

Why regulations on empirical claims in the media are justified

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In light of rampant fake news and disinformation in today's press and social media, I provide a new consequentialist argument that regulations on the media pertaining to certain false verifiable empirical facts are warranted. This contention is based in part on a collection of pre-existing empirical findings that I newly piece together from political science and psychology demonstrating that a post-truth society is likely with current media. My position is then defended from several counters, such as that it violates deontological rights to free speech and to freedom of the press, that free speech leads to the acquisition of truth, and that government regulators can be biased and corrupt.

Keywords: social media; internet ethics; free press; consequentialism; free speech; fake news; political epistemology; disinformation.

I. Introduction

On 6 January 2021, there was an attempted coup against the US government where rioters stormed and overran the Capitol Building, based in part on the disinformation or deceptively false information promoted by then President Trump that there was widespread voter fraud in the 2020 presidential election. The insurrectionists were able to breach the Capitol and temporarily stop the certification of the election results that favored Trump's opponent. In the aftermath, Republican senators generally refused to convict Trump of impeachment charges of inciting the insurrection. Although some knew that the voter fraud claim was false, 147 Republican members of Congress

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voted against the certification of election results as they attempted to overturn the legitimate democratic election. Those Republicans in Congress who were critical of Trump even to this day are castigated by their party, and most have lost their political careers due to it (Stevenson 2021). Moreover, Trump's like influence over the party generally continued through the midterm elections of 2022 with a strong majority of about 60% of Republican election deniers winning their races in national and statewide elections while increasing their total numbers in the House and Senate (Rosen et al. 2022). At the time of this writing, Trump is the presumptive nominee of the Republican Party from the 2024 primaries and is running neck and neck with Biden in the polls to be the next President of the US (538-ABC News 2024).

The United States generally is viewed by the world as the beacon of democracy. However, this attempted coup and potential end to the US government as we know it based on disinformation is one of many instances spurned from our current post-truth era, where 'post-truth' was the *Oxford Dictionary* (Oxford Languages 2016) word of the year in 2016. 'Disinformation' and 'misinformation' will be understood here to be synonyms that refer to information that is false but also deceptively false in that there's an attempt to deceive. Post-truth is where objective facts carry less importance and are frequently publicly overridden by subjective emotions and alternative facts or false statements promoted for political reasons. Political reality and facts are shaped subjectively as one sees fit. Here, I'm not talking about normative moral facts, such as what a government ought to do, in political philosophy and ethics. Rather, the focus here is on verifiable non-moral empirical facts that eventually can be used to draw moral conclusions.¹

Basic empirical facts that describe the way the world is, such as how many people actually attended an event, scientific facts, and whether a foreign country has performed a certain act, are now thrown into question in the political sphere despite decisive, clear evidence of what is true. This is exacerbated by the media (Sullivan et al. 2021; Zakrzewski et al. 2023). For example, widespread disinformation about the seriousness of the COVID-19 pandemic and about the safety and efficacy of the vaccines has played a major role in increasing the death toll of the pandemic in the US. This death toll now well exceeds the total number of US deaths in World War I and World War II combined. About a third of such deaths could have been averted (Martinez 2022). Many politicians, news agencies, and citizens have constructed and appear to live in an alternative reality or reality that at many times doesn't correspond to the way the world is. This contrasts with prior times. Both major parties in the US can't agree at many times on the simple empirical

¹I say 'non-moral empirical facts' because there are moral naturalists who believe that moral facts are natural empirical facts, such as that rightness is pleasure. From here forward, it should be understood that by 'empirical facts,' I mean verifiable non-moral empirical facts.

facts of the world such that they even could reach an agreement on the moral normative facts of relevant political issues.

Today, in our pockets or purses, we carry an electronic device that can access an extraordinary amount of knowledge. Yet, despite this easy access to information and truth, in our post-truth era, we now have a bewildering amount of people who believe in false information and fake news from the internet and media, such that it's a legitimate question as to whether the internet and freedom of the press have overall left the human race better off in the domain of knowledge and politics. The open marketplace of ideas has in significant part led us to the era of post-truth, and John Milton (1644/2016) and John Stuart Mill's (1859/1978) robust notion of having a marketplace of ideas is a failed project. Our era of post-truth and pervasive misinformation about topics like the validity of election outcomes, pandemics, vaccines, economics, the Black Lives Matter movement, expected paths of hurricanes, and foreign affairs that have wide swaths of the country in belief stems in significant part to the internet, social media, TV, and certain other current forms of media, like radio. Of course, Mill did not live in and have the foresight to predict the technologies in today's media age and what they might bring to the marketplace. We only have had a marketplace of ideas for a few hundred years, but given this social experiment of the marketplace that now includes the internet along with other formats like television and radio, I will argue that the government needs to restrict to a specified extent the marketplace of ideas. We shouldn't have the robust marketplace regarding the press that Mill can be interpreted as envisioning. To note, later in this paper, I will spare some detail on a government agency that can regulate the media in a fair manner.

This paper is a philosophical one focused primarily on the ethics rather than the current legality of the issue. It's interested in what we ought to do morally speaking rather than entertaining First Amendment law, other federal and state laws, legal precedents, etc. that might make it difficult to legally implement my conclusions on how to handle fake news. Laws can be morally incorrect and even abhorrent at times, and this essay primarily is focused on the higher plane of ethics.

