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MEDIA LITERACY BEYOND THE NATIONAL SECURITY FRAME

Lili Levi[*]

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INTRODUCTION

The pressing question of what to do about online mis/disinformation[1] has led to a variety of reform proposals, the most seemingly uncontroversial of which is the push to "media literacy."[2] Recently, rhetoric supporting pending federal media

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[1] Because this Essay focuses on media literacy as a way of dealing with false information online generally, and because the differences between disinformation (intentional falsehood designed to achieve strategic ends) and misinformation (false communication that is either mistakenly or inadvertently created or spread, or as to which strategic intention is not established) are not critical to my principal argument, I refer to online falsity with the portmanteau term "mis/disinformation." For links to definitions and examples of online falsity, see *"Fake News," Lies and Propaganda: How to Sort Fact from Fiction*, U. MICH. LIBR. (Jan. 24, 2020, 9:15 AM), https://guides.lib.umich.edu/fakenews [https://perma.cc/4GH5-5ESH].

[2] Google searches for 'media literacy' delivered almost 5,000,000 results (with over 100,000 citations in Google Scholar). *See, e.g.*, GOOGLE SCHOLAR, https://scholar.google.com/scholar?hl=en&as_sdt=0%2C10&q=%22media+literacy%22&btnG= [https://perma.cc/GPZ4-XAXL] (last visited Mar. 23, 2020).

"Media literacy" is a notoriously protean term with no single definition, perhaps in part because it has been addressed by various different social science disciplines since the 1970s. *See generally* MONICA BULGER & PATRICK DAVISON, DATA & SOCIETY INST., THE PROMISES, CHALLENGES, AND FEATURES OF MEDIA LITERACY 3 (Feb. 2018), https://datasociety.net/pubs/oh/DataAndSociety_Media_Literacy_2018.pdf [https://perma.cc/4H53-5DMZ]; Omwoyo Bosire Onyancha, *Knowledge Visualization and Mapping of Information Literacy, 1975–2018*, IFLA J. (Apr. 3, 2020), https://journals.sagepub.com/doi/abs/10.1177/0340035220906536?journalCode=iflb [https://perma.cc/H2ZW-KDDH] (examining the history and evolution of information literacy and its spread across twenty-seven multi-disciplinary fields); W. James Potter, *The State of Media Literacy*, 54 J. BROAD. & ELEC. MEDIA 675 (2010) (cataloging 23 definitions from different disciplines); *see generally also* Renee Hobbs, *The State of Media Literacy: A Response to Potter*, 55 J. BROAD. & ELEC. MEDIA 419 (2011); Caroline L. Osborne, *Programming to Promote Information Literacy in the Era of Fake News*, 46 INT'L. J. LEGAL INFO. 101 (July 2018), https://www.cambridge.org/core/journals/international-journal-of-legal-information/article/programming-to-promote-information-literacy-in-the-era-of-fake-news/F8061544738F4C6A3CFF3EAE34EDA42E [https://perma.cc/82NU-W89L]. Media literacy has an older pedigree, however, dating back to the 1930s. *See* Anya Schiffrin, *Fighting Disinformation with Media Literacy—in 1939*, COLUM. JOURNALISM REV. (Oct. 10, 2018), https://www.cjr.org/innovations/institute-propaganda-analysis.php [https://perma.cc/XJ42-CNCZ] [hereinafter Schiffrin, *1939*].

The most recent definition of media literacy from the National Association for Media Literacy Education (NAMLE) is "the ability to access, analyze, evaluate, create, and act using all forms of communication." *Media Literacy Defined*, NAT'L ASSOC. FOR MEDIA LITERACY EDUC., https://namle.net/publications/media-literacy-definitions/ [https://perma.cc/53FW-36Q8] (last visited Feb. 21, 2020). Recently, various other adjacent terms—such as information literacy and news literacy—have been used when focusing on online disinformation, apparently reflecting the disciplines in which the terms are deployed. One useful library-based categorization effort describes a literacy pyramid with information

literacy legislation has framed that push as a matter of national security—suggesting that audience empowerment through the provision of critical reading tools could inoculate citizens against governance-threatening disinformation from foreign agents.[3]

In addition to its limited focus on disinformation by foreign actors, this national security frame implies a narrow interpretation of media literacy—emphasizing individual competency to read factual claims skeptically. But success at this limited level cannot ensure the kind of literacy that would fully promote the democratic design. An additional frame beyond national security is necessary—one that seeks to expand awareness of the role of the press in democracy and how domestic delegitimation of the press by the Executive undermines our constitutional structure and poses a fundamental threat to the republic. Accordingly, this Essay calls for a two-pronged approach—one that seeks both: 1) to increase the effectiveness of current disinformation-debunking models by adopting inter-disciplinary methods and relying more explicitly on the lessons of social science research; and 2) to broaden the focus and expand the targets of media literacy efforts aimed at addressing the potential anti-democratic effects of strategic disinformation campaigns aimed at the press itself.

