the Administration's belief in the censorship industrial complex conspiracy theory that government actors and academicians are altering algorithms to squelch conservative content in favor of liberal narratives, or both? Unfortunately, the order does not operationally define its terms or provide any examples to substantiate what otherwise appears to be a misplaced assumption. Nonetheless, Section 5 of the order tasked the Secretary of Commerce to issue a public notice to states with what the Administration considers to be "onerous AI laws" that they will no longer be eligible for remaining federal monies from the Broadband Equity Access and Development Program (BEAD).[60] Furthermore, the order directed other federal agencies to assess their discretionary grant programs and condition such funding to states on the absence of any AI law that conflicts with the Administration's policy. In other words, agencies would withhold any federal funding to states within their discretion if the Administration disfavors any of the state's laws about AI. Section 6 of the order called on the chair of the FCC to initiate a proceeding to consider adopting federal reporting and disclosure standards for AI that would preempt state laws, and Section 7 asked the FTC to issue a policy statement explaining the conditions under which the Administration's policy would preempt any state law that requires "alteration to the truthful outputs of AI models."[61] Perhaps the Administration's expectation was that the FTC would later articulate what it meant by state laws requiring modification to AI outputs that would violate the announced policy.

In sum, it seemed that the President's policy preferences were still obsessed with content standards despite the lack of First Amendment justification, while also wanting to usurp any authority from states imposing

any form of legal restraint on AI without regard to the numerous risks and harms associated with its deployment. As such, it stands in sharp contrast to the regulatory approaches favored by a broad coalition of state attorneys general, as well as several bills percolating in Congress. The President's executive order was issued just about two weeks after a letter from 36 state attorneys general to Congress stating their opposition to a moratorium on state laws addressing AI.[62] The letter mentions their concerns about AI-generated scams that involve deepfakes and social media profiles, as well as "sycophantic and delusional generative AI outputs" and the harms they create.[63] Citing their previous letter to Congress earlier that year, the coalition of state attorneys general noted that states have pioneered "narrowly tailored laws" that "protect against AI-generated explicit material, prohibit deep-fakes designed to mislead voters and consumers," as well as ensure notification and privacy provisions.[64] The letter emphasizes that a broad federal preemption of state AI laws is "ill-advised" as AI technologies, along with their risks and harms, are constantly evolving, and effectively addressing these concerns requires a more agile regulatory approach.[65] Ultimately, the state attorneys general called for a more cooperative approach between the federal government and the states, which was remarkably different from the adversarial and punitive tone in the President's executive order and national policy proposal.

The state attorneys general also suggested that regulatory innovation was best left to the states. California, where many Big Tech companies are located, has led the way in establishing AI rules on several fronts, including a gubernatorial executive order and advancing several bills in its state house, despite the Trump Administration's push for federal preemption.[66] While California Governor Gavin Newsom's executive order is limited to tying state contracts with tech companies to "policies and safeguards to protect public safety while preventing the misuse of their technologies," the numerous bills in the California state house involve other, more robust regulatory avenues.[67] Perhaps most notable among these are California Assembly Bill 2023 and Senate Bill 1119, which would establish safety standards to protect children from harmful content generated by AI chatbots.[68] These new bills build off California's cyberbullying law that was passed a year earlier. Furthermore, they come after a federal judge struck down California's most vigorous efforts to tackle political deepfakes online. That law required social media companies to remove user-posted deepfakes of political candidates within 60 days before an election.[69] However, the judge did not address any First Amendment arguments and relied solely on Section 230 of the CDA, which protects any interactive computer service operator from liability for third-party content posted on its platform. The

Trump Administration is looking to expand this notion of preemption to other areas of AI and algorithmically churned content.

Moreover, the Trump White House is also pushing back on Republican-led AI bills, even in red states like Missouri, Nebraska, Tennessee, and Utah.[70] While many in the Grand Old Party (GOP) at the state and federal levels, along with a growing amount of the public, support for regulatory oversight of AI and Big Tech, Republican lawmakers are reluctant to defy Trump. The GOP-backed bills in Nebraska and Tennessee are similar to those in blue states, such as California and New York, further indicating broader bipartisan support across the U.S.[71] Reporting in the *Wall Street Journal* has described the public's rising rebellion against unchecked enthusiasm over AI.[72] Meanwhile, the Trump Administration has yet to get Congress to pass a federal regulation preempting state AI laws, and has won only some modest concessions from the states, which seem mostly semantic in nature. For instance, in Tennessee, Republican State Senator Ken Yager, sponsor of the "Artificial Intelligence Public Safety and Child Protection Act," claimed the bill was amended "at the suggestion of the White House," adding that the proposed law is not "broad AI regulation…. Only chatbots."[73] Of course, modern chatbots (the ones sparking all of the concern about their interactions with children) are, in fact, AI.[74]

When states refuse to comply with the Trump White House's wishes on AI regulation, the Administration is threatening to withhold its BEAD funding. In Missouri, state lawmakers' efforts to enact safeguards around AI's use – including chatbots, campaign advertisements, and other areas – have stalled amid fears that any new AI-related law would jeopardize nearly $900 million the state is expected to receive in federal broadband funds.[75] Although one Republican-backed bill in the state would prohibit AI from being granted legal personhood and prevent someone from marrying an AI partner (policies that would seemingly fit a politically conservative agenda), the subsequent debate over the bill has focused on concerns that President Trump would withdraw federal money that is needed for high-speed internet access in rural areas in retaliation for contravening the Administration's preferences.[76] However, some policy analysts believe the Trump Administration's tactics are illegal because the National Telecommunications and Information Administration (NTIA) "cannot use these funds to demand compliance with unrelated policy preferences."[77] Under the anti-commandeering doctrine established in *Printz v. United States*, the Supreme Court said that the Tenth Amendment to the Constitution prohibits the federal government from issuing direct demands to states, which the Administration appears to be doing through its order.[78] The NTIA cannot withhold "BEAD funds to substitute indirect coercion for the direct commands it lacks the constitutional authority to issue."[79]

The irony should be noted again that this kind of coercion is precisely what the Trump Administration accused its predecessor of doing – unlawfully forcing its policy preference where it does not have the authority to do so. The only way that the Trump White House could implement its preemption strategy on state AI laws would be through a new federal law, which requires Congressional action and, at the time of this writing, has yet to materialize.

Perhaps, part of the reason for the slowly developing federal action is that Trump Administration has missed a few of its own deadlines established in its 2025 executive order, which has raised "doubts about how forcefully the administration can follow through on its push to rein in states on AI regulation."[80] The Secretary of Commerce has not produced a report – due in March 2026 – that was, at a minimum, expected to

> identify laws that require AI models to alter their truthful outputs, or that may compel AI developers to disclose or report information in a matter that would violate the First Amendment or another provision of the Constitution.[81]

Perhaps that is because there were no such state laws. The FTC also missed the same deadline to produce a policy statement that "must explain the circumstances under which State laws that require alterations to the truthful outputs of AI models are preempted by the Federal Trade Commission Act's prohibition on engaging in deceptive acts or practices affecting commerce."[82] Even though the Trump Administration produced its proposed national policy framework for AI, it was big on bluster about AI dominance and obsessed with an unsubstantiated conspiracy theory, but offered little, if any, detail about how to achieve its ends. Furthermore, its agenda dramatically diverges from the calls for greater responsibility and accountability in the development of AI coming from a growing chorus of the public and bipartisan members of state and federal legislators. As an Axios report observed, the Trump Administration's proposed policy framework offered "no roadmap" on how to reach its destination, and exposed a widening rift between the White House and Congress over AI and Big Tech.[83]

The Rift between the White House and Congressional Republicans over Big Tech and AI

While the Trump Administration has opposed any meaningful AI regulation and pushed for a laissez-faire approach that will not hinder development and innovation, a more socially conservative bloc of Congressional

Republicans has remained "deeply suspicious" of Big Tech since Barrack Obama's presidential administration, and concerned about AI's risks and harms, such as children interacting with chatbots.[84] President Trump's AI and crypto czar, David Sacks, has argued that state laws are burdensome to innovation, and the White House wants Republicans to push ahead despite internal gridlock over Big Tech.[85] However, old political grudges are not the only things driving the movement. The right-wing powerhouse Heritage Foundation has thrown its support behind the Alliance for a Better Future, an advocacy group formed in March 2026 to support strong AI safety rules, especially for children.[86] The Alliance plans on spending at least $10 million in the year ahead to urge Congressional Republicans to oppose the Big Tech backers in the Trump Administration.[87] Although the bipartisan "Take It Down Act" passed in 2025 has already netted its first conviction, the Alliance's formation and financial backing suggest that more still needs to be done to protect children and others from harmful AI.[88]

As the inner rift between Trump and Republicans in Congress and state houses continued, Democrats introduced bills in the House and Senate that would repeal Trump's 2025 executive order, "Ensuring a National Policy Framework for Artificial Intelligence." The companion bills, both titled "Guaranteeing and Upholding Americans' Right to Decide Responsible AI Laws and Standards Act" (or "GUARDRAILS Act"), would protect states from having federal BEAD funds withheld by the Trump Administration for enacting regulatory safeguards around AI.[89] Although no Republicans co-sponsored the bill in either chamber, its passage would achieve what a coalition of state attorneys general and red state lawmakers have asked for: an ability to enact timely, narrowly tailored state laws without risking the loss of federal broadband funds. Because Republicans controlled both chambers of Congress when the bills were introduced, neither can reasonably be expected to advance out of committee due to political partisanship or Republicans not wanting to defy President Trump, who has successfully orchestrated primary campaigns against fellow Republicans in Congress and at the state level who have opposed him on political or policy issues.[90] However, lame-duck Republicans in Congress, such as Representative Thomas Massie of Kentucky, may be more likely to oppose Trump's policy directives while they finish out their terms in office, now that their political fates have already been sealed. Heading into the mid-term election in 2026, there was a growing sense that the pocketbook issues related to AI, such as the cost of data centers and fears about job loss to AI, as well as the other societal risks associated with chatbots and the need for oversight of Big Tech industries, would be pivotal issues for the electorate. There is a growing sense that Democrats are also split over which of these

to focus on.[91] At any rate, a comprehensive AI bill from either party or a bipartisan effort should not be expected in the foreseeable future.

The Enduring Legacy of Neoliberal Economic Philosophy from the Telecommunications Act of 1996 to AI in the Post-Truth World

Although the politics of the policymaking process has frustrated Congressional efforts to address AI in a meaningful way, former FCC chairperson Reed Hundt believes that effectively addressing the many challenges posed by AI "is critical to rebuilding trust in American government."[92] In an article for the American Enterprise Institute, Hundt reflects on the passage of the Telecommunications Act of 1996 (TCA), which occurred while he was chair of the FCC, and compares that period of time when the media industries were undergoing a revolutionary change to the current rapid development of AI. The 1996 TCA was the first major rewrite of media laws in the U.S. since the Communications Act of 1934, and it embraced a broad neoliberal economic philosophy that minimized federal regulations.[93] While romanticizing the bipartisan effort to produce a comprehensive overhaul of media policy, Hundt's call for such an endeavor to address AI appears to be unaware of the growth of political polarization and epistemic alienation in the thirty years since the TCA's creation, which predominate the post-truth world.