'Fake news' itself is a term that can have different meanings. For instance, when used by Donald Trump, such as to describe reports that global warming exists (Miller 2019) and that we need to take the Coronavirus very seriously (Klar 2020), it mostly means news that is true or accurate but that makes me look bad or is something I don't want you to know is true. However, the original contemporary meaning of 'fake news' comes from BuzzFeed's Craig Silverman (2016), and the meaning that will be adopted here is that it's news that is false but also deceptively false. In other words, it's disinformation. There's an intent to deceive in putting out false stories rather than true stories that attempt to correspond to the way the world actually is or was. This intent to mislead by putting out captivating but false stories that visually look like

traditional media news is usually further motivated by the desire to increase subscribers and readers to augment advertising dollars acquired by a 'news' agency.

'Fake news' was first used to describe offshore click-bait sites that attempted to draw attention in the 2016 political election with outrageous tabloid-like headlines and false or misleading stories but while masquerading as a genuine news source. Since there is no longer a substantial monetary cost to enter the media market due to the internet, many supposed news sites have opened up that specialize in fake news in order to draw in viewers and receive lucrative advertising dollars in return. As fake news attempts to look like it is coming from traditional journalistic sources, it's parasitic upon the integrity such sources have acquired over time while at many times simultaneously attempting to denigrate traditional news agencies as producers of fake news. Silverman reported that over 100 pro-Trump websites come from one town in the former Yugoslav Republic of Macedonia. The teenagers there, who have no political ties, found they could make a wealth of advertising dollars by imitating real news sites but by pumping out outlandish hyper-partisan articles for Trump supporters.

Regarding this prevalent misinformation, there may be a Millian basis for making relevant restrictions on free speech in the media. Mill (1859/1978) thought we should have a very high degree of liberty regarding freedom of speech and the press, where Mill claimed that a high level of free competition of ideas will make it more likely that the truth will emerge. Mill stated that we should have a marketplace of ideas because a silenced opinion can be true, a silenced opinion importantly may contain a partial truth, and speech that challenges what is true allows us to test the truth so that the truth is not held in mere prejudice that's inherited rather than adopted. The right to freedom of speech protects important interests.

However, free speech is not a fundamental and infallible value. Philosophers generally agree that speech should be limited for instances like child pornography, inciting violence, libel and slander, lying that there's a bomb on a plane, false advertising, blackmail, advertising dangerous adult products to children, uttering 'fighting' words, lying by yelling 'fire' in a crowded theater, etc. In league with this, Mill, who is a consequentialist, states that free speech may be overridden using the harm principle. If free speech's beneficial consequences are outweighed by the negative consequences of other factors like certain harms or are better promoted by restricting speech, then freedom of speech may be curtailed in certain instances. This highly influential and well-trodden position by Mill on speech regulations is generally considered in philosophy to be one established means among possible others for morally justifying certain regulations on speech, and it will be the route I take in arguing for certain regulations.

To note, Mill states that this consequentialist means for limiting freedom can be applied prospectively to help prevent future negative consequences, even if the negative consequences may not come about. For example, he writes in *On Liberty* that we may limit the liberty of individuals from being intoxicated at work since it elevates the risk of workplace accidents to fellow employees. In modern times, the government may limit the ability to drive while intoxicated given the risk of bodily injury to others, even though no accident may occur in a particular instance. Such limitations are justified even though no negative consequences actually ensue on a case. Hence, if there's a significant possibility that an overridingly negative post-truth world will come about with current forms of media, then we prospectively will be justified in implementing certain speech regulations on media. I now provide my own new consequentialist contention that speech in the media regarding verifiable empirical facts should be regulated by the government given the likelihood of a post-truth world that will arise with current media.

II. Disinformation and its consequences

My new contention for government regulations on speech in the media, which includes traditional news media and social media, is limited to speech regarding verifiable empirical facts only, as empirical facts have been the center point of fake news. However, I allow for the possibility that a variety of other speech regulations may apply to the media as we will see shortly below.

I'd like to introduce a distinction between empirical facts vs moral and political normative values.² Moral and political normative claims are about what is right and wrong or good and bad in a moral or political context, and they are in part informed by empirical facts. For example, there is the empirical fact that a foreign country who we've had past border disputes with has sent its military across our border. Then one might make the normative political judgment that the government ought to send the military to defend ourselves. There's the empirical fact that global warming is true, then there are normative inquiries such as whether this is good or bad and whether the government should do anything about it. There are *empirical* claims that merely describe the world as it is, and there are *normative* moral claims that draw certain conclusions on rightness and wrongness concerning the world. It's widely held in ethics that moral and political normative claims should be based on relevant, accurate empirical facts. For instance, intuitionists claim that before drawing moral intuitions on a matter, we need to take into account the empirical facts of the case, such as that the patient didn't sign the informed consent

²To be sure, empirical claims can be based on proper non-moral epistemic norms of justified belief formation concerning the external world.

document. I allow for free speech generally regarding proposed moral normative claims, such as from conservatives and liberals, but in this paper, I will contend for limitations in media on the verifiable empirical facts only. For example, when applied to opinion news programming on TV, TV personalities generally are permitted to give their moral opinions but will be regulated on empirical claims, such as that voting machines have been rigged to steal the election.