The Trump administration's delegitimizing refrain characterizing legacy media as "fake news" institutions has doubtless exacerbated growing public distrust in government and accountability institutions.[4] It has also promoted arrogation of power by the Executive. Media literacy must be broadened to encompass the more capacious goal of helping citizens understand the structure, operations, and

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literacy (defined as "the ability to locate, access, select, evaluate, manage, use, create and communicate information effectively and responsibly") subsuming media literacy, which in turn subsumes news literacy and requires digital literacy, visual literacy, and numeracy/data literacy. *See Fake News: Literacies*, CAL. ST. U. LONG BEACH, https://csulblis.libguides.com /c.php?g=756956&p=5426991 [https://perma.cc/G78Y-LBRR] (last visited Feb. 21, 2020) (describing the various literacies and compiling links to electronic resources for each). Apparently, there is debate within the social science community as to the parameters of these different literacy constructs (not to mention debate as to the character and scope of media literacy itself). *See, e.g.*, Jihii Jolly, *News Literacy vs. Media Literacy*, COLUM. JOURNALISM REV. (Sept. 4, 2014), https://archives.cjr.org/news_literacy/news_literacy_vs_media_literac .php [https://perma.cc/58RJ-SDC4]; Anya Schiffrin, Demand Side Solution: Teaching Media Literacy in Order to Fight Disinformation—in 1939, *in* Mis and Disinformation Online: A Taxonomy of Solutions (forthcoming 2020) (Ph.D. dissertation, University of Navarra) (on file with author) [hereinafter Schiffrin, Demand Side]; *see also* Sonia Livingstone, *Media Literacy and the Challenge of New Information and Communication Technologies*, 7 THE COMM. REV. 1, 3–14 (2004). This Essay follows the convention in the legal literature and legislation in this area by referring to "media literacy" as an umbrella term, seeking to capture both accuracy-enhancement and deeper social and democratic needs.

[3] *See infra* notes 23–27 and accompanying text. *See generally also* Osborne, *supra* note 2.

[4] *See, e.g.*, Lili Levi, *Real Fake News and Fake Fake News*, 16 FIRST AMEND. L. REV. 232, 257–62 (2018) and sources cited therein.

constitutional role of the press through increased transparency about journalism, its structural role in democracy, and the interconnected ways in which it is threatened.[5] Expanding the public's understanding of the proper role of the press and the ways in which modern information industries operate attention markets, promoting the audience's awareness of its own cognitive blind spots, increasing reporters' critical acumen when dealing with information, and reframing newsworthiness norms and awareness of disinformation techniques in order to lessen the mainstream press's vulnerability to informational manipulation can all be positive expansions of the notion of media literacy beyond the ability to spot factual errors in particular articles.

The point of this shifted and expanded approach to media literacy is to address our new informational and institutional realities, rather than to fight old wars with old techniques. It should be designed to evolve and attuned to robust results of empirical study. Admittedly, media literacy does have its skeptics—those who claim that it has not succeeded so far, and who argue that disinformation is less a problem of information than of cognitive bias, rendering information-forcing solutions irrelevant (or even counterproductive).[6] But the social science evidence so far does not clearly portend the failure of well-designed media literacy.[7] And an expanded interpretation of media literacy diminishes the power of current critiques of today's efforts in any event.

Ultimately, however, even effective media literacy can and should be but one piece of a broader media strategy—one that includes an economically reinvigorated press, enhanced legal protections for press operations, increased consciousness of the multiple ways in which journalistic norms can be manipulated, a healthier technological environment for the dissemination of information to the public, and critical attention to how the institutions of the press operate. Individual, audience-focused approaches alone are not enough. Calls for media literacy in its multiple forms should be broadly welcomed but should not distract from the need for such a multi-faceted approach to addressing the social harms of disinformation, including its systemic and structural aspects.[8]

The Essay proceeds as follows. Part I describes current and proposed legislation designed to promote media literacy and maps the existing legislative agendas. Part II examines the narrow sense of media literacy, which focuses on helping audiences (and principally school-age audiences) identify false statements. The Part explores how to increase the effectiveness of today's media literacy interventions, focusing on the shortcomings of current approaches, the need for an interdisciplinary and empirically-grounded methodology, and new tech-based dangers. Part II argues that

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[5] *See* discussion *infra* Part III.