However, his observations about the "unhappy surprises" that have developed with Section 230 of the CDA, which was included in the TCA, were more useful in understanding the current moment:

> A big unanticipated outcome of the widespread deployment of the Internet was that the social media dominated the platform. These firms should have been subjected to a national regulatory regime. Instead, their negative effects have gone unaddressed.[94]

As noted earlier, Section 230 provides broad immunity for interactive computer service operators from harms caused by third-party content posted to their networks. In doing so, social media companies have no legal obligation to moderate content on their platforms, including AI or human-generated dis- and misinformation. Section 230 was intended to encourage growth and innovation, which was believed to be best served by the lack of burdensome regulations. But as Hundt quipped, "[t]he road to legislative hell is often paved with good invention."[95] The promise of the internet in the mid-1990s was a digital and more utopian marketplace of ideas. While the business models and algorithms of social media platforms

aggregate commentary in the way that the authors of Section 230 might have imagined, "cons, scams, and cruelty" have become a significant part of the content that is churned, which is not the fault of the technologies, but they have made some of the worse parts of human character "more manifest, and at scale."[96]

Hundt also bemoans the "unanticipated … consolidation of markets" after the TCA, believing that "self-perpetuating competition" would prevail.[97] Instead, the legacy media markets (broadcasting, film, and music) have become more consolidated, and a handful of entities have dominated in the newer markets involving social media and Big Tech. While this author would quibble with former chairman Hundt that this development should not have been "unanticipated," as a decided faith in neoliberal economics and market efficiencies shaped the formation of the TCA during his chairmanship of the FCC, as well as its implementation.[98] Perhaps, his faith in the "invisible hand of the market" has since been shaken, but there were a number of critical political economists who were anything but surprised by how media behavior and content have developed since the TCA.[99] One analysis of the media ownership studies that the FCC commissioned to justify further relaxation of media ownership rules after the TCA showed that the agency relied on a disproportionate number of economic studies that favored market efficiencies, and suppressed studies that raised other public interest concerns.[100]

However, former chairman Hundt seems to understand the negative impact that market efficiencies have on the quality media content. Invoking Metcalfe's Law, Hundt describes the weakness of even antitrust theories to address modern media consolidation, especially when they involve two-sided social media platforms that attract users on one side and push paid content from the other side to those same users.[101] With consolidation in the "attention market," Hundt asks if Section 230 protects AI agents that create and promote content to users "even if they extinguish rivals and dominate our consciousness?"[102] Hundt presses the need for a benevolent and independent FCC to address future challenges – a vision he believes he had when the TCA was created, though the agency still lacked foresight about the nature of technology and power without suitable regulatory oversight.

Another former FCC chairperson, Tom Wheeler, added to the list of shortcomings in the TCA's formation that has hampered regulatory efforts with AI – it did not address how unfettered corporate interests would shape the structure and character of "the newly emerging internet" at the time.[103] While the laissez fare policy fostered innovation, it also allowed a few powerful companies to create "vertically integrated closed ecosystems" that ultimately protected their position of dominance "against the very kind of upstart competition that had enabled their own rise."[104]

Even worse, "the online platform companies transferred the social costs of privacy infringement, misinformation, polarization, effects on children and other harms to the public at large."[105] Taken together, Hundt and Wheeler's observations should be a clear warning that the hands-off approach in the name of innovation that is being forwarded by the Trump Administration is wrongheaded and destined for evermore destructive societal consequences. As Wheeler put it,

> In 1996, Congress sought to legislate a transition by prioritizing competition. Now, in the AI era, we face an even more consequential transition. The stakes are not merely market structure or consumer pricing. The stakes extend to … national security, democracy, and the control of the tools of knowledge itself.[106]

If they are going to meet the moment, Democrats and Republicans in Congress need to put political interests aside to work together and develop a forward thinking and comprehensive national policy to curb the ill effects of AI and disinformation.

However, in the current political climate, this seems unlikely. Even though there has been a common refrain among Republicans and Democrats about the need to revise Section 230 of the CDA, their verses about what the problem is and how it should be fixed vary widely, especially when it involves content.[107] One solution that a Facebook whistleblower has proposed would involve revising Section 230 to make social media platforms responsible for their algorithms that are used to rank content with the aim of getting rid of engagement-based rankings, which tend to feed emotionally charged dis- and misinformation as well as other harmful content.[108] Alternatively, allowing states to develop their own policies to manage the problems associated with AI and disinformation could yield some useful case studies. The remaining questions are whether Congress is willing to confront the concentrated power of Big Tech in the same way that many states have begun to do, and whether the Trump Administration will succeed in thwarting those efforts from the states. The unfortunate state of partisanship and polarization in American politics today though will surely frustrate the former and spur on the latter.

To Know the Future, Study the Past: Social Media Companies and Big Tech Will Put Self-Interest over the Public Interest

Another lesson that can be derived from both Hundt and Wheeler's essays is that social media and Big Tech companies cannot be relied on to be consistent, benevolent, self-regulating actors. As Wheeler conceded, it was "a

predictable pattern of corporate behavior" after the 1996 TCA that contributed to the social ills of misinformation and political polarization, as well as the loss of privacy and lack of regard for children that we are experiencing today; and "many of those same companies" are poised to "manifest that same behavior again" with AI.[109] Consider Elon Musk's frivolous lawsuit against Sam Altman, who co-founded OpenAI with him in 2015. While OpenAI's mission was, ostensibly, to ensure that AI "benefits all of humanity" and counter what seemed to be Google's pre-ordained dominance of the technology, it did not take long before internal power struggles took over.[110] After leaving the company, Musk accused Altman, its CEO, and its executives of abandoning OpenAI's original principles of prioritizing safety over profits. However, this case represented more than a petulant feud among corporate techies and raised more consequential questions about how AI ought to be governed. As reported in *The New Yorker*, the most basic question was "whether the transmogrification of OpenAI from a safety-minded nonprofit into a ravenous corporate" entity occurred by "cynical intention or merely in outcome."[111] Based on the lessons learned from the legacy of the TCA, either answer – cynical intention or mere outcome – is equally problematic and should cause lawmakers to abandon the policies of laissez fare and industry self-regulation because the financial incentives of private actors will always supersede social responsibility.

Although a jury ultimately barred Musk's suit due to a statute of limitations, his philanthropic claims ring hollow when considering his endeavors with xAI, which he founded in 2023. xAI developed the chatbot, Grok, which was used by online agitators in a spree to digitally undress people and post their images on Musk's social media platform, X.[112] Most of the victims of the pornographic deepfakes were women, and some cases even included children. When questioned about whether X bears some responsibility for what happened, Musk was quick to shift blame back on to the users that posted the content.[113] X would also be protected in this case by Section 230 of the CDA, which Musk used to challenge state laws in California and Minnesota that prohibited political deepfakes.[114] With the passage of the "Take it Down Act" in 2025, online outlets now have 48 hours after a request to remove nonconsensual sexual images posted on their platforms by third parties, or face action by the FTC. While the law only applies to nonconsensual sexual images, it does demonstrate that social media companies could remove political deepfakes or disinformation from their platforms if they chose to (without being required by law). However, political deepfakes – just like emotionally charged dis- and misinformation – drive user engagement, and profitability, and thus are good for business.

The social media and tech industries' political interests often intertwine with their business interests (as we discussed in Chapter 3). Surely, it was

not by coincidence that Meta dropped its fact checking program across its social media outlets after Trump was elected for a second term. While acknowledging the impact of the 2024 election on his decision to the program, Meta's CEO Mark Zuckerberg even parroted Trump's talking points about media censorship.[115] Larry Ellison's growing media empire includes Oracle software, Paramount Skydance (which owns CBS), a stake in TikTok, and likely Warner Bros. Discovery (which owns CNN) once that deal is approved. Media empires such as his are not just about economic efficiencies, they also have a clear motive to shape public discourse in ways that are preferable for their political interests.[116] As Paddy Leerssen put it for Tech Policy Press, "[f]or politically active billionaires and their allies in the US government, social media platforms are increasing seen as instruments of political power." Aligning content moderation practices with the preferences of the current Trump Administration poses an avenue for both financial and political success.

To be fair, even when interactive computer services that are protected by Section 230 of the CDA do endeavor to act benevolently and cull dis- and misinformation from their platforms, it can be an uphill struggle. For instance, volunteer editors at Wikipedia continuously work to correct AI-generated errors on their site, but it is a lot like playing whack-a-mole. Suspicious edits, entirely new articles with errors, and others with made-up citations are all "hallmarks of AI-generated writing" that keep popping up on the popular online encyclopedia.[117] When it comes to policing disinformation in particular, social media companies may also fear backlash from the Trump Administration with accusations of being part of the censorship industrial complex. Sadly, correcting dis- and misinformation with fact checking may not be good for business, at least under the current administration.

Furthermore, there is no voluntary common code of best practices for social media platforms to counter dis- and misinformation. Social media companies do not have professional organizations – like the Society of Professional Journalists or the Radio Television Digital News Association in journalism and news media – that determine ethical codes members are expected to follow. Such an organization could set professional standards about the use of engagement-based algorithms, labeling and fact checking third-party content, and so on. However, social media companies do not see themselves as journalistic organizations, and they do not share the same kind of calling that journalists do, which would compel them to a common set of professional rules that everyone would be bound by. Rather, these are rival businesses and if one social media company uses engagement-based algorithms, the ones that do not – because a professional code of ethics (and not the law) prohibits it – will be at a competitive disadvantage and antithetical to their mission.

With neither comprehensive government action nor socially responsible industry self-regulation on the horizon, social media users could take more responsibility for the integrity of information that they consume. Social media companies have their own terms of service that we must click "agree" to before using their platforms. Consumers could exercise their own judgments about the credibility of the content that they may encounter on those platforms and accept the buyer beware adage. However, public perceptions about who is responsible for dealing with dis- and misinformation vary.