To note, I say that I ‘generally’ want to have free speech regarding moral normative claims because there might be exceptions in which certain normative speech should be regulated given the overriding weight of certain moral considerations. This might include possibly regulating speech in which news agencies tell business owners to break the law by not hiring women or in social media when people urge others who are suicidal to commit suicide.³ Any of such exceptions will need to be argued for on a case-by-case basis. Given that our limited focus here is on establishing regulations in the media on empirical facts rather than normative ones, a listing and further examination of the possible exceptions to moral normative speech will be saved for a later date.

I will rely on and newly piece together certain pre-existing studies in the social sciences to show that current forms of media tend to lead to the pervasive spread of disinformation. I will rely on scientific studies along with other elements to show that we need particular restrictions on speech in the media. I will contend that such studies show that it’s likely we will live in a post-truth society. Given this likelihood and the overwhelmingly negative consequences of it, I conclude that legal restrictions are warranted on media for news content concerning the empirical facts somewhat (although not exactly) similar to how we have regulations on false advertising in media. I contend for regulations on media, broadly understood, because in today’s times, various types of media, like from the internet, TV, and radio, together contribute to a post-truth era and overall negative consequences. Due to the fact that different kinds of media today are together responsible for bringing about a post-truth era, restrictions on the press ought to apply to media, generally understood. Since Mill, the times have changed, bringing new unforeseen problems. This requires us to adapt to the times and to put forth new solutions that relevantly restrict the marketplace.

The serious philosophical question in our inquiry is whether regulations on restricting or blocking fake and false news in Western democracies are warranted and should be put in place by the government with government oversight in light of freedom of speech and the press. At this moment in time,

³The news media is currently regulated such that news organizations cannot promote job discrimination and many other crimes. The latter example is in partial reference to the Michelle Carter case, where Carter was convicted of manslaughter for urging her suicidal boyfriend to commit suicide.

it's mostly private companies, like Instagram, Facebook, and X (formerly Twitter), taking various steps on their own to regulate speech on their platform and handle fake news. The level of their restrictions is an ever evolving and fluid situation. For example, internal documents from Facebook and X reveal they played a crucial role in promoting and instigating the 2021 insurrection against the US government (Sullivan et al. 2021; Zakrzewski et al. 2023). Even though X knew the increasing extremist activity should be regulated, they bent their own rules and allowed for such activity out of fear of upsetting conservatives, which helped lead the oldest constitutional democracy in the world to the brink of ruin. It's a very relevant question as to whether their self-regulations are sufficient or whether they need stronger government oversight. However, should the government get involved and formally put regulations into law, especially in light of the right to freedom of speech and the press? Should the government make sure that a media company's regulations are sufficient and cover those companies that don't even self-regulate? I will begin my argument by newly piecing together particular pre-existing social science studies that together indicate that a post-truth era is likely with today's media technologies in an age that lacks sufficient regulations.

The existence of fake news on the internet is substantial in that fake news stories from offshore political click-bait sites generated more Facebook engagements than the most popular stories from authentic news agencies (Silverman 2016). Another study found that fake news on X is retweeted by vastly more people and more quickly than accurate political stories (Vosoughi et al. 2018). Researchers found that it's unlikely that a true story on X is exposed to more than 1,000 people, but the most popular false stories reach an audience of between 1,000 and 100,000 people. Deep fakes of doctored false videos, pictures, or audio can be even more effective. Fake news stories include ones like that Hillary Clinton is running a pedophilia ring from the basement of a named pizza parlor. Nearly half of all conservatives gave some credence to this story, and one even walked into the Comet Ping Pong pizza restaurant in Washington, D.C. with an assault rifle to stop this supposed criminal activity but was flabbergasted to find no such ring (Yougov 2016). The possibility of real violence that could have ensued in this situation should be alarming. Immediately after the 2020 presidential election, 77% of Republicans falsely believed that there was widespread voter fraud (Keating 2020).

Fake news is a concern for the US and other democracies as voters may be swayed by disinformation, which might have significant effects on the election outcome as well as radicalize a party(-ies) to take extreme actions such as to overthrow the current government. Social media and the internet have created an environment where capitalism rewards people such as in Macedonia to put up fake news sites with outrageous headlines to become wealthy. Furthermore, foreign adversaries are motivated to put up disinformation to

mislead people in enemy territory to support and vote for the adversary's desired candidates and policies. For instance, data shows that Instagram had the most engagement with Russian disinformation campaigns in the 2016 election out of all social media companies (Silverstein 2019). Moreover, politicians and party members have incentives to put out misleading propaganda and amplify or repost fake news from foreign adversaries like Russia if it's to their political benefit (Jankowicz 2020). Social media companies also strongly are incentivized to promote fantastic fake news stories to increase clicks and thus, profits. Overall, there is excellent motivation in the Internet Age for many to promote disinformation of the kind that people tend to find irresistible.