[6] *See* discussion *infra* Sections II.A, II.B.2–3.

[7] *See* discussion *infra* Sections II.A, II.B.

[8] *See, e.g.*, Whitney Phillips, *The Toxins We Carry*, COLUM. JOURNALISM REV. (2019), https://www.cjr.org/special_report/truth-pollution-disinformation.php [https://perma.cc/TX 8L-DRRH] (discussing the insufficiency of fact-checking as a response to "information pollution" and calling for an "ecological" response focusing on "how our systems, our actions, and our institutions intertwine in ways that create perfect conduits for pollution to flow unchecked").

current approaches miss those unserved by school-based media literacy requirements; that social science findings—rather than intuition—should be taken into account in media literacy design; and that the fact-check-based model of media literacy is problematic and insufficient as currently envisioned. Part III turns to a broader view of media literacy, expanding both its goals and targets. This Part focuses both on audiences and the press itself—calling for expanded audience literacy and media self-literacy. It argues for initiatives designed to increase public trust in the press as a constitutionally recognized monitor of power. Specifically, Sections III.A.1 and III.A.2 focus on an expanded sense of media literacy for audiences and respectively call for (1) transparency about press processes; and (2) enhanced public knowledge about the modern media ecosystem, disinformation techniques, and the cognitive biases that enable audience manipulation. Sections III.B.1 and III.B.2 respectively suggest (1) including journalists as proper targets of literacy initiatives; and (2) promoting self-examination and improvement of journalistic and editorial practices.

I. NATIONAL SECURITY RHETORIC AND THE TURN TO MEDIA LITERACY IN PENDING FEDERAL LEGISLATION

By contrast to overarching reform proposals—such as platform break-ups under anti-concentration laws[9] or legislation designed to ferret out and quell false speech[10]—media literacy seems to be an easy and uncontroversial goal as to which many across the spectrum of American political discourse agree.[11] Recent polls

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[9] Such reform proposals have moved from the academy to the platforms of presidential candidates. *See, e.g.*, Matt Stevens, *Elizabeth Warren on Breaking Up Big Tech*, N.Y. TIMES (Jun. 26, 2019), https://www.nytimes.com/2019/06/26/us/politics/elizabeth-warren-break-up-amazon-facebook [https://perma.cc/9YVB-556M].

[10] *See, e.g.*, Daniel Funke & Daniela Flamini, *A Guide to Anti-Misinformation Actions Around the World*, POYNTER, https://www.poynter.org/ifcn/anti-misinformation-actions/#us [https://perma.cc/4UQS-ADKU] (last updated Aug. 13, 2019).

[11] *See, e.g.*, CLAIRE WARDLE & HOSSEIN DERAKHSHAN, COUNCIL OF EUR., INFORMATION DISORDER: TOWARD AN INTERDISCIPLINARY FRAMEWORK FOR RESEARCH AND POLICY MAKING 68 (2017), https://rm.coe.int/information-disorder-toward-an-interdisciplinary-framework-for-researc/168076277c [https://perma.cc/NSD3-GSWN]; Michael Rosenwald, *Making Media Literacy Great Again*, COLUM. JOURNALISM REV. (2017), https://www.cjr.org/special_report/media-literacy-trump-fake-news.php. [https://perma.cc/X95S-R6YC]. While critical media literacy initiatives have in the past reflected a leftward political valence, the current calls for audience empowerment through use of media literacy techniques appear to have widespread support across the political spectrum. *See, e.g.*, DAVID LAZER ET AL., COMBATING FAKE NEWS: AN AGENDA FOR RESEARCH AND ACTION 9 (2017), https://www.sipotra.it/wp-content/uploads/2017/06/Combating-Fake-News.pdf [https://perma.cc/4S6J-C8SX]; Daniel D. Barnhizer & Adam Candeub, Elite Theory, Media Regulation, and 'Fake News' (2019) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3449503 [https://perma.

show that the public distrusts the news accessed on social media[12] and would have an appetite for training on how to find online resources for trustworthy information.