The Problem of the Public: Perceptions about Journalism, Politicians, and How to Fix Dis- and Misinformation

A 2019 study by Pew Research Center showed that a majority of Americans found fake news and misinformation to be a more significant problem than even hot-button issues like illegal immigration and terrorism. They blamed politicians for the situation, but somehow expected journalists to fix it.[118] In the post-truth era, however, when the very institution of journalism itself has (at least in the view of this writer) been unfairly maligned as public trust in the news media has steadily faded. All the high-value, in-depth, and investigative reporting and fact-checking in the world cannot overcome fake news, pink-slime journalism, sophistic disinformation campaigns, or misinformation and bullshit in the digital marketplace of ideas unless news audiences appreciate, value, and are primed to engage in reasoned discourse and critical thinking. The problem is an epistemic one. For example, people tend to have more confidence in their own ability, over others, to assess the accuracy of a news report.[119]

While public confidence in journalism has continued to erode, it now expects politicians (the same politicians it blamed for the situation earlier) to fix it. In the aftermath of the coronavirus pandemic in 2020 and the impact that misinformation had on the public health crisis, a 2021 Pew study found that nearly half of Americans were open to the idea of "the U.S. government taking steps to restrict false information online," and a majority (59 percent) favored technology companies limiting access to misinformation on their platforms.[120] However, partisan support for specific governmental efforts to mitigate false information (even from foreign actors), such as the failed Disinformation Governance Board, likely depends on the party in office when those actions are proposed and implemented. As the Pew study cited above also observed, there are notable partisan differences within those figures as more Republicans disfavor governmental or industry restriction of false information.

Industry support for self-regulating false information on their own platforms has also been uneven. During the coronavirus pandemic, some social media companies like Twitter made an effort to label and fact-check dis- and misinformation on their platform, and after the January 6, 2021 Capitol riot, it suspended over 70,000 accounts that spread misinformation which fueled the violence that day.[121] The problem, of course, is that the rectification comes after dis- and misinformation has taken hold, and the damage is already done. Also, Twitter's efforts were frustrated by a flood of coordinated malicious reports by far-right activists who targeted anti-extremist researchers and journalists.[122] The reports falsely accused the very people who were researching and reporting on dis- and misinformation of violating Twitter's terms of service at the time, which led the company to wrongly suspend their accounts. Even in a post-Trump presidential administration, industry self-regulation (even with the best intentions) may not solve the effects of dis- and misinformation.

For the moment at least, the impact of dis- and misinformation in the post-truth era may be irreversible. There are powerful political interests that are served by disinformation campaigns, which are fed by algorithms that drive engagement and profitability for social media industries. Algorithms churn the most divisive content that only furthers political divisions, and political interests play on those wedge issues. Meanwhile, confidence in government, journalism, science, and academic expertise is steadily withering. Post-truth politics is not about the truth at all. It's about what achieves a desired political end. This leads us to consider a larger question about patently false information, especially when it is harmful, and free speech. As we will see in the following chapter, the First Amendment has presented a separate impediment to potentially regulating AI and algorithms, as well as disinformation and other forms of false expression.

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5

TRUTH, FALSITY, THE FIRST AMENDMENT, AND AI

This chapter explores in greater detail the history of free expression as provided under the First Amendment to the U.S. Constitution, including the popular "marketplace of ideas" metaphor, which often justifies minimal government regulation of speech. Using critical legal and political-economic analysis to understand the production and dissemination of false information, and more importantly to those whom it most often inaccurately describes and defines, we can see the limitation of the marketplace of ideas metaphor. For instance, factual speech may not have the same level of prominence as false speech, and instead, we can see where there is market failure in the digital dissemination of ideas. Inaccurate data, like misinformation, is easy to access and convenient to believe, but not victimless.

Accordingly, in U.S. jurisprudence, we must rethink the limited, absolutist notions of the First Amendment as merely a limitation of government power, and instead, conceptualize data accuracy as a matter of personal, social, and political justice. Consider the Supreme Court's 1992 ruling in *R.A.V. v. City of St. Paul*, which found that a local hate speech law was a form of viewpoint discrimination.[1] However, a concurring opinion by Justice Byron White argued that the majority ignored earlier jurisprudence "that certain categories of expression are 'not within the area of constitutionally protected speech.'"[2] This draws attention to certain categories of speech that the Court has held are outside the scope of First Amendment protection, such as obscenity, and child pornography. Could false political speech fall into this category?

The harm caused by patently false expression would have to outweigh the individual right to express false ideas. While words may not cause direct

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physical damage, false words in our news and information streams can have negative effects in our political and economic lives, just as the courts have recognized that fraudulent expression has financial consequences; that child pornography that involves actual kids in its production hurts those children; and that libel (false defamatory speech) damages individual reputations. Words matter, expression has consequences, and malicious false information poisons our public discourse and injures our democratic self-governance. What we must ask ourselves are several questions: does patently false information deserve the same kind of First Amendment protection as demonstrably factual information; and what are the effects of maliciously false speech? Can our public health survive another crisis after the wave of dis- and misinformation like the one that plagued our social media during the coronavirus pandemic of 2020? Can our democracy withstand another "Big Lie" about election fraud like the one that sparked the Capitol riot on January 6, 2021? What are the long-term effects of conspiracy theories, fake news, foreign dis- and misinformation attacks on our public discourse, especially with trust in our epistemic institutions at an all-time low? How will our country effectively produce and disseminate knowledge when science and research are dismissed?

These questions may seem enigmatic. As John Anderton explained the paradox of pre-crime enforcement in the novella, *Minority Report*: "We claim they're culpable. They, on the other hand, eternally claim they're innocent. And, in a sense, they are innocent."[3] Likewise, we are imagining serious societal harms, but ones that have yet to fully materialize. Ideally, we would like to prevent the problems that can cause irreversible damage if they occur. We are trying to fix the future.

Disinformation Discourse, Fake News, and Falsity in the Marketplace of Ideas

Throughout the 20th century, it became broadly accepted in jurisprudence to rely on the marketplace of ideas metaphor when weighing the constitutionality of laws that would infringe upon free expression. The metaphor assumes that the truth will inevitably emerge in a free and open exchange of ideas. However, in the age of post-truth, knowing the difference between what is real and what is fake, as well as between what is true and what is false, has become increasingly problematic, which calls into question the usefulness of the marketplace of ideas metaphor.[4] Similarly, the U.S. "First Amendment tradition has valorized the notion of 'counterspeech'" as the most effective remedy against the production and dissemination of false information.[5] The counterspeech doctrine is a way to redress the effects of hateful expression or false information without

infringing the First Amendment rights of the speaker. Critical analysis of the counterspeech principle has been applied to news media and questions whether "legitimate news will systematically win out over false news."[6] However, I will apply the counterspeech and marketplace of ideas theories to the production and dissemination of false information through private online networks, and consider more carefully its individual impact on who it inaccurately describes, who believes, as well as the collective impact on our society.

Countering Counterspeech

One of the limitations of the counterspeech remedy is that factual speech may not have the same level of prominence as the false speech that created the problem. While this has been a notable issue with news media, the same could be said for false information embedded within personal data. As Nahid Noori learned, correcting errors in one's personal financial data files "can be a hellish task" because the institutions that collect, vend, and use that data "are not likely to be held accountable to the harm caused to an individual" when those errors occur.[7] Even though Bank of America (BoA) had erroneously reported Noori as deceased to multiple credit reporting agencies, causing subsequent credit applications to be denied, including a home mortgage, a California court dismissed her lawsuit against BoA.[8] Among the reasons for the dismissal was the court's acceptance of BoA's assertion that it followed reasonable procedures for credit reporting that were in alignment with industry standards. Apparently, BoA had no obligation to correct the record even though Noori had alerted the company of the error. So, how is Noori supposed to counter that with more speech? Unless her financial records are corrected, there is no material way to fix the error.

Similarly, we might question how to best counter dis- and misinformation. Although there may be other outlets for counter expression, it does not ensure that accurate information will reach the audience that initially received the first piece of dis- or misinformation, especially in the age of online information bubbles. In its 1988 decision in *Hustler Magazine, Inc. v. Falwell*, the Supreme Court said that public figures and officials have access to an expanse of media outlets to counter false and malicious speech made about them.[9] However, this remedy fails in the networked architecture of online environments without some level of enforcement, especially for false or defamatory personal data.

If financial institutions have no legal requirement or incentive to accurately curate their data, what obligation will social media companies, or other purveyors of dis- and misinformation, have to information integrity,

particularly when the inaccurate information serves their political or financial interests? Under the First Amendment, courts are loath to compel speech from an entity, but there are some exceptions. For instance, in *Zauderer v. Office of Disc. Counsel*, the Supreme Court ruled in 1985 that the government may compel commercial speech in certain situations, such as preventing deception to consumers.[10] While it would be widely seen as unconstitutional for the state to compel an individual speaker to correct dis- or misinformation that they may post or share on social media, an argument could be made that the same standard does not apply to commercial platforms that vend third-party content. However, Section 230 of the Communications Decency Act (CDA) protects social media companies from liability for third-party content, and thus, would have little if any legal obligation to correct even patently false information posted on their platforms.

In digital spaces, the idea of counterspeech is ineffective in practice without some kind of "fairness doctrine" that ensures its enforcement on the same outlet that the speech being countered initially occurred on. A more effective example of counterspeech was the (now defunct) Fairness Doctrine that required U.S. television and radio broadcasters to provide competing perspectives on issues of public importance.[11] The Fairness Doctrine was in accord with the popular notion that more speech is better than censorship to counter false or harmful information, as well as the marketplace of ideas metaphor. One corollary of the Fairness Doctrine was the Federal Communications Commission's (FCC) personal attack rule, which required broadcast stations to notify and provide individuals or groups a reasonable opportunity to respond to condemnations of their integrity that occurred on the station's air while discussing controversial issues. The doctrine and attack rules were the only forms of compelled speech regarding discourse about public affairs. Although the Supreme Court upheld the constitutionality of the Fairness Doctrine and personal attack rule in its *Red Lion Broadcasting Co., Inc. v. FCC* decision, the FCC stopped enforcing them in 1987, and both were later removed from the federal register.[12] The Fairness Doctrine and its corollary rules only applied to the broadcast medium based on the dual belief that the electromagnetic spectrum, which is used for over-the-air broadcasting, belongs to the public, and broadcasters should therefore serve the public interest, as defined by the FCC.[13] Perhaps, another medium-specific rationale could support a "fairness doctrine" of sorts for online environments, although such a development is highly unlikely during the Trump Administration. Additionally, there are First Amendment protections that are often afforded to informationally false expression.

The Supreme Court has recognized First Amendment protection for varying types of unsavory expression, including lies. In *U.S. v. Alvarez*,

the Supreme Court plainly said that "falsity alone" does not render speech outside the scope of First Amendment protection.[14] Invoking the marketplace of ideas metaphor, the majority said that the "remedy for speech that is false is speech that is true.... The response to the unreasoned is the rational; to the uninformed, the enlightened; to the straight-out lie, the simple truth."[15] But this answer is not so simple in post-truth in which dis- and misinformation are garnering more algorithmic churn online, and the emotional has overtaken the rational. What about disinformation campaigns that promote intentionally false information to support their own political or financial interests? What benefit is there to protecting patently false statements that inflict real harms (such as to public health), or sews informational chaos, political discord and polarization, or that makes us individually and collectively ignorant? Will the marketplace of ideas correct these ills?