To exacerbate the situation, there are well found peer pressure (Parsons 2015; Michaeli 2017), tribalism (Cohen 2003; Haidt 2012), and confirmation biases (Kahan et al. 2013; Dickinson 2020) in psychology that are prevalent in the human species. In evolutionary psychology, it's uncontroversial that an in-group bias has been genetically selected for in our species. These biases will help motivate many to believe in fake news that favors their tribe. For instance, in tribalism experiments, voters will approve a policy X if they're told that it's what their party approves of, but they'll reject this same policy if they're told that it's endorsed by the opposing party rather than their own (Cohen 2003).

The confirmation bias is where people tend to reject or ignore evidence that goes against their views but search for evidence that favors their current positions. Moreover, they can interpret data that goes against their political views as being in favor of their position. For example, on the moral issue of whether we should allow for concealed handguns, liberals, and conservatives both were given conflicting studies. One of the studies had data consistent with but not necessarily supporting the promotion of having concealed handguns in that bans on such guns failed to decrease crime (Kahan et al. 2013). The other study showed that bans on concealed guns decreased crime. However, both liberals and conservatives viewed both contradictory sets of data as being consistent with their own disparate moral conclusions on concealed weapons.

Given the above, this makes it likely that we will find ourselves in a post-truth era. Moreover, there is not only a quantitative component of many adhering to misinformation but a qualitative one too. The qualitative aspect is that the believers in fake news will become more extreme, basing their political normative judgments on more radical empirical beliefs. This follows because now their beliefs may include disinformation and conspiracy theories. The internet itself provides a social medium for radical extremists who were previously isolated from each other to link up and form an online and organized community of like minds to share disinformation and work together to achieve common goals.

However, there's evidence that fake news doesn't have a large enough effect on people's voting behavior to change election results. Studies show that even if an individual was exposed to Russian propaganda and fake news,

it's unlikely or unclear that disinformation had a major impact on the 2016 election, even in hotly contested swing states (Benkler et al. 2018). Yet, since 2016, the post-truth era has taken firmer hold as compared to its nascent stage. Disinformation and its influence are growing. Data shows that the mainstream media is largely accurate and highly reliable (Benkler et al. 2018). However, Gallup polls show that mistrust in the mainstream media is rising over the years, with 68% of Americans in 2023 believing that the mainstream media generally can't be trusted (Brenan 2023). A record high 39% of people don't trust the mainstream media at all, which is 12 points higher than in 2016 with the start of our post-truth era. There is growing mistrust of reliable news sources and of the empirical facts over time for a majority of the population in the US, as our post-truth era is still in its relative infancy and gaining power. The standard purveyors of the political facts in society have substantially been discredited despite the fact that they are reliable (Leiter 2022). This opens the floodgates for fake news to produce even larger negative consequences on society, as it no longer matters to most if a conspiracy theory is refuted by the 'untrustworthy' mainstream media.

This is made worse by certain companies, such as the Sinclair Broadcasting Group. They own local TV stations across the US and require their local news anchors to recite the same message warning of the rampant bias and fake news in the media (Domonoske 2018). Also, what such studies on the little impact of fake news in the 2016 election fail to take into account is the greater qualitative radicalization of party members. This creates a post-truth society where large swaths of the population are more radicalized at many times with more radical beliefs, and there will be a substantial portion of the population living in an alternate political reality.

The misinformation can be so great that if the misinformation were true, such as having a fraudulent election, people would have good reason to attempt a coup against the government or start a civil war. Moreover, they would have excellent reason to elect a candidate who promotes and agrees with the alternative facts; they're politicians willing to put forth policies consistent with the conspiracy theories as contrasted with nominating a reasonable person within their party. Recall that most in the Republican party who refuse to support conspiracy theories and side with former president Trump have lost their jobs or don't run for reelection given the lack of support by their constituents. Candidates who do visibly support the misinformation generally get the party nominations. Misinformation now is affecting the vote by getting more extreme candidates aligned with fake news into office. It doesn't take much moral imagination to conceive of these possibilities, as it has already happened, like in the 2022 midterm elections. Furthermore, with a large portion of the population engorged in misinformation and outrageously false claims, they are more susceptible to follow orders from leaders that are in line with the wild conspiracy theories as they live within the alternate reality, such

as by possibly overthrowing their legitimate democratic governments. Many of such actions are likely to be extreme as they are based on false, extreme empirical beliefs that stray wildly from reality.

The famous Milgram Shock Experiments are where an ordinary test subject is ordered to 'shock' another test subject who, unbeknownst to the original test subject, is an actor and is not really being shocked. The results across cultures were that most continually will 'shock' the confederate when the confederate gives the wrong answer to a question, even pushing buttons labelled at excruciating high voltage levels. They will continue to obey those scientists in power and push the 'shock' button even in the presence of shock and suffering. Even when the confederate pretends to be passed out from the pain, most will continue to push the 'shock' button when ordered. Such an experiment was run to test whether normal everyday people, regardless of gender, race, culture, etc., largely will obey authority and perform horrendous actions like what was witnessed in Nazi Germany. The ramping up of fake news and propaganda, where politicians promote and firmly may even believe in an alternate political reality, is a situation in which people in authority are telling constituents to partake in outrageous and unscrupulous actions aligned with conspiracy theories. Remember that normative moral and political decisions are based on empirical claims. The Milgram studies demonstrate that many people will obey their leaders if instructed to act in such situations, such as to possibly overthrow their legitimate democratic government. This, in particular, will be problematic for those in echo chambers. Echo chambers are tight, small communities that may be insulated from receiving accurate news and the facts. They, also are subject to patterns of limited news sharing, as false information is reinforced by being echoed back and forth between members and the relevant news sites. Those in echo chambers only pay attention to normative calls for action made by their favored political leaders, rather than possible contrary normative claims made by other leaders outside the echo chamber. This is in part because other leaders' claims are automatically discounted.