Whether because the platforms, the media, advertisers and any other major players perceive little threat if reform focuses on media literacy, or because it seems not to require much from the media sector itself, or it is consistent with notions of American individualism, or it is perceived as more desirable than censorious regulatory interventions due to "third party perception,"[13] or it is envisioned as a bulwark against foreign influence in U.S. elections to enhance national security,[14] media literacy seems to have become a natural response to the complex and seemingly intractable problems posed by false speech.[15] In a world in which many worry simultaneously about the harmful effect of speech on democratic institutions, about government control of speech, about our constitutional commitment to freedom of speech false or true, about the decline of public trust in virtually all accountability institutions—and in which many people believe that others are more at risk of negative influence from fake news than they themselves are[16]—a reformist tack that promises to seat powerful tools in the hands of the individual in politically neutral ways (and without command-and-control regulation) might well be perceived as a godsend.[17]

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cc/53U3-73U2]. For recent reports recommending media literacy as part of an overall response to disinformation, see, for example, Rasmus Kleis Nielsen et al., *What Can Be Done? Digital Media Policy Options for Strengthening European Democracy*, REUTERS INST. (Nov. 25, 2019), https://reutersinstitute.politics.ox.ac.uk/risj-review/what-can-be-done-digital-media-policy-options-europe-and-beyond [https://perma.cc/MEJ9-LNDV].

[12] *See* Elisa Shearer & Elizabeth Grieco, *Americans Are Wary of the Role Social Media Sites Play in Delivering the News*, PEW RES. CTR. (Oct. 2, 2019), https://www.journalism.org/2019/10/02/americans-are-wary-of-the-role-social-media-sites-play-in-delivering-the-news [https://perma.cc/XMZ6-3ALY].

[13] *See, e.g.*, S. Mo Jang & Joon K. Kim, *Third Person Effects of Fake News: Fake News Regulation and Media Literacy Interventions*, 80 COMPUTERS IN HUM. BEHAV. 295, 299 (2018) (confirming third party perception (TPP)—pursuant to which individuals believe that others are more vulnerable to false information than they themselves are—and finding that TPP is positively correlated, across political parties, with approval of media literacy interventions).

[14] *See* discussion *infra* notes 24–26.

[15] These are simply speculations; perhaps the enthusiasm for media literacy is grounded on the belief that it can be effective. *See* Rosenwald, *supra* note 11.

[16] *See, e.g.*, Jang & Kim, *supra* note 13, at 17.

[17] *See* Sonia Livingstone, *Media Literacy: What Are the Challenges and How Can We Move Towards a Solution?*, LSE (Mar. 13, 2019), https://blogs.lse.ac.uk/parenting4digital future/2019/03/13/media-literacy-what-are-the-challenges/ [https://perma.cc/4ZHQ-B8WC] ("In our ever-more complex media and information environment, media literacy is being hailed as a silver bullet solution. . . . [I]n the face of clashes of positive and negative rights, regulatory difficulties, powerful global companies and short-termist political expediency, this call in turn quickly morphs into a call for the supposedly 'softer' solution of educating the internet-using public.").

As a result, the heightened concern about electoral disruptions by disinformation on social media has led to a cottage industry of studies and initiatives to promote media literacy in both private and public contexts. While the specifics are contemporary, today's turn to media literacy has deep antecedents in the media discourse of the 1930s.[18] States have adopted media literacy requirements for their K-12 curricula.[19] Universities have started investing in media literacy courses.[20] The platforms, such as Google and Facebook, have been funding media literacy efforts.[21]

On the legislative front, in addition to the existing curricular media literacy requirements in many states,[22] proposed federal legislation—entitled the Digital Citizenship and Media Literacy Act ("DCMLA")—has been introduced with

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[18] *See* Shiffrin, *1939*, *supra* note 2.

[19] *See, e.g.*, *Legislative Activity Across the Country*, MEDIA LITERACY NOW, https://medialiteracynow.org/your-state-legislation/ [https://perma.cc/LHB7-B396] (last visited Feb. 21, 2020) (for links to state media literacy education legislation); NAT'L ASSOC. FOR MEDIA LITERACY EDUC., SNAPSHOT 2019: THE STATE OF MEDIA LITERACY EDUCATION IN THE UNITED STATES 7 (2019), https://namle.net/publications/somlr/ [https://perma.cc/42 59-P3C5] [hereinafter NAMLE, SNAPSHOT 2019].