Correcting the Market of Ideas

The first use of the marketplace of ideas metaphor in First Amendment jurisprudence is typically traced to Justice Oliver Wendell Holmes dissenting opinion in the Supreme Court's 1919 decision in *Abrams v. United States*, and then to Justice Louis Brandeis's concurring opinion in the *Whitney v. California* case just eight years later.[16] The two opinions "comprise the seminal texts in the cannon that now includes hundreds of decisions by the Supreme Court of the United States interpreting the core of the American free speech tradition."[17] The marketplace theory that derived from these opinions often favors an open and robust exchange of ideas, no matter the quality, value, or offensiveness of the speech in question. Even expression without any credible redeeming value, such as lying about military honors or depictions of animal cruelty, receives "robust First Amendment protection."[18]

However, there have been philosophical divides between jurists about the relationship between free speech and concern for order and morality.[19] While preferring free expression over government censorship, adherents to order and morality theory will also accept limitations on speech in narrowly defined and limited sets of circumstances, such as fighting words, false and malicious defamation, or the Fairness Doctrine in broadcasting. At the same time, First Amendment philosophers such as Alexander Meiklejohn and William Ernest Hocking have also agonized over the relationship between free expression and self-government.[20] Based on his analysis of each author's primary work, Stephen Bates argued that Hocking saw the central problem as publishers spreading what he believed was "bad information," while Meiklejohn was more concerned about "government officials trying

to stop the spread of what they consider bad ideas."[21] To apply their relative concerns to the problem of dis- and misinformation, Hocking would likely focus on the poor quality and harm caused by fake news and pink slime journalism, while Meiklejohn would take umbrage with efforts to deal with the problem, such as the short-lived Disinformation Governance Board during the Biden Administration. However, Bates argued that both Hocking and Meiklejohn believed

> that self-government is the principal purpose of freedom of speech, that the rights of listeners are paramount, that the state plays an essential role in facilitating the system of free speech, and that public political deliberation requires a more formal structure than it currently has. From those shared tenets the two seem to go in opposite directions, with Meiklejohn calling for less regulation of speech and Hocking calling for more.[22]

Interestingly though, both philosophers had doubts about the marketplace of ideas model to satisfy their concerns. Hocking worried that the marketplace of ideas metaphor reduced truth to a mere "commodity" that would only serve "the greatest appetites of the greatest number."[23] Meiklejohn similarly disliked the marketplace comparison, rejecting the notion that the best ideas emerge just by competing as "intellectual laissez-faire."[24] Each of their dismissals of the metaphor also underscores the shortcomings of marketplace theory to satisfy contemporary concerns about the state of political discourse and knowledge online. Algorithms churn content, not based on quality nor accuracy, but rather on pure engagement. At the same time, social media users are consuming emotionally charged content, rather than engaging in the kind of reasoned discourse necessary for informed self-governance. Disinformation, fake news, pink slime journalism, and the like are not just low-value, junk food expression. It is unhealthy for our democracy and damages a fundamental precept of what free expression is ideally supposed to protect.

The Marketplace of Post-Truth

When the marketplace of ideas metaphor was first articulated in U.S. jurisprudence, the telegraph was the state-of-the-art communication technology at the time. Today, as Robert Kerr described, a central problem of the marketplace of ideas theory "lies in whether an effective framework can be developed for responding to particular uses of socially networked algorithms that are rapidly growing and infinitely more widespread."[25] The expanse of online content may give the appearance of a utopian marketplace

with endless varieties of expression to consume. However, a fundamental problem is that the marketplace model is premised on the idea that "people have the ability to eventually sort out truth from falsehoods, when able to access both. And yet, increasing evidence indicates algorithmic-driven social media seem to heighten and leverage an innate human appetite for false ideas."[26] In a pure marketplace analogy, the people are getting what they want. However, the people "want what they want to believe more than they want the truth."[27] This is the marketplace of post-truth; you can get what you want, but not necessarily what you need to be accurately informed.

Unlike the marketplace of ideas, the marketplace of post-truth is not just a single mass medium that distributes the same content to everyone. Rather, it is "an infinite array of microtargeted bubbles, cocoons and silos" that are constructed through "algorithmic programs so that within each, one falsity can be seamlessly woven upon another.... competing ideas are diminished or potentially eliminated – in favor of false or misleading variations of one's own preconceptions relentlessly looped back and choreographed."[28] In the marketplace of post-truth, everybody gets what they want to believe, whether it's real or not. Proponents of the marketplace of ideas may be fooled by the illusion of infinite information with unending content, choices, and possibilities, but the reality is that the algorithmic churn online and within social media platforms has reconstructed what used to be "media marketplaces into an array of narrowed and individualized burrows of fabricated reality."[29] And in reality, the marketplace of post-truth is antithetical to what the marketplace of ideas was supposed to be.

Consumers of information are not always presented with what is truth that can be separated from sophistic lies or falsity. Algorithms are only focused on attracting and holding people's attention for as long as possible by featuring more of the type of content that we engaged with previously.[30] With no regard for truth or falsity, algorithms make social media platforms a bullshit factory that spits out whatever easily keeps users' attention and is convenient for them to believe. There are no algorithmically generated warnings that tell users that the information put in front of them is false or misleading. Whether it is deepfakes, or "cheapfakes" that recontextualize media by circulating video clips out of context to intentionally distort their meaning, such as a video of former House Speaker Nancy Pelosi that was slowed down to make her appear drunk, platform companies have no obligation to remove or label them even when they are revealed to be doctored.[31] However humorous or harmless some specific examples may seem to some, the overall danger to the epistemic veracity of our public discourse is real. As Michael Cacciatore and colleagues suggested, users' reliance on algorithmically curated news feeds is reducing

political knowledge.[32] The sophisticated level of microtargeting leverages "inherent biases among online users," which may even "stimulate human appetite for false ideas," so long as it is what they want to believe.[33] Rather than journalists, scientists, and experts competing with partisanry, commentary, and advertising in an open arena, algorithms construct social media as an individualized space of friends, followers, and selective newsfeeds, which whittles down the range of information and ideas to that which is most easily accessible to its users.

The marketplace of ideas metaphor has been used to justify a policy of First Amendment absolutism under the belief that the truth can be sorted from falsity by an informed public within a single reality and engaged in collective reasoning to promote democratic decision-making. In contrast, the marketplace of post-truth is a panoptic missort of information with no regard for truth or accuracy that is curated by algorithms. It presents multiple realities and reifies individual beliefs, which discourages collective reasoning and furthers political polarization. Perhaps, the most significant distinction is that the marketplace of ideas theory was formed during a time when only humans had First Amendment rights. Since then, the Supreme Court has granted First Amendment entitlements to corporations, and now, some are suggesting that AI might be the next non-human entity to receive First Amendment protection.

Algorithmic Free Speech: 1A for AI?

Though most experts in AI deem chatbots as "stochastic parrots," their growing use for human therapy and life-coaching raises concern about the future of free expression.[34] However, if AI is considered sentient, do they have First Amendment rights? In an essay for the *Yale Law Journal*, Katherine Forrest, a former federal judge, considered the possibility that someday soon a court will be asked about granting personhood to AI, and therefore some form of First Amendment rights.[35] While the notion of legal personhood for AI may seem "absurd" to some, there is legal precedent for non-humans to be regarded as "people," since the Supreme Court has recognized corporations as having First Amendment rights.[36] Although it is beyond the scope of this book, and even this portion of the chapter to consider all of the ethical and legal challenges that AI personhood would pose, I would like to focus specifically on the allocation of First Amendment rights between human and non-human entities, such as corporations, and question the legally based relationships of power between the two.

The first time that the Supreme Court specified that the First Amendment protects corporate speech about matters of public concern was in its 1978 decision in *First National Bank of Boston v. Bellotti*.[37] The Court

noted its previous decision in *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council* where it recognized the public value of commercial speech.[38] Since commercial and corporate speech rights were initially predicated on their public value (hence, their value to the human public), it is reasonable to question whether non-human entities should have the same level of First Amendment rights as humans. In 50 years of jurisprudence, corporate speech rights have been shaped in three areas, including campaigns and elections, commercial speech, and conflicts between speech and privacy.[39]

Although there had been concerns about corporations unduly influencing election campaigns with their financial largess, the Court has steadily allowed more corporate activity in the political arena. Throughout its decisions in *Buckley v. Valeo*, *Austin v. Michigan Chamber of Commerce, McConnell v. FEC*, and *Citizens United v. FEC*, the Supreme Court often placed the value on the category of speech in question – political speech – as a justification for protecting corporate speech rights.[40] In these cases, the classification of speech (political speech) outweighed concerns about the identity of the speaker as human or non-human.[41]

The Court has also recognized the value of another category of expression – commercial speech. However, the *Virginia State Board of Pharmacy* and *Central Hudson Electric and Gas v. Public Service Commission of New York* decisions offered less protection for commercial speech than political expression.[42] While the state has to demonstrate a compelling government interest to override First Amendment protection for political speech, only a substantial government interest is needed to overcome First Amendment protection for commercial speech. Moreover, the Court found no First Amendment protection for false or misleading commercial speech, whereas political speech can be protected even when it is false or misleading.

Just as the Supreme Court has outlined the differences between the amount of First Amendment protection afforded to political speech compared to commercial speech, perhaps, it should also consider distinct privileges based on the identity of the speaker as either human or not, especially if it is AI. As discussed in previous chapters, there are explicit commercial interests in algorithmically churned content, and they are often intertwined with political interests. Should the First Amendment protect AI-generated or algorithmically processed disinformation or patently false expression as if it were the same as human opinion? In its *FCC v. AT&T* decision in 2011, the Court did not recognize a "personal privacy" right for corporations as it does for humans.[43] It can be inferred then that privacy meant something different for corporations in business than it does personally for humans. Likewise, it could be argued that disinformation and falsity

are different in commercial and algorithmic contexts than they are within human expression.

Another decision issued by the Court in 2011 offered a somewhat paradoxical view of corporate and commercial interests when it struck down a Vermont law in *Sorrell v. IMS Health, Inc.*[44] The state law prohibited pharmaceutical manufacturers, marketers, and data miners from attaining information about the drugs physicians were prescribing from the pharmacies that were filling them. The Court found the Vermont law to be an unconstitutional restriction of corporate speech while not engaging in balancing a compelling, or even substantial government interest in

> keeping down the cost of prescription drugs against the individual liberty of corporations to use physicians' prescribing information to market pharmaceuticals. The law seems to set an alarming precedent that corporate rights to information for commercial purposes is greater than … patients' interest in affordable medications.[45]

The *Sorrell* decision does not predicate corporate speech or commercial interests on their public value, but instead it seems to place greater value on business interests over personal ones.