To be clear, the Milgram experiments aren't ones in which disinformation directly leads people to engage in immoral acts. Rather, people engage in horrendous acts due to the commands of those in positions of authority. Hence, my point here is not that the Milgram experiments properly are analogous to cases of political disinformation in the media directly causing people to partake in heinous acts. Rather, my point with the Milgram experiments is that when authority figures make qualitatively extreme and unethical calls for action to the public (that are based on misinformation), those especially in the relevant echo chamber, largely will follow such commands.

Continuing with the idea of echo chambers, there are other related causes for concern, such as the algorithms used by certain social media sites like Instagram and Facebook. There's a worry that Instagram and Facebook's news feed algorithms not only promote click-bait news sites to many users

but also insulate consumers on what kinds of news they see Rini (2017) and Nguyen (2018). For instance, twelve social media influencers were responsible for 65% of the antivaccine posts on X and Facebook between 1 February and 16 March 2021 (Center for Counter Digital Hate 2021). Influencers who are connected to many people are centralized, and their content gets amplified across the network because social media algorithms favor posts from influencers (Lara-Steidel 2022). Fantastic false stories from influencers and their bots that attract attention and clicks get the limelight and are disseminated widely over users. Meanwhile, voices of reason and moderators of debates get pushed into the background and may never be heard by those who need to hear them the most. The algorithms ensure there is a nonegalitarian distribution of power for one's speech to be heard, where influencers are more like traditional broadcasters with greater ethical responsibilities than regular citizens. Due to the algorithms, users are getting inundated and continually pounded with false information, such as to not take the COVID-19 vaccine or to disbelieve in the election results. Social media companies want to drive up user engagement to acquire greater digital ad revenues, so they make sure social media isn't an equal marketplace of ideas. Rather, it's a marketplace of the information you're very likely to buy or be interested in Lara-Steidel (2022). As another example, data shows that TikTok repeatedly pushes captivating disinformation videos to millions of its young users when they search for things like presidential elections, the Capitol insurrection, health guidance, school shootings, and the Russia-Ukraine War (Tucker 2022).

Moreover, echo chambers label dissenters and dissenting news regularly as false and biased, even though they may be accurate. These insulated communities then echo fake news back to each other from click-bait sites and 'news' agencies that promote outrageously false stories in a kind of feedback loop. This echo chamber and repetition of inaccurate stories even further reinforce the fake news in people's minds.

Data shows that social media used to manipulate public opinion based on disinformation is on the rise across the world (Woolley & Howard 2018). Moreover, studies show that fake news is a widespread problem found now generally across Western democracies (Humprecht 2019; Hollyer et al. 2018; Monsees 2021). This is problematic in that it makes voters more likely to elect poorly performing governments and to help usher in a nondemocratic era. Another problem is that fake news is shown to lower countrywide unity and voter confidence in democracy, which increases political instability. For example, through textual analysis and reconstructing dominant argumentative patterns in parliamentary debates and newspapers, Monsees (2021) has found that fake news is used to structure public debates and decrease rational deliberation in democracies by denouncing certain opinions, news outlets, or people who share news. This then reinforces political and social divisions in

a country between those who believe in the ‘right’ vs ‘wrong’ kind of news. It leads to a less united country.

To describe another study, findings gathered from exploring the histories of democracies across the world, such as in Bangladesh, show that poorly informed voters due to fake news in democracies are more likely to make mistakes when voting in that they tend to lead to antidemocratic forces (Hollyer et al. 2018). This makes it less likely for democracy to survive, as there is a trend for democratic countries in tough economic times ensconced in fake news to resort to extra-constitutional means, like coups and assassinations, to attempt to remove those who have been democratically elected.

Regarding these echo chambers, politicians of the relevant party can influence what news agencies report (Benkler et al. 2018). News agencies in turn can influence a politician’s policy preferences. This creates a feedback loop where it then becomes difficult for a news source or politician within the loop to consistently maintain the truth unless they want to lose touch with the viewership. Furthermore, politicians feel obliged to stay within the loop and repeat relevant talking points in order to receive attention, to get votes, and to remain in office. Certain politicians and relevant media sites must participate in the propaganda feedback loop in order to maintain credibility within their party.