[20] *See, e.g.*, *Universities with Courses in News or Media Literacy*, CTR. FOR NEWS EXCELLENCE & ENGAGEMENT, https://www.news-excellence.org/universities-with-courses-in-news-or-media-literacy/ [https://perma.cc/Z9W3-7MY6] (last visited Feb. 21, 2020); Rosenwald, *supra* note 11.

[21] On Google's efforts, including its Google News Initiative, see, for example, Kerry Flynn, *How Google-Backed MediaWise Is Teaching Teens Media Literacy*, DIGIDAY (Jan. 7, 2019), https://digiday.com/media/google-backed-mediawise-teaching-teens-media-literacy/ [https://perma.cc/B6RU-28NF]; Sarah Perez, *Google's New Media Literacy Program Teaches Kids How to Spot Disinformation and Fake News*, TECHCRUNCH (Jun. 24, 2019), https://techcrunch.com/2019/06/24/googles-new-media-literacy-program-teaches-kids-how-to-spot-disinformation-and-fake-news/ [https://perma.cc/J8AE-FA65]; *see also* GOOGLE, HOW GOOGLE FIGHTS DISINFORMATION (2019), https://kstatic.googleusercontent. com/files/388aa7d18189665e5f5579aef18e181c2d4283fb7b0d4691689dfd1bf92f7ac2ea68 16e09c02eb98d5501b8e5705ead65af653cdf94071c47361821e362da55b [https://perma.cc/ LN3R-FLZH]. Facebook has also joined in this effort by launching the Facebook Journalism Project, which has funded media literacy education for teens. *See, e.g.*, Campbell Brown, *The Facebook Journalism Project Partners with the News Literacy Project to Expand Its News Literacy Program for Students*, FACEBOOK JOURNALISM PROJECT (Aug. 15, 2018), https://facebookjournalismproject.com/article/the-facebook-journalism-project-partners-with-the-news-literacy-project-to-expand-its-news-literacy-classroom-for-students/ [https:// perma.cc/E444-ZBCA]. In addition, Facebook has experimented with fact-checking and tagging disputed news content online. *See, e.g.*, *Fact-Checking on Facebook: What Publishers Should Know,* FACEBOOK (Feb. 25, 2020), https://www.facebook.com/help/pub lisher/182222309230722 [https://perma.cc/G7P3-8L9S]. Twitter has also enlisted in these efforts, recently partnering with UNESCO in a media literacy initiative. *See generally* TWITTER, TEACHING AND LEARNING WITH TWITTER (2018), https://about.twitter.com/content/dam/about-twitter/values/twitter-for-good/en/teaching-learning-with-twitter-unesco.pdf [https://perma.cc/C3BQ-TDU-5].

[22] *See supra* note 19.

apparently bipartisan support in both houses of Congress.[23] The DCMLA specifically identifies media literacy education as a response to online disinformation and attempts by foreign states to destabilize U.S. elections.[24] (The legislation was proposed apparently in response to the findings of the Senate Intelligence Committee's report on Russian social media disinformation efforts in connection with the 2016 presidential election and its recommendations for federal support for media literacy to "build long term resilience to foreign manipulation of our democracy."[25]) In comments supporting the bill, its sponsors identified disinformation as a "national security threat," and argued that "[a]n important part of safeguarding our country against foreign influence is making sure individual citizens have the tools to spot that disinformation."[26] If passed, the legislation would

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[23] *See* S. 2240, 116th Cong. (2019), https://www.congress.gov/bill/116th-congress/senate-bill/2240/text?r=8&s=1 [https://perma.cc/TK5L-UTDT] and H.R. 4668, 116th Cong. (2019), https://www.congress.gov/bill/116th-congress/house-bill/4668 [https://perma.cc/SDJ2-TLQH].

It should be noted that the House and Senate bills are virtually identical in language except that the House bill (which, as the October bill, is more recent than the Senate's July version): (1) contains specific references to the accessibility of media literacy to "at-risk" students (*see* § 2(4)); (2) contains a new Section 4 requiring the Secretary of Education to establish a Federal Advisory Council "to assist the Secretary in evaluating and awarding grants under this section 3 and developing and making available to States and local educational agencies evidence-based model curricula and standards for media literacy education"; and (3) contains a Section 5 requiring the Government Accountability Office to submit various reports within 180 days after enactment of the legislation concerning the media literacy and digital citizenship programs at the state and local levels, media literacy and digital citizenship competencies among students, and the impact of media literacy and digital citizenship education on student outcomes.