As Justices John Paul Stevens, Ruth Bader Ginsburg, Stephen Breyer, and Sonia Sotomayor argued in their dissenting opinion in *Citizens United*,

> corporations have no consciences, no beliefs, no feelings, no thoughts, no desires. Corporations help structure and facilitate the activities of human beings … and their 'personhood' often serves as useful legal fiction. But they are not themselves members of 'We the People' by whom and for whom our Constitution was established.[46]

The same could be said for AI and algorithms. They structure online experiences and curate information for humans, but they are not the body politic. Corporations have a right to use these technologies, but that right should be predicated on responsible use that does not harm effective democratic self-governance.

AI and Algorithms as Content Moderation Systems

The argument against granting AI entities legal personhood has centered on who (or what) is potentially responsible for the results of their use.[47] For that matter, we should consider AI and algorithms' role as content moderation systems, without First Amendment rights of their own, and instead assess their role in facilitating harmful expression. As Kerr proposed,

"legal efforts to prevent algorithmic-media practices from undermining the viability of marketplace-of-ideas theory" could more easily be "grounded within the established First Amendment content-neutral and commercial-speech doctrines – rather than new doctrinal theory," such as legal personhood for AI.[48] From the analysis presented earlier in this chapter, it is clear that the marketplace of ideas metaphor can no longer stand on its own to justify First Amendment absolutism while ignoring the ever-growing threat of disinformation and malicious falsity to our political discourse in the marketplace of post-truth. For instance, the Supreme Court's 2025 per curiam opinion in *TikTok v. Garland* found that a law that required TikTok to be separated from Chinese control based on national security interests did not violate the First Amendment.[49] The ruling did not engage the specifics of the national security concerns presented. Rather, it accepted Congressional determination that foreign-based disinformation campaigns presented a national security concern, just as the Department of Homeland Security (DHS) did during the Biden Administration.[50] Accordingly, the *TikTok* case could establish an important precedent by recognizing that the First Amendment does not fully protect social media companies when their data collection and algorithmic practices risk causing real-world harm.

The *TikTok* decision raises other questions about exceptions to First Amendment protections for social media companies. Was TikTok a national security exception to First Amendment protection solely because it was held by foreign ownership at the time? What about Russian disinformation campaigns that have targeted American-owned social media platforms such as Twitter (now X) and Facebook? What about domestically based dis- and misinformation campaigns?

Although the Supreme Court has not taken these questions head-on at the time of this writing, its 2024 decision in *Moody v. NetChoice* may provide some indication of how the courts will consider content moderation practices and free expression in the future.[51] The *Moody* case involved challenges to a Florida law that would prohibit social media companies from deplatforming candidates running for public office, and to a Texas law that made it illegal for social media companies to censor user content based on its viewpoint. Both laws took shape after the 2020 election cycle when Twitter and Facebook suspended President Trump's accounts (as well as thousands of others) for spreading unsubstantiated claims about election fraud on their platforms that led to the Capitol riot on January 6, 2021. Twitter and Facebook had also moderated their users' posts, either by removing or labeling them as misinformation during the 2020 coronavirus pandemic, which Trump and other conservatives contended was censoring the political right.

While the Eleventh Circuit Court of Appeals enjoined Florida's content moderation law, the Fifth Circuit would have allowed the Texas law to take effect, thus creating a split among the circuits over a significant constitutional matter. In a unanimous decision, the Court vacated both the Eleventh and Fifth Circuit Court decisions because neither had conducted a proper First Amendment analysis and remanded them back to the lower courts for further review. In dicta, the Court noted that the First Amendment protects against compelled speech, such as being forced to "present and promote content" on social media feeds that the platform regards as "objectionable"; and added that the government cannot claim balancing the marketplace of ideas as a reason to compel content from private speakers.[52]

Although the *Moody* decision was primarily procedural in nature, it nonetheless has important implications for future cases. It suggests that social media companies may no longer be able to easily dismiss litigation using Section 230 of the CDA or the First Amendment as such broad defenses. Furthermore, it requires the lower courts to do a more nuanced analysis of how the First Amendment applies in social media environments. As Kyle Langvardt and Alan Z. Rozenshtein put it, "[d]icta or not … the majority clearly intended its framework to guide the lower courts on remand."[53] Of note, the Court likened content moderation to editorial discretion and asked the lower courts to consider which government interests would justify regulating content moderation. The Court emphasized that it

> has repeatedly held that type of regulation to interfere with protected speech. Like the editors, cable operators, and parade organizers this Court has previously considered, the major social-media platforms curate their feeds by combining "multifarious voices" to create a distinctive expressive offering.[54]

Furthermore, the Court also asked for a consideration of the different parties who would be affected by any such regulation, including the platforms and their users, as well as listeners and broader societal interests.[55]

A Shifting Legal Landscape for Online Media

One area that the Supreme Court has already reconsidered the breadth of what the First Amendment and Section 230 of the CDA will protect is the government's interests in regulating children's access to sexually explicit content online. A year after its *Moody* decision, the Supreme Court in *Free Speech Coalition v. Paxton* upheld a Texas state law requiring pornographic websites to vigorously verify the age of its viewers.[56]

Adult websites would now be responsible for verifying the age of its users through a government-issued identification card, or a third-party verification service. Under the broad protection of the First Amendment and Section 230 of the CDA, pornographic web operators had successfully resisted the imposition of age verification systems since the Court's *Reno v. ACLU* decision in 1997, and the *Ashcroft v. ACLU* ruling in 2004. In those cases, the Court applied the strict scrutiny standard to review the constitutionality of the laws in question.[57] However, Court's majority now said that the lesser, intermediate scrutiny standard of review was appropriate, noting the evolution in internet-based communications:

> With the rise of the smartphone and instant streaming, many adolescents can now access vast libraries of video content—both benign and obscene—at almost any time and place, with an ease that would have been unimaginable at the time of *Reno* and *Ashcroft II*.[58]

With the ease of access to obscene sexually explicit content online and the ability to require age verification without prohibiting adult access to those same materials, the Court reasoned that the Texas law advanced the "State's important interest in shielding children from sexually explicit content," and thus survived the intermediate scrutiny test under the First Amendment.[59]

There are some takeaways from the *Paxton* decision that may potentially signal a shift in the breadth of First Amendment protection for internet-based service operators, including social media and AI. Likewise, Section 230 of the CDA may no longer provide the broad shield from liability for third-party content on these platforms. Together, the Court's *Moody* and *Paxton* rulings suggest that the legal landscape around online media is shifting. However, we might question how dramatic the move could be when it comes to the thornier political issues involved in dis- and misinformation spread. Applying the strict scrutiny standard to a potential content-based restriction of patently false information, is it possible to narrowly tailor a law that would be the least restrictive means to meet a compelling government interest to lessen the impact of disinformation campaigns? That would likely depend on whether Congress articulated such a law as a matter of national security.

Perhaps, another way to answer the question will depend on how the courts perceive the proportional harm and the platform's liability. In a landmark verdict, a California state jury found Meta (which operates several social media platforms) and Google (which owns YouTube) negligent in the design of their apps and contributed to the plaintiff's alleged mental health issues.[60] The jury found that "features like infinite scroll and

content recommendation algorithms" contributed to the plaintiff's "addiction to social media as a child, which led to mental health issues like suicidal ideation and body dysmorphia."[61] Although Meta and Google are appealing the state trial court's ruling, the verdict was a groundbreaking moment for holding social media companies accountable for the effects of their algorithms.

In a New Mexico state court, a jury determined that Meta violated a state law by knowingly harming children's mental health and concealing what it knew about child exploitation occurring on its platforms. The verdict "signals a changing tide against tech companies" and the state government's "willingness to crack down."[62] In another setback for Meta, the U.S. Supreme Court rejected its appeal to set aside a Vermont Supreme Court decision that allowed a lawsuit alleging that Facebook and Instagram harmed young social media users through their addictive algorithms.[63] With thousands of similar cases going to trial, the law may be moving quickly in the years ahead. Although scientific research on social media addiction is developing more slowly than the number of lawsuits alleging its effects, under current product liability laws, "conclusive scientific evidence" is not necessary to prove that "products were unreasonably dangerous, that the defect led to the injury and that there is a safer design."[64] Appeals courts will likely be asked if Section 230 of the CDA will override the product liability claims, and thereby shield social media companies from further litigation. If it is the algorithm, and not third-party content that is causing the harm, Section 230 may offer social media platforms little protection.

Content Moderation and Hate Speech

As social media companies' protection under Section 230 may be weakening in product liability cases that involve harm to children, it has remained an effective shield against other tortious claims. For instance, the Ninth Circuit Court of Appeals stopped a lawsuit against Meta for failing to moderate hate speech on its platforms under Section 230 of the CDA, even though plaintiffs alleged that the platform's design contributed to real-world harm.[65] The disparity between seeing algorithms as contributing to addiction, but not necessarily to users' compulsion for the types of harmful content the algorithms are propagating is an interesting one. Is it possible that someone might become addicted to forms of hate speech because of algorithmic activity, causing psychological harm to the users, or leading the user to harm others in real life?

Hate groups have utilized online services to build their networks and spread their messages since internet use started to become popular in the

1990s.[66] Originating in the corners of the World Wide Web, hate groups later migrated to more mainstream social media platforms. Although blanket statements of hatred are generally protected under the First Amendment, social media platforms have at their discretion suspended accounts or taken down offensive content that violated the platform's terms of service.[67] However, a 2025 study showed a sudden spike in hate speech on X since Elon Musk took over the platform formerly known as Twitter.[68] That does not mean that the growth in hatemongering was necessarily an intentional choice by the service operator, but it can happen when hatemongers exploit content recommendation algorithms.[69] This would suggest that content recommendation algorithms may be modified to correct this kind of misuse, so long as the social media companies that use them are motivated to do so, either legally or ethically. Outlets like Instagram and TikTok tend to be "hotspots" for hate speech because of their interactive and viral features "that create conditions where hate can spread quickly" through comments, reposts, and other forms of sharing.[70] By 2023, social media had become the primary space where extremists, especially on the far-right, popularized their ideas, recruited new members, and spread talking points, or other themes and messages.[71] Radicalization to hateful ideas or conspiracy theories often requires repeated exposure to select narratives, which social media algorithms can facilitate by "connecting people with like-minded others … and acclimating them to extremist ideas through repetition."[72] The endless stream of videos, memes, and other social media content reinforcing the same themes and messages is presented as evidence, or "going down the rabbit hole," when an initial search refers the user to sources connected or similar to the original piece of content.[73]

In some instances, hate speech may be intertwined with disinformation or conspiracy theories, as Alice Marwick and Katherine Furl demonstrated in their ethnographic analysis of extremist communities and their online media consumption, which described the relationship between disinformation and the adoption of extremist beliefs. Marwick and Furl's study explained how extremist communities understood "going down the rabbit hole" as "evaluating evidence [and] doing their own research … [f]raming even widely discredited or otherwise shoddy evidence as objective, incontrovertible truth."[74] This observation further problematizes how to address disinformation and online content moderation through jurisprudence. Those who adopt demonstrably false information as true will likely become resentful when policymakers, academic researchers, or social media companies address their deep-seated beliefs as conspiracy theories, disinformation, or misinformation. Furthermore, it will reinforce their views "that the media, universities, politicians, and shadowy powers," such as Big Tech are conspiring against them by suppressing what they believe to

be factual evidence and replace it with "politically correct narratives."[75] This is the basis for the censorship industrial complex conspiracy theory, which was underscored in the plaintiffs' claims in *Murthy v. Missouri*, President Trump's executive order on "Restoring Freedom of Speech and Ending Federal Censorship," and the consent decree in *Missouri v. Biden*, as well as the Trump Administration's efforts to nix federally funded misinformation research. Furthermore, it reinvites the worn-out marketplace of ideas metaphor to be the neutral arbiter of what is true and false.