In summary of my inductive claim of probability that a post-truth future is likely given today’s technologies for media: We know as a fact that sensational fake news stories with their emotional attractive power are more popular to read than true stories. Moreover, people will be highly motivated to create their own online news sites with cheap start-up costs to promote fake news and deep fakes on the internet for financial gain. Foreign adversaries, politicians who benefit from fake news from foreign adversaries, social media companies, influencers, and political organizations will be extremely motivated as well. From psychology, we know that there are peer pressure, confirmation, and tribalism biases. These psychological biases along with echo chambers and social media algorithms are additional factors that favor sensationalist stories that will get people to buy into disinformation. Data shows that fake news is now a pervasive problem generally across Western democracies and makes antidemocratic movements likely during economic recessions. Moreover, many people will become more extreme as they base their normative political judgments on extreme, false empirical beliefs. Most in the US now don’t trust the accurate mainstream media and view them as promoting fake news. The reliable standard bearers and purveyors of political facts significantly have been discredited in the eyes of the public, which opens the gates for the influence of even more fake news. Furthermore, disinformation is affecting people’s votes at many times towards more radical nominees who are in the feedback loop with disinformation. Those who stand up for the truth against their party have been and are mostly ousted. Given the Milgram experiments and their ilk, we also know that most who are at least in echo chambers are

willing to act when their political leaders tell them to perform wild actions that are based on wild conspiracy theories.

III. Arguments for regulations

I newly have pieced together a conglomeration of empirical studies from the social sciences on the effects of fake news in media as well as combined it with psychology studies regarding factors like confirmation biases and tribalism. I then conclude that with the current media, the empirical data shows that it's likely that we will find ourselves somewhere in a varying spectrum of a post-truth society with pervasive misinformation that further radicalizes certain groups towards extreme behavior. It's likely we will find ourselves in a post-truth era that will, to a large extent, grow and become more radical over time. This can lead to events such as the overthrow of legitimate democratic governments, the suppressing of civil rights movements, the denial of global warming and the demise of the planet, and the preventable deaths of countless lives during a pandemic. It likely will lead to overridingly negative consequences. For, every political era deals with heavy controversial issues that carry potential massive negative consequences, and politicians can concoct fake news, like fraudulent elections, out of thin air. This can be mitigated from private media companies self-regulating speech at least to a certain limited extent. However, there is no guarantee that such companies will even self-regulate or sufficiently self-regulate, and not all social media platforms currently do self-regulate. To see the importance of government regulations, we need only imagine a world in which private media companies don't self-regulate at all to see how much faster disinformation will spread to create a post-truth society. Hence, I contend that if we don't restrict speech in the media in particular ways regarding the empirical facts, then it's likely to lead to the overridingly negative consequences of a post-truth era.

Benkler et al. (2018) argue from the deontological perspective that it's problematic to restrict media at such a scale as I've proposed as it limits the rights to freedom of speech and the press. However, remember Mill's generally accepted harm principle that freedoms can be restricted by the government if they lead to harm and overridingly negative consequences. This morally justifies restrictions on free speech on many things, such as on child pornography, on verbally inciting violence, on yelling 'fire' in a crowded theater, and on libel and slander.⁴ The moral deontological right to free speech and the press is overridden in relevant contexts when the harm principle is in play.

The individual right to freedom of movement should be restricted for a person, even in a democracy, when this person has a deadly, highly contagious

⁴Recall that this paper is interested in moral rather than legal justifications for restrictions.

virus that equally affects all, with no cure or vaccine available. Quarantine is justified due to the dire consequences of the death of humanity. Although not completely the same thing, a post-truth society built on misinformation similarly also has such dire consequences that the right to freedom of speech and the press on empirical facts is overridden even in a democracy to a substantial extent. Just as we have government regulation of speech and press for fake or false advertising, we need a higher level of government involvement in trying to eliminate fake or false news in our times.

IV. Implementing regulations

One may worry that government regulations on the verifiable empirical facts on media may itself lead to the problem of government controlling the media for its own potentially sinister self-interests. Let me now elaborate on a way of practically implementing my principle for regulation, where I only provide a general framework and allow for potential future alterations by those such as professional policy makers more specialized in these more practical affairs.

One possible change in countries like the US is to allow for civil lawsuits against social media companies for things like damages caused by promoting false information even from third parties.⁵ Purely online media organizations have enjoyed a general immunity from civil lawsuits, such as for libel and slander and supporting illegal activities by promoting third party websites that have led to US casualties, not enjoyed by traditional media news agencies. Fox News paid Dominion \$787 million to settle a suit when many of Fox's TV opinion programs made the false claim that Dominion's voting machines were rigged. Just as traditional news organizations can be sued for false damaging information and they need to run claims by fact-checkers and lawyers before releasing them on pains of possibly facing crippling lawsuits, social media, and purely online news companies that broadcast to the masses should too. Furthermore, the dark web should be shut down, or authors of sites on the dark web need to be made transparent to face these crippling lawsuits.

While this can limit some misinformation in the media, it won't necessarily be sufficient. For example, Fox News is a traditional media company that can face civil lawsuits. However, many of its opinion programming still actively promotes disinformation, where many don't attract civil suits. For instance, Tucker Carlson helped fuel the Russian misinformation campaign that the US and Ukraine are unethically producing biological weapons in biolabs in Ukraine (Chappell & Yousef 2022). Russia's invasion of Ukraine can help eliminate such labs. This disinformation attempts to undermine US citizens'

⁵In the US, this will require an alteration to Section 230.

support for Ukraine in the War. Hence, more restrictions are needed to halt misinformation that doesn't attract civil suits.