[24] The findings indicating this are contained in Section 2 in both the House and Senate versions of the bill. *See* S. 2240, § 2; H.R. 4668, § 2. The legislation-supporting rhetoric styles the matter as one of national security because guarding against foreign state interference in domestic elections is envisioned as a central goal of national security.

[25] The report concluded that "a public initiative—propelled by federal funding but led in large part by state and local education institutions—focused on building media literacy from an early age would help build long-term resilience to foreign manipulation of our democracy." S. SELECT COMM. ON INTELLIGENCE, 116TH CONG., REP. ON RUSSIAN ACTIVE MEASURES CAMPAIGNS AND INTERFERENCE IN THE 2016 U.S. ELECTION, VOL. 2: RUSSIA'S USE OF SOCIAL MEDIA WITH ADDITIONAL VIEWS 81 (2019), https://www.intelligence.senate.gov/sites/default/files/documents/Report_Volume2.pdf [https://perma.cc/UPZ3-6HS5] [hereinafter SENATE REPORT ON RUSSIAN INTERFERENCE]; *see also* Maggie Miller, *House Dems Introduce Bill to Fight Social Media Disinformation*, THE HILL (Oct. 11, 2019), https://thehill.com/policy/national-security/465464-house-dems-introduce-bill-to-fight-social-media-disinformation [https://perma.cc/K3T5-H88P] (describing report's findings with respect to Russian disinformation campaign, and recommending "a 'public initiative' aimed at promoting 'critical thinking skills' to help Americans identify disinformation online").

[26] Miller, *supra* note 25.

authorize the Secretary of Education to create a grant program to help develop digital and media literacy education for grades K-12.[27]

The DCMLA defines media literacy broadly, including the ability to evaluate the credibility of information obtained via various media and to analyze media content critically.[28] The proposed legislation seeks to empower children to identify online disinformation and to be aware of the ways in which media can influence them. Despite the broad language employed in parts of the definition, the findings and most of the definitional provisions suggest a focus on media literacy principally as inoculation against the impacts of factually false claims.[29] This reading of media literacy does not significantly focus on the media itself as anything more than the conduit for the spread of disinformation. And perhaps of its apparent origin in the need to find an antidote to "foreign manipulation of our democracy,"[30] the DCMLA does not address the anti-democratic effects of a domestic campaign of false information and attacks on the press by the President of the United States himself. And it is an approach that "put[s] the onus for monitoring media effects on the audience[.]"[31]

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[27] *See* S. 2240; H.R. 4668; H.R. 4668. Both House and Senate bills provide that state or local educational agencies receiving grants could use the funds to incorporate media literacy into existing K-12 curricula, establish media literacy advisory councils to help develop new curricula, recommend guidelines and best practices in media literacy education, and expend funds to provide professional training for teachers in media literacy. Both House and Senate bills define media literacy as "the ability to (A) access relevant and accurate information through media in a variety of forms; (B) critically analyze media content and the influences of different forms of media; (C) evaluate the comprehensiveness, relevance, credibility, authority, and accuracy of information; (D) make educated decisions based on information obtained from media and digital sources; (E) operate various forms of technology and digital tools; and (F) reflect on how the use of media and technology may affect private and public life." H.R. 4668, § 3(a)(5); S. 2240, § 3(a)(4).

[28] *See* S. 2240; H.R. 4668; H.R. 4668.

[29] I do not mean to over-interpret either the narrowness of the disinformation-debunking goal or the implications of the national security-focused rhetoric deployed in support of the DCMLA. As noted above, the definition of media literacy (and especially H.R. 4668, § 3(a)(5)(B) & (F) and S. 2240 § 3(a)(4)(B) & (F)) is broader than simple debunking. Similarly, the call-out to national security may well be a strategic ploy to increase bipartisan support for the bill rather than a well thought-out choice to limit the scope of media literacy.

[30] *See* SENATE REPORT ON RUSSIAN INTERFERENCE, *supra* note 25.

[31] BULGER & DAVISON, *supra* note 2, at 15; *see also* Livingstone, *supra* note 2.