Maliciously False Speech and Free Expression

At last, we are left to consider whether maliciously false speech, such as disinformation, is worthy of the same level of First Amendment protection as other categories of speech. Chris Demaske made a compelling argument to rethink First Amendment jurisprudence about hate speech, and based on that analysis, I will apply those same concepts and arguments to false speech and free expression.[76] Demaske's proposal is to shift First Amendment jurisprudence away from an emphasis on protecting individual speech rights as a negative freedom, and move toward a more positive notion of free expression that regards societal concerns and is grounded in justice. Viewing the First Amendment as a positive freedom, rather than a negative freedom, is one of the most fundamental debates about free expression. The movement Demaske described, "differs from those based in the Kantian conceptions of the autonomous individual and negative liberty," and instead focuses on a "human rights framework which calls for a level of positive liberty on the part of the government in terms of speech."[77] Free speech philosophers who privilege the "Congress shall make no law" passage of the First Amendment take as dogma that "no law" literally means absolutely "no law." In this sense, the First Amendment is a negative freedom in that it does not necessarily give rights, but rather, it merely limits the power of government. However, a more positive view of the First Amendment sees it as aspirational and goal-oriented. Free expression should facilitate self-governance and a better society.

In this sense, we can consider whether the First Amendment should be a primary means of protecting the individual liberty to deliver maliciously false speech and disinformation as equal to all other expression that is factual. If the marketplace of ideas metaphor functioned as intended, this would not necessarily be a question to consider. But in the marketplace of post-truth, we must think about the societal concern for enriching the quality of our public discourse and ensuring the integrity of the information we consume to improve both our individual and collective decision-making. This is not to suggest that the First Amendment can only protect

either individual or collective rights. There is certainly room to express opinions or ideas that are misinformed. However, can we jurisprudentially separate maliciously false expression as a category of speech that does not always merit absolute protection against broader societal concerns for national security and democratic self-governance? For instance, the courts have long held that the First Amendment does not protect fraudulent speech in the commercial marketplace, such as false advertising. Other categories of expression, such as obscenity, child pornography, threats, and blackmail, do not enjoy absolute First Amendment either. The harm caused by these forms of expression clearly outweighs the individual right to express them. Similarly, it can be argued that the collective harm caused by disinformation should outweigh an individual right to express maliciously and demonstrably false information.

Of course, making determinations about truth and falsity in a political context would be no easy task, as political speech has long been at the core of what the First Amendment should protect. John Stuart Mill argued that restricting speech based on the category of falsity would not work because some suppressed opinion might be true, and even false ideas might contain some element of truth.[78] But it is not an impossible chore to separate opinion from fact. For example, claiming that Democrats are soft on crime and hate America would and should be protected political opinion. However, distributing a deepfake video showing groups or individual Democrats doing and saying things that they did not would be provably and intentionally false. Just like in libel torts, the courts have long recognized the difference between opinion and false defamatory speech. Something that is demonstrably false cannot be considered just viewpoint. Falsity is a matter of fact, or lack thereof, just like the burden of proof is on the plaintiffs in libel cases to prove that the defamatory speech in question is false.

Another analogy to be drawn from U.S. libel torts is the demonstration of harm. The old adage of "sticks and stones may break my bones, but words will never hurt me" is another overworked cliché that has outlived its usefulness. Libel causes serious injury to reputation, and even in false light privacy torts, an erroneous public portrayal causes some personal harm. Fraudulent expression in commerce has financial consequences. While words may not cause direct physical damage, maliciously false expression in our news and information streams poisons our public discourse and injures our ability to reason and effectively self-govern. The problem is more compelling when we consider what the long-term epistemological effects might be on how we produce and disseminate knowledge. Maliciously false speech violates the collective rights within a democracy, as well as our individual rights to security, integrity, and overall public welfare.

It may be difficult to dramatically rethink our own core conceptions of what free expression means. As Bart Cammaerts put it, "First Amendment discourse itself has been hegemonic – a dogmatic ideology where there is little free thought about free thought."[79] The prevailing doctrine has been that the First Amendment exists for the primary, if not the exclusive purpose of protecting the speech rights of the individual "with little to no consideration of the implications in the larger social community."[80] However, the age of post-truth compels us to reconsider the allocation of First Amendment rights with the use of AI and algorithms, as well as the proliferation and effects of disinformation and fake news in our communication environment. This is why a critical political economic perspective must be brought to bear on the effects of maliciously false speech in the marketplace of post-truth. It is necessary, as Demaske explained "[t]o unmask the oppressive elements of the First Amendment, the link between power and free speech must be considered discursively, historically and relationally."[81] As much of the analysis in the book has examined, algorithmically churned misinformation and disinformation has served political and economic interests. Simply put, the system of public discourse imagined by the forefathers of the U.S. is not working.

Meta Ignorance in the Marketplace of Post-Truth

Thomas Jefferson famously wrote:

> The way to prevent these irregular interpositions of the people is give them full information of their affairs thro' the channel of the public papers, and to contrive that those papers should penetrate the whole mass of the people. 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. But I should mean that every man should receive those papers and be capable of reading them.[82]

Jefferson's vision could only imagine a single system of discourse akin to the marketplace of ideas metaphor that would develop in American jurisprudential philosophy by the early 1900s. But individual liberty of free expression without government restraint was not enough. Rather, democracy itself demanded "that there be a literate public, a viable press system, and easy access to this press by the people."[83] In the marketplace of post-truth, fake news and pink slime news media are pushing aside

the legacy press. Dis- and misinformation, and the declining trust in journalism, science, and expertise have distorted how we form, and what is counted, as knowledge. James Madison predicted:

> A popular government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.[84]

Madison may have been right. A failing media system without shared and credible information is tragic, but ignorance appears to be governing knowledge in post-truth.

Notes

1 *R.A.V. v. City of St. Paul*, 505 U.S. 377 (1992).
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6

CHANGING THE MARKETPLACE OF POST-TRUTH AND OUR DIGITAL FUTURES

This book was inspired by a large body of work from science fiction writer, Philip K. Dick, especially his novella *Minority Report*. Dick's novels dealt with many of the themes addressed in this analysis, including the nature of reality, how we perceive it, the difference between real and fake, truth and falsity, what it means to be considered human, and questioning both the power of the state and private enterprise. For Dick,

> reality could not be apprehended directly, because it gets filtered through each individual's subjectivity. What seems real is a deception. What rational beings agree on as constituting reality is merely and illusion, a simulacrum created either by the few in an effort to mislead the many or else by some external power intent on misleading everyone. Reality is not reality.[1]

The marketplace of post-truth that I described in Chapter 5 is similar to this dark vision. Reality and truth are contested and fragmented into separate streams that reinforce what every individual wants to believe with no objective arbiter of fact or fiction. And within the social media machine and its algorithms that generate it all are political and financial powers that are difficult to understand. What I have endeavored to show here is who and what those powers are and the interests that they represent.

We find ourselves at a critical juncture where comprehensive public policy that would govern AI and algorithmic uses and abuses is possible, but not likely. State laws addressing the problems associated with these technologies are being cranked out and challenged in federal courts. The Trump

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Administration is pressuring both the states and fellow Republicans for a moratorium on new laws in the name of innovation, while Republicans in Congress are split about how to address the increasing power flexed by big technology companies that create and operate these platforms. Algorithmic errors, data missorts, and AI slop, along with the rise of fake news, pink slime journalism, disinformation, misinformation, and conspiracy theories distort truth and aggravate public discourse. Political and financial interests manipulate algorithms and drive political polarization, while epistemic institutions are pushed to the margins at a time when their expertise and critical inquiry is needed most. Post-truth has become an ideology unto itself, and the legacy of neoliberal economic policy in media markets has failed to deliver the social goods that were promised. And the old doctrines of free speech and free markets have become hollow platitudes that leave us with no clear roadmap for the future. Where do we go from here when there appear to be no clear paths out of the post-truth ethos?

Although we should not expect divine intervention to deliver us from such a worldly mess of technology and politics, Pope Leo XIV used the first encyclical of his papacy, *Magnifica Humanitas*, to talk about the need to protect human dignity in the age of AI.[2] In addition to its theological message, the Pope addresses many of the issues examined in this book, including the relationship between truth and democracy, and how technology compounds the impact of disinformation and fake news, as well as the need for informational integrity, and a common epistemology in public dialogue:

> The use of digital platforms and AI systems is driving profound changes in public and political communication. Tools that could foster dialogue and participation are often used to construct distorted narratives and blur the boundaries between truth and falsehood, mixing facts with opinions. Disinformation did not begin with AI, yet today it finds a powerful amplifier in AI. The ability to manipulate content, images and videos exposes people to biased or misleading perspectives. The problem has both cultural and moral dimensions, since the quality of public communication depends directly on social trust and, in turn, shapes it. At the same time, truthful information does not arise from centralized or automated control. In public discourse, the truth of facts has a rational dimension, as it requires verification, cross-checking of sources and responsible argumentation . . . . Only the shared pursuit of the veracity of facts, perceived as a common good, can provide a solid foundation for just communication.[3]

Toward that end, I will use this concluding chapter to suggest the ways in which we can begin to rebuild, together, the kind of informational

veracity in our public discourse. Although our common societal conversations are primarily and centrally facilitated through online media, these endeavors will take work both online and off. Journalists and media policy scholars can also adapt their work, and the public can do more of its own intellectual labor, to counter the impact of dis- and misinformation. We all need to be committed to not living in post-truth forever.