Additional regulations can be written such that it's reputable nonpartisan, independent privately owned third-party fact-checking organizations that must be hired to check for relevant false news stories. Media companies that purvey false news must simply take down such news within twenty-four hours to avoid any penalties or any trouble from the government. Citizens who may or may not know the empirical facts are not punished for their social media posts by the government, and it's the media company's job to take down false news. The media company will receive hefty fines if they don't act appropriately within the time frame. Recalcitrant problems with a media organization can lead to immediate fines. False news coming from an international source that especially can meddle in a country's politics and culture should immediately be blocked or firewalled. The above provides teeth to the fact-checking organizations such that they can't be ignored.

Hired fact checking organizations must make publicly available the reasons why a claim is judged true or false so they can be checked by researchers and the public, where everything is transparent. There also must be an independent avenue where the public and other fact-checkers can freely register their protestations formally to such organizations and potentially accumulate an overriding consensus. Fact checking organizations, in turn, can be rated by a nonpartisan independent governing body of expert journalists and social scientists with doctorates. Such expertise provides even more trust to the system. For instance, the Congressional Budget Office (CBO) is a highly reputable and fair nonpartisan government organization that provides independent economic assessment and economic facts of certain proposed laws from Congress. The CBO is widely regarded as largely accurate and impartial by economics experts (Lee 2017). One possibility is that we can have a new office regarding overseeing the verifiable empirical facts for the media that is different from the CBO but similar to them in respect to impartiality and integrity. This federal governing body also must make public their findings and reasonings with a secure avenue for any dissenters to formally give their dissents and potentially grow an overriding consensus against the governing body.

In order to be qualified to be hired as a third-party fact-checker, a company must be highly rated by this governing body. The government checks to make sure relevant sites have hired such reputable third-party organizations, and the government doles out punishments if they have not and if a company doesn't take down false news. Elected politicians aren't in the business of doing fact and algorithms checking themselves.

Moreover, measures that increase the likelihood of objectivity from the CBO likewise can be implemented with this new body. For example, there can be merit requirements for employment, like having a relevant doctorate, and employees must have little to no ties to political parties, currently or in

the past. The senior panel of advisors must represent diverse perspectives equally. The senior panel that heads the governing body must be approved by elected representatives equally represented by the major political parties. This is somewhat similar to, although not exactly like, how the senate confirms cabinet members.⁶

Fact-checking reports must include confirmation from other government agencies, private organizations, and outside experts in the subject matter. It also must pass through various levels within the governing body as well. The above stopgaps limit the possibility for elected politicians and leaders to overstep their bounds and abuse their powers by influencing this governing body on the media. The idea is to create a system that is epistemically justified even though it may at times produce false results just as the CBO largely is epistemically justified regarding economic facts. The structure of how the agency is constructed to make it likely to produce objective results morally ought to be safeguarded in the constitution so that a corrupt leader can't readily alter the agency to do the leader's bidding.

One may doubt that the governing body can be implemented given that they'll be distrusted by some due to their education or be thought to be politicized. Yet, my advocacy for a regulation committee is not a prediction of what will happen but a normative one about what morally ought to be the case. We ought to have a regulation committee even though it may be difficult to implement. At one time, it was doubtful that The Thirteen Colonies could become a democracy and separate from the British, especially since many in the Colonies were loyal to the British. Yet, during that time, it still morally was the case that they should be a democracy in spite of such doubt.

V. Further objections

I now will address additional objections to my arguments. There may be less invasive yet effective measures that don't erase or block a false news story completely. On such accounts, freedom of speech in sharing news stories and freedom of the press are still respected, but we also might have far less influence of false news. Against my position, we potentially can have our cake and eat it too. One measure is that viewers can flag news articles they believe to be false. Such content will then be checked by a third-party fact-checking organization. If a story is found to be false, it can be listed as 'disputed' and placed near the bottom of the news feed. It isn't eliminated.

However, one problem is the process of flagging a news article can be slow, and a fake news story may already have made the rounds and circulated widely before it's flagged (Rini 2017). Another problem is that laboratory

⁶The senate generally confirms cabinet members very quickly.

experiments show that repetition of seeing a story a second time or more overrides the flagging of a fake news story in people's minds (Pennycook et al. 2019). Even when at the bottom of a feed, susceptible people still will believe the story if they see it a second time, even though it's flagged, and it goes against their political leanings. Flagging of a news post makes it even more intriguing for those who want to believe the headline and for those who don't.

As another possible remedy in which we don't have to limit freedom of speech and the press, the philosopher Richard Heersmink (Martens 2018) proposes that increased education on critical thinking in relation to the media and internet is required. For the media, we need to develop the epistemic and intellectual virtues, such as curiosity, intellectual autonomy, and intellectual humility when acquiring political information. This initially appears as a reasonable proposal for public education. One general problem today is that most aren't taught critical thinking until college, so such skills aren't engrained in us in our important formative childhood years. Another issue is that this proposal for applied political epistemology classes for children has not produced strong initial testing results of having more critical viewing of the media (Martens 2010). In addition, one study shows that such a class teaches students to be distrustful of all the media (Boyd 2018). One possible way around these negative findings is to develop better critical thinking skills classes that produce results. However, even if this is possible, it would take decades before such a program could be developed, implemented, and the children come of age. This is too long to wait and do nothing else concerning fake news. However, I do leave open the possibility that in the future, better education and government regulations on the media can work together to form an even stronger buffer.