II. INCREASING THE EFFECTIVENESS OF TODAY'S MEDIA LITERACY IN LIGHT OF
COGNITIVE BIASES AND AT A TIME OF EVOLVING DISINFORMATION

If media literacy is to be effective even as a technique of skeptical reading, the first step is to assess and increase the effectiveness of current media literacy approaches, particularly as they focus on debunking factual mis/disinformation.[32]

A. *Addressing Structural Problems in Existing Tactics*

Social scientists and education researchers assert that the effectiveness of media literacy education legislation has not yet been established empirically.[33] One of the major difficulties besetting media literacy legislation and proposals is that the concept of media literacy itself has been contested, developed in a variety of separate disciplines, and subject to limited empirical study.[34] In addition, some scholars identify significant structural problems that stand in the way.[35] This does not

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[32] Of course, effectiveness is a relative notion. Still, it is useful to engage in an analysis of the costs and likely benefits of the focus on media literacy as an antidote to disinformation. In application, the idea appears to be to provide the audience with the tools to be able to evaluate the likely truth of factual allegations. A broader goal could be to understand the frames, biases, and contexts of news reports.

[33] *See, e.g.*, BULGER & DAVISON, *supra* note 2, at 16–17; Schiffrin, *1939*, *supra* note 2; Schiffrin, Demand Side, *supra* note 2.

[34] *See* Osborne, *supra* note 2, and sources cited therein.

[35] *See* discussion *infra* notes 34–38 and accompanying text; Schiffrin, Demand Side, *supra* note 2. On the education front, for example, a recent report addresses the structural problems that appear to reduce the effectiveness of state-based media literacy education initiatives in the U.S. overall. *See* NAMLE, SNAPSHOT 2019, *supra* note 19, at 9; *cf.* JOEL BREAKSTONE ET AL., STANFORD HISTORY EDUC. GRP., STUDENTS' CIVIC ONLINE REASONING: A NATIONAL PORTRAIT 3 (2019), https://purl.stanford.edu/gf151tb4868 [https://perma.cc/75FA-MREB] (detailing a Stanford University report indicating significant college student inability to distinguish false from true information despite existing media literacy educational requirements for high schoolers); *see also* Osborne, *supra* note 2. Studies of the effectiveness of media literacy efforts at the K-12 level suggest, *inter alia*, a need to improve the education-sustained U.S. commitment and to improve professional training and diversity. *See* BULGER & DAVISON, *supra* note 2. Critics point to the lack of professional training in media education approaches for teachers as one of the structural problems that make it hard to conclude that the educational approach has been particularly effective. This does not even get to the insufficient and variable funding of such media literacy efforts in education. *See, e.g.,* Schiffrin, Demand Side, *supra* note 2. One of the important contributions of pending federal legislation may be a response to that latter concern. Even more critically, some argue that current educational interpretations of media literacy are unduly narrow, rest on "crass versions of critical thinking," and will be unable to solve the major social problems for which they are proposed. *See, e.g.*, danah boyd, *You Think You Want Media Literacy. . . Do You?*, MEDIUM: DATA & SOC'Y: POINTS (Mar. 9, 2018), https://points.datasociety.net/you-think-you-want-media-literacy-do-you-7cad6af18ec2 [https://perma.cc/U4MC-42RT].

necessarily suggest promising results from the still-highly-decentralized funding approach taken by the proposed DCMLA. Moreover, beyond media literacy requirements in the K-12 educational context, research has also cast doubt on the ability of audiences to distinguish mis/disinformation online[36] and therefore raised questions about the effectiveness of the various initiatives (undertaken particularly by the tech platforms) to empower audiences to detect falsity.

Although some take the position that mis/disinformation has little electoral effect[37] and media literacy efforts have not been conclusively shown to be effective, we should not read too much into such a supposed failure of proof. After all, attempting to assess effectiveness faces huge measurement problems, not to mention the inconsistent and inadequate ways in which it has been operationalized, so existing empirical studies begin from a data disadvantage.[38] A bird's eye view suggests that even in the educational setting, media literacy has been legislatively aspirational rather than operationally central. Moreover, social science research has not offered uniform results with respect to debunking strategies.[39]

At the same time, critics might assert that not having a clear, consensus definition of media literacy does present a problem. Unfortunately, it is not enough to respond that the cornerstone of media literacy is critical thinking,[40] because that

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[36] *See, e.g.*, BREAKSTONE ET AL., *supra* note 35, at 14–27.