Although some social media companies have begun reaching settlement agreements in state-based lawsuits over the addictive and harmful features of their algorithms to children, this alone will not even begin to touch our most vexing problems, such as dis- and misinformation spread that are associated with algorithmic churn.[4] Meredith Brousard has called for a system of algorithmic auditing and accountability that would advise social media companies and other entities that use algorithms to ensure compliance with any laws.[5] Social media companies are beginning to experience some legal accountability in youth-harm cases, and perhaps could have avoided litigation altogether with some independent oversight or advising that privileges social good over explicit commercial interests. As Kenneth Wenger explained, "the test for whether AI is a good fit to solve a human-related problem is if it doesn't aim to influence our behavior (as in the case of advertising and recommender systems) and if there is a fundamental set of rules to solve the problem."[6] At the moment, social media algorithms are programmed to recommend content that keeps us engaged, or addicted as several lawsuits have alleged, and that is the fundamental problem driving our political polarization and epistemic alienation. Short of rewriting the digital cypher, the only way those of us on the outside of the industry can begin to fix that problem is to define and explain it in a way that resonates broadly across partisan divides and leads to a major shift in U.S. media policy. This is not an easy task.

A Critical Juncture and a Policy Window

Returning to Robert McChesney's articulation of a "critical juncture" for when a dramatic shift in U.S. media policy is being considered and is possible, as this analysis has shown, all of the following conditions are present.[7] The use of AI and other algorithmically based applications has destabilized nearly everything in the media system, especially in regard to how we acquire news and information. At the same time that algorithms are creating our individualized bubbles of polarizing information, journalism has become delegitimized and has left our society stranded in an unprecedented political and epistemic crisis that has imperiled the very notion of truth itself. Change is possible and being considered, at least within several

state legislatures that have promulgated laws to address algorithmic errors, label or limit defamatory deepfake political advertisements during elections, and hold tech companies accountable.

However, those worthy efforts have come under assault by a powerful presidential administration that is hellbent on imposing a federal standard that is as irresponsible as it is ill-defined. Nonetheless, AI and algorithmic accountability are still on the public's agenda, but the "policy window" of opportunity described by John Kingdon will not stay open forever.[8] While there is a broad sense of enthusiasm and reservation about AI, there are variations of specific concerns – AI replacing human jobs, AI becoming sentient, loss of personal privacy, and programming bias in algorithms. While these are all pressing matters, less attention (outside of critical media policy scholarship and legacy news reporting) has been paid to the more elusive problem of the effects of dis- and misinformation on public discourse and reasoning, as well as democratic self-governance. There is a stream of policy proposals to deal with the more commonly understood concerns about AI and algorithms, but few if any to deal with the ones that are more abstract and steeped in politics, and it is those same political interests that use the loss of common truth to their advantage that can (and are actively trying) to close this window of opportunity to correct course.

Pope Leo's articulation of the relationship between AI and disinformation and the need for a common set of facts and reasoning in public discourse is a promising sign that such conceptual issues about truth and falsity can be more practically described (and maybe even understood) outside the realm of social science. That message will need to resonate beyond the Catholic laity though, if it is to help drive public policy, or jurisprudence about free expression. However, there will likely be more pushback from the Trump Administration, as well as conservative pundits, about anything that is counter to Trump's AI policy. Secretary of the Interior, Doug Burgum said on a Fox Business channel program, "I didn't know that tech editorializing was part of the role of being pope."[9] Vice President J.D. Vance, although a stated Catholic, has not been afraid to challenge the pontiff in the past, even on matters of religious doctrine, saying that Pope Leo needed to be "careful when he talks about matters of theology."[10] Vance struck a different tone about the Pope's encyclical on AI, however, calling it "very profound," although the Vice President admitted that he had only read "bits and pieces" of it.[11]

Nonetheless, a public dispute between the President and the Pope is unlikely to shift conservative Catholic support away from Trump, as many Catholics on the political right "remain aligned with him on abortion, religious liberty and cultural issues."[12] Trump won 55 percent of Catholic voters in the 2024 presidential race after a near-even split (49 percent

to 50 percent) in the 2020 race.[13] Moreover, Republican voters, even the ones that are Catholic, are more likely to be persuaded by Fox News and other conservative pundits more so than the Pope. On Fox News program, "Journal Editorial Report," panelists criticized the Pope's economic stance and the idea of regulating markets on moral grounds, and expressed concerns about stifling innovation, echoing the Trump Administration's AI policy as well as the kind of laissez-fare neoliberal economic philosophy that supported the Telecommunications Act of 1996.[14] Meanwhile, host Greg Gutfeld used humor on his Fox News program, along with his panelists, to ridicule some of Pope Leo's premises, arguing that the pontiff does not understand technology.[15] Under a headline that read "progressive pope takes aim at AI and risks killing its miracles," Fox News opinion contributor Liz Peek claimed that the pontiff had channeled Senator Bernie Sanders (a self-proclaimed democratic-socialist), adding that Sanders had "gained a new powerful ally."[16] At least no one at Fox News has called Pope Leo a Marxist. At least not yet.

Lessons from the Francis "Side Effect"

The last time a pontiff made an impact on public discourse so noticeably was Pope Francis after his encyclical on the environment and his visit to the Americas in 2015.[17] The trip drew the attention of the Catholic faithful, as well as the general public, policymakers, and news media into a discussion about global warming and economic squalor. During his historic visit, the Pontiff met with then President Obama, addressed a joint session of the U.S. Congress and the General Assembly of the United Nations, and met with various other constituencies. Afterward, a George Mason University study showed that Americans (especially Catholic Americans) became more engaged in and concerned about global warming. This phenomenon has been referred to as the "Francis Effect" – drawing people from various backgrounds into a dialogue about the impact of environmental degradation and climate change on the poor through a morally based call to action that is rooted in a Christian theology.[18] Could the same happen with Pope Leo XIV about AI?

In changing the conversation about global climate change by making it a moral and theological issue, many right-wing conservative news outlets, alt-right media, and political commentators reacted by accusing Pope Francis of "Marxism."[19] After the encyclical's release, the late Rush Limbaugh told listeners on his radio program that it "seems to confirm" his prior statement that it is "just pure Marxism coming out of the mouth of the pope."[20] In an article headlined: "Marxists, Global Warming Extremists Control Vatican," Breitbart.com promoted the claims of conspiracy theorist Christopher

Monckton, who said that the Vatican was under the influence of Bishop Marcelo Sanchez Sorondo, an "out and out marxist who decided that climate change was useful to marxism."[21] Michael Savage told his audience, "the pope is a Marxist. I stand by those words. He is a wolf in pope's clothing, he is an eco-wolf in pope's clothing. He is a stealth Marxist in religious garb," and added,

> The man sounds like the false prophet in Revelation. He sounds just like the false prophet in Revelation – an ecumenical spiritual figure directing mankind to worship the Antichrist. The man is a false prophet. How could you buy this garbage? How in the world can you buy this? The world is cooling off, and the man is pushing this to attack capitalism?[22]

Long-time "Fox and Friends" host, Brian Kilmeade, told a radio audience: "I'm Catholic and he [the Pope] can stay home. Some of his comments just have no place . . . . He doesn't like capitalism."[23] It was clear that Pope Francis's use of theology to address neoliberal economic culture and environmental degradation struck a nerve with the political right.

I called these kinds of hyperbolic reactions and sophistical accusations from right-wing media at the time, the "Francis side effect."[24] However, the "Francis side effect" may not necessarily apply just to Pope Francis. For instance, Fox News host Sean Hannity said that he was no longer Catholic amidst the Spring 2026 feud between Trump and Pope Leo, choosing allegiance to the President over the pontiff, saying that "Pope Leo XIV is now seemingly more interested in spreading left-wing politics over than the actual teachings of Jesus Christ … Why is the Pope twisting religion specifically to attack Donald Trump?"[25] In the marketplace of post-truth, it should no longer come as any surprise to see adherents to the neoliberal economic system choose politics over faith. Their whole reality depends on it. Critical media policy scholars and journalists should expect similar hyperbole and sophistry in response to policy proposals that would restrain AI or dis- and misinformation.

Adjusting Journalism

Online networks are not likely to significantly alter their algorithms any time soon, but journalists can better adapt to network architecture and raise the profile of their own reporting. As a social network analysis of Twitter during the coronavirus pandemic showed, journalists and news media can still play an important part in connecting disparate audiences on social media platforms.[26] The problem for journalists is that this is not the epistemological function their institution is used to playing, as the age

of social media influencers has emerged. Within networked social media platforms, users encounter news in a place that appears to put "as much weight on the social identity of the sharer as the reputation of the creator in determining informational credibility, further undermining the potentially moderating role of centrist journalistic media."[27] As institutional journalism and big-name legacy media continues to diminish while influencers and popular podcasters continue to grow, journalists will have to adjust in ways that may be uncomfortable by reinventing themselves as independent subject matter experts with their own brand. Utilizing online outlets like Substack that provide a publishing platform, as well as payment and analytics support, can help new independent writers and journalists begin to build their own network of followers.

Journalists who are covering dis- and misinformation online, or conspiracy theories, should also rethink how they center their reporting. Disinformation and conspiracy theories are often racially charged, misogynistic, or may falsely attack public officials. When reporting focuses on the nature of the disinformation (e.g., that it was racist), rather than substance (that it was false), so too will the audience; and the people who may have believed it will think they are being called racist or bigoted for believing it. "Instead of emphasizing the nature of the lies, it would behoove journalists to focus on the liars" and analyze how the liar is benefiting from the spread of the claim.[28] In this sense, we may also be helping audiences to build critical literacy skills, rather than innocuously engaging in a lexicon of language that can be (albeit, unfairly) dismissed as "woke." I say this not to disregard the racialized or bigoted aspects that too often characterize disinformation and conspiracy theories. The harm inflicted on those communities and individuals is real, and those stories should and have been told. I am also not arguing that journalists should ignore them. Instead, my goal here is to consider how we can educate the groups of people who tend to believe dis- and misinformation in a way that they will be more likely to understand, rather than just be offended. We will not persuade people who think we are insulting them. Our society is deeply fractured, and we are living in virtually (but, significantly) very different realities. Everyone has been in their own algorithmically curated digital bubble that has fed them a stream of affective content, and in the process, steadily reaffirmed the moral superiority of their own sub-culture's worldview.[29] Differing realities will not merge overnight, but perhaps they can at least move closer together over time.