One may object that we can just reinstall the Fairness Doctrine that from 1949 to 1987 in the US, required news organizations to provide both sides of a controversial issue. Disinformation will be contrasted with opposing viewpoints, which may help viewers. We should have more speech rather than less speech. The problem is that when the media attempts to be balanced by giving time to both sides of a debate when there is a definitive factual answer to the issue, such as with global warming, this creates the false notion in viewers' minds that it's controversial and an unsettled matter. A like phenomenon occurred with whether cigarettes cause cancer in the latter half of the 20th century, even though the science was settled. For the debate about who is more corrupt in the 2016 US presidential election, data shows that the mainstream media gave about equal time in focusing on the negative aspects of Trump and Clinton, in order to try and appear unbiased despite Trump being more corrupt (Benkler et al. 2018). This, for many, created a sense of equality concerning corruption.

Another possible counter is that politics is like a pendulum, where things can swing conservative or liberal over time. For example, today most conservatives finally may believe that former Republican President Richard Nixon

was a crook. As Thomas Jefferson and Mill said, it takes time for truth to rise to the top. Perhaps, we need more patience and no regulations. Yet, my response is that there are many urgent issues tied to fake news in which we don't have decades to wait for people to see the truth. There were false claims on dangerous medicines, like ivermectin, that supposedly cure COVID-19 (Jankowicz 2020). Also, there are Russian disinformation campaigns in several countries, like Estonia, Poland, and Georgia, to create divisions within society and political instability (Jankowicz 2020). The above fake news and others may have immediate effects that cannot wait for the pendulum to swing in the right direction. Action is needed immediately.

Mill may claim that with my argument for regulations, we may be eliminating the truth from the public eye. Recall that one of the main virtues of free speech is that it allows us to find the truth. While this is a possibility as, for example, later discovered information may shed new light on what the real facts are, reputable third-party fact-checking organizations currently are epistemically justified in their beliefs of what the empirical facts are given the information presently available. In our high information world, we widely and justifiably get much of our information about the world from reputable outside sources that provide us information quickly and efficiently without us having to know arcane knowledge or having the expertise to know how to acquire such facts. This includes information about severe weather from forecasters and the best treatment for our illness from medical doctors. Getting empirical facts relevant to politics approved by reputable fact-checkers is along similar lines. Insofar as fact-checking organizations are epistemically justified and something like such organizations are used to check the media when government regulations are implemented, they are warranted in regulating the empirical facts in the media even if some proposed facts that pass their screening are false. Of course, at times, human errors may be made by a fact-checking organization, as no one is perfect. However, they will have to make corrections in their decision-making when mistakes in their work are found by other news agencies, fact-checkers, or the public.

Finally, Mill says that free speech allows for claims that may contain important partial truths, although not being wholly true. Allowing for such a speech can be for the greater good. Should such speech be regulated? To be sure, there are lots of outright false claims in our post-truth era, such as that global warming is a hoax, that the 2020 US elections were tampered with by Democrats, and that Russian interference in US elections didn't happen. Many effective kinds of disinformation will be stifled on my view, and my system will have a wide scope of application.

Yet, partial truths also can be regulated on my system. An example of a partial truth claim is one by democrat Donna Brazile (Jankowicz 2020). She wrote in *Politico* (Brazile 2017) that the Democratic National Committee (DNC) rigged the 2016 primaries in favor of Hillary Clinton over Bernie

Sanders. In exchange for raising money and investing in the DNC, which was nearly bankrupt, Clinton was given the right, before the primaries ended, to veto who was the new DNC communications director. She had veto power over other senior staff member positions too, should there be vacancies. This is unusual. The Sanders campaign claimed that this led to disadvantages for them, such as on the timing of primary contests by shortening the campaign season and on the way delegates were divided over the states. However, these DNC rules were decided on in 2014, well before anyone could expect a Clinton vs Sanders contest (Heersink Martens 2017). Given this fact, Brazile soon retracted her statement that the primary was rigged (Klein Martens 2017).

Her statement that the primary was rigged was overall false, but it was partially true in that it had a truthful component that the DNC gave Clinton unusual veto power on DNC job vacancies before the primaries were over. On my account, partial truths still can be regulated by permitting the truthful component of a claim. False components that unwarrantedly extend beyond this truth should be regulated. The truth should be disentangled from what is false. Brazile should be permitted to write about the fact that Clinton had unusual power to veto certain job vacancies. However, her claim should be regulated when writing that this led to the primaries being rigged. For, this doesn't follow from established empirical facts.

VI. Conclusion

I have provided a new consequentialist argument that, given amassed evidence from the social sciences that I have assembled, a post-truth era is likely with our current media technologies. This creates such negative consequences that it overrides benefits that may arise from having free speech in media on the empirical facts. By relying on the harm principle, I have argued that the negative consequences override individual rights to freedom of speech and the press, and I have defended this conclusion from numerous counters. Moreover, I have provided a working framework for how regulations can be implemented in an unbiased way. Given the above, we ought to have government regulations on the media for news content regarding the empirical facts.

Conflicts of interest

The authors have no conflict of interest to disclose.

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