[37] *See, e.g.*, Hunt Allcott & Matthew Gentzkow, *Social Media and Fake News in the 2016 Election,* 31 J. ECON. PERSP. 211, 232 (2017) (disputing electoral impact of disinformation in 2016 U.S. presidential election); Andrew Guess et al*., Eur. Res. Council, Selective Exposure to Misinformation: Evidence from the Consumption of Fake News During the 2016 U.S. Presidential Campaign*, at 2–12 (Jan. 9, 2018), https://nordpresse.be/IFC/fake-news-2016.pdf [https://perma.cc/5N2T-5AEX] (an early study pushing back against claims of direct electoral impact).

Still, each of the studies thus far has its limits. *See generally* Danielle Kurtzleben, *Did Fake News on Facebook Help Elect Trump? Here's What We Know*, NPR (Apr. 11, 2018, 7:00 AM), https://www.npr.org/2018/04/11/601323233/6-facts-we-know-about-fake-news-in-the-2016-election [https://perma.cc/H2NV-7TZ4] (reviewing findings and limitations of fake news studies); *see also* discussion *infra* note 127 and accompanying text.

[38] *See* Schiffrin, Demand Side, *supra* note 2.

[39] For example, some argue that even appropriately audience-targeted, fact-based debunking may well have limitations to the extent that different audiences do not all spread disinformation because they are unaware of its falsity. But recent empirical work suggests that large majorities of those who spread disinformation are in fact unaware of its falsity. *See* Amy Mitchell et al., *Many Americans Say Made-Up News Is a Critical Problem That Needs to Be Fixed*, PEW RES. CTR. (June 5, 2019), https://www.journalism.org/2019/06/05/many-americans-say-made-up-news-is-a-critical-problem-that-needs-to-be-fixed/ [https://perma.cc/5DCE-QHNH] ("Of the 52% of Americans who say they have shared made-up news themselves, a vast majority of them said they didn't know it was made up when they did so."). So at least for those people, effective debunking techniques might well work to reduce sharing of disinformation.

[40] *See, e.g.*, Marin Dell, *Fake News, Alternative Facts, and Disinformation: The Importance of Teaching Media Literacy to Law Students*, 35 TOURO L. REV. 619, 643–46

notion is itself an abstract construct as to which people can differ, whose deployment will vary with circumstances, and which is more a starting point than a conclusion.[41] Still, fact-based approaches to media literacy can be improved even without a full-fledged definition (and a broader definition is offered in Part III below).

An interdisciplinary and granular approach to media literacy design—involving both educators, researchers of all stripes, and technologists, and looking at the larger political, social and technological context—may help increase the effectiveness of this antidote to mis/disinformation.[42] At a minimum, more sustained and broadly-based empirical research is necessary, and the law should not be deaf to its results.

B. An Interdisciplinary Approach to Media Literacy Design

A reasonable response to the call for regulation and the uncertainty in the social science literature on the subject is to increase evidence-based awareness about what kinds of debunking strategies work to change people's minds about informational truth and falsity. For this, both close attention to the different audiences for media literacy, and deep engagement with the findings of cognitive psychologists and other empirical researchers may be necessary (if not sufficient) conditions for success.[43] A reflexive reliance on fact-checking is not sufficient, and new challenges are posed by the increasing enhancement of technological methods designed to create false realities.[44]

1. Matching Debunking Strategies to a Variety of Audiences

The role of age in contemporary American politics in an era of technological change and media fragmentation has been understudied. Many information literacy programs are school-based and directed to children. Even the DCMLA bills are school-focused.[45] But many people who are taken in by false information online are

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(2019) (arguing that media literacy education be mandatory for law students). Early media literacy proponents in the U.S. stressed critical thinking and understanding of the broad social and political context of propaganda. *See* Schiffrin, Demand Side, *supra* note 2.

[41] It is also important to ensure that a commitment to critical thinking does not become an avenue for generalized cynicism about truth and trust across the board.

[42] *See* Stephan Lewandowsky et al., *Beyond Misinformation: Understanding and Coping with the "Post-Truth" Era,* 6 J. APPLIED RES. MEMORY & COGNITION 353, 362, 365 (2017) (proposing an interdisciplinary "technogition approach" to address "the post-truth crisis").

[43] Of course, just as lawyers, media literacy educators, and technology platforms must take close account of the findings of social scientists, the various