For that matter, in reporting on AI and dis- and misinformation, journalists must be careful about how they frame their reporting. Too often, news media tend to present every societal issue as a political one and then cover it in a way that seems balanced – democrats see it this way, republicans see

it that way – end of story. There are two problems with this approach. First of all, if someone identifies as either left or right, and the reporting frames the issues as a left v. right one, then the audience already knows which side of the debate they fall on. No critical thinking is necessary. Second, if someone is in the middle and the reporting is balanced for the sake of being balanced – that is, giving equal treatment to each "side" – you may also do a disservice to the truth if one position is supported by strong empirical evidence, and the other side is only held up by partisan talking points, because the report will make it seem like a "tie" to the audience. This phenomenon of both-side-ism is apparent in mainstream media coverage of global climate change, in which mountains of scientific evidence is given equal treatment to a handful of industry-backed (hence, financially interested) studies and talking points.[30] Journalists cannot let this be the case with AI policy, in which "democrats want burdensome regulations" and "republicans want innovation and free markets." This is already how the Trump Administration has positioned the issue, even though, at the moment, there are still a significant number of republicans in Congress who want to stand up to Big Tech. The same goes for dis- and misinformation policy, where "democrats want censorship" and "republicans want free speech." Again, this is how the Trump Administration has (incorrectly, and unfairly) positioned the issue. But as this book has shown, that is simply not the case. Of course, politics tend to be more exciting and interesting stories to tell, rather than more involved policy or complicated science, but these issues are too important to simplify and water down with reporting as usual. In this case, the Trump Administration does not even have to win the argument about complex policy matters, such as AI, or dis- and misinformation. All it needs to do, instead, is make it look like a tie. In such a scenario, it has become too easy for someone in the middle to read that kind of coverage and say, "well I guess I'll take free markets and free speech' over 'big government and censorship." Journalists need to resist this kind of sophistic framing.

Public Intellectuals in Post-Truth

What can researchers do about the plague of mis- and disinformation? For some of us, this might mean giving interviews to journalists who are trying to run down the facts about the latest bit of fake news that is going viral on social media. While this is absolutely something that we should keep on doing, we also have to understand that the truth will always struggle to catch up with the lie if the lie has been given a head start. Another approach to "chasing one presumed threat after another" is that "the scholarly community can instead help develop feasible solutions to the increasing social problem."[31] Here, the scholarly community is still

at another disadvantage, as university researchers, experts, and the news media have been steadily demonized by Trump and the far right. Who will listen to our proposals? Certainly not the pundits on television. But this is not the question we should be asking right at the moment. Instead, let us consider *who* needs to hear what we know.

A "parallel approach" of focusing our scholarly efforts is on "learning how to live with fake videos, understanding the threats they pose, and increasing digital literacy in algorithmic spaces."[32] As the most popular social media platforms, X and Meta, have abandoned self-regulation through fact-checking services, there is some utility in this approach, but what we offer has to be more than presenting a list of the most reliable fact-checking services currently available. That approach can also encourage a sort of intellectual laziness as well, where we are looking to the very technologies that created the problem to solve them now. Also, one-time resources can become quickly outdated. Describing tech-related problems can be a lot like shooting at a moving target, once you have solved one issue, another one arises. One contemporary source that I do recommend though is Tiziano Bonini and Emiliano Trere's 2024 online open-access book, *Algorithms of Resistance: The Everyday Fight against Platform Power*.[33] While providing an enriching theoretical overview of the continuum of moral economics, the authors use ethnographic analysis to show some of the imaginative ways communities have resisted networked power.

Open access scholarship is another way university researchers can make their work more accessible to communities outside of the academy. While literally removing the cost barrier, it also makes our work more portable when giving public talks. Toward that end, I urge researchers, especially those who are advanced in their academic careers (without the need to write for tenure and promotion), to create these open-access works that are more accessible to non-university audiences. I have had the good fortune that all three of my books to date (including this one) have been supported by open-access publishing grants, which allows me to share my work with individuals and groups that would not normally read an "academic" publication.

What I also propose for media policy scholars, especially those who study dis- and misinformation, is that we embrace the role of public intellectuals and present our research to broader audiences outside of the academy. Entering networked spaces is one way to do this, but it is just as important (if not more so) to speak at town halls or other community events. No matter the reason, public trust in journalism and university-based research is low, and no one outside of our little field-specific academic bubbles is reading our research. If we want our research to truly matter, we need to be willing to take it where the people are in the community. For those of us who work at publicly funded, state universities,

I see this as an essential service. Let the taxpayers who ultimately fund our work see the usefulness of our scholarship and how it serves the public good. As McChesney recognized, the digital revolution is not inexorably determined by technology, "they are shaped by how society elects to develop them."[34] Let us help lead that effort.

A Critical Media Literacy

Since the 2010s, America has been much like the city of Babel described in the biblical book of Genesis after it was destroyed with "people wandering amid the ruins, unable to communicate, condemned to mutual incomprehension."[35] One of the most common calls to rebuild our societal understanding has been the establishment of media literacy education programs in schools "to give people a critical understanding of digital communications."[36] While media literacy in education could significantly improve our ability to confront reality distortion, such a program has yet to be developed and will not likely occur anytime soon. It will require a commitment from educational leaders to change curriculums, which is already a challenging enough matter due to large educational systems' tendency to maintain the status quo, especially without a clear definition of media literacy. And, at the moment, such a proposal would likely meet fierce resistance from the Trump Administration.

However, we can start thinking about what a critical media literacy curriculum could look like and should include after the Trump presidency. What we need to avoid is a simplistic literacy that focuses on apps and platforms and that will be untimely and critically useless. Rather, a critical media literacy should include an understanding of who owns our digital platforms, and the role that data collection and marketing, as well as political and financial interests, play in shaping our content and experiences online. We all must take more responsibility for how we process information and be willing to consider *why* something might be false or misleading. This may start with looking for clues, such as incomplete information or lack of contextual deception. We also need to learn to identify noise and intentional distractions and think about *how* the content in question appears to attempt to influence our thinking. We should consume images and video with extreme caution unless they come from a verified and trusted source. The real difficulty though is being aware of our own biases and managing our emotions.

Emotions can significantly impact engagement by making content more resonant and shareable, often leading to virality. They foster brand loyalty and influence decision-making, driving consumer actions like purchases. Designing user experiences that evoke positive emotions enhances

satisfaction, while storytelling that incorporates emotional elements captivates audiences and encourages deeper engagement. Emotions can also be exploited to spread disinformation, as emotionally charged false content can quickly engage and mislead audiences, amplifying its reach and impact. Leveraging emotions in marketing strategies can strengthen connections with audiences. And lastly, how about some good old fashioned news sense? Anytime someone reads an online post with words in the headline like "proof," or "evidence," or "true" should be another red flag. This is not how legitimate news media write headlines.

Calling Bullshit

Most importantly, perhaps, we also have to be willing at some point to call "bullshit," even if we have to call "bullshit" on ourselves, because sometimes the truth is simply not what we want it to be. No matter who we are calling bullshit on, it is important to keep in mind that bullshit is never personal. AI and algorithms have no intention or goal, and they are ultimately unconcerned with truth or falsity.[37] Likewise, human bullshitters may only want to support the position they already knew they had. While citizens in a democratic republic should be concerned with truth, machines and politicians that engage in bullshit are neither on the side of truth nor the side of the false. What is put out (by the algorithm) or communicated (by the politician) is only suited to fulfill a purpose or self-interest. However, "[b]y virtue of this, bullshit is the greater enemy of truth than lies are."[38] For that matter, we need to be more on guard about what the intended effect is from algorithmic output or political discourse. Not so much *how* it makes me feel, but rather, *what* is it trying to make me feel, and *why*.

Waiting for Post-MAGA

In episode nine of the second season of the Disney Star Wars series, "Andor," Mon Mothma gives a speech to the Imperial Senate that cautions the Republic about the loss of truth:

> I believe we are in crisis. The difference between what is said and what is known to be true has become an abyss. Of all the things at risk, the loss of an objective reality is perhaps the most dangerous. The death of truth is the ultimate victory of evil. When truth leaves us … we become vulnerable to the appetite of whatever monster screams the loudest.[39]

Although this line is from a sci-fi melodrama, the statements about "the loss of an objective reality" and what happens when "truth leaves us"

are nevertheless alarming. The post-modern age and its relativism were overtaken by the more affective dimensions of post-truth. What is most troubling in post-truth is how the loudest power will abuse the absence of truth. It is a fate we should refuse to accept.

The post-truth era in American politics has coincided with the rise of Trump and MAGA culture, as Oxford Dictionaries declared "post-truth" its "word of the year" in the aftermath of an election cycle that saw Donald Trump win the U.S. presidency in November of 2016.[40] During his ride to the White House, Trump was able to redefine what was real and fake by using the term "fake news" to disparage the real news media, instead of the disinformation campaigns that pretended to be legacy news media and dominated social media during the election cycle. Trump's completely unsubstantiated claims of election fraud drove an angry mob into the U.S. Capitol on January 6, and his embrace of a conspiracy theory that the Biden Administration was bringing in voters from Mexico eventually helped propel him back into another 4 years in the White House. During his second Administration, Trump has waged a cultural and policy war against American epistemic institutions, including journalism, science, universities, and government agencies, such as the Department of Education and Center for Disease Control (CDC). Perhaps, most notably, Trump has also now recast research on dis- and misinformation as another conspiracy while cutting funding for its research and nixing any policy that seeks to redress it. In Trumpian digital politics, disinformation is not lies, and misinformation is not inaccurate – they are conservative viewpoints.

Trump has cultivated a political culture that expresses hostility toward the truth and vilifies empirical evidence whenever it is inconvenient to his interests. For instance, Trump insulted and stormed off mid-interview with NBC journalist Kristen Welker after she fact-checked his claims about January 6 and election fraud. Welker kept returning to the absence of any "evidence" to support his accusations and asking if he had any "evidence."[41] As troubling as it is for the President of the United States to chafe at being asked about "evidence" in response to his assertion of wholly unsupported conspiracies, the effect of Trump's rejection of even the need for any proof is more alarming. When asked about evidence to support one of Trump's suggestions about election fraud in the Los Angeles mayoral race, Republican House Speaker Mike Johnson offered only a vague dismissal of, "some of these efforts are so diabolical and so far upstream it's impossible to prove."[42] While Johnson's response may be rooted in fear of Trump retaliating for contradicting him, we are still left to wonder if such little concern for epistemic veracity will remain in the future.

Will the integrity of our political discourse online improve? Will social media companies go back to factchecking? Will the next administration

reboot disinformation and misinformation research? What will the political right be like without Trump in the White House? Will there be a "Post-MAGA" era? Or will any common notion of truth have already died by the end of Trump's second term? If truth is going to survive, we must first resist Trump's redefinition of what is fake news and mis- and disinformation. Altering reality and its meaning was a common theme in several of Dick's novels, and as he noted in one of his philosophical essays, "[t]he basic tool for the manipulation of reality is the manipulation of words. If you can control the meaning of words, you can control the people who must use those words."[43] We must also realize that our AI and algorithmically churned bubbles are not reality either. They are manufactured by political and commercial interests. Neither are they predicting the future. They are creating it, if we let them.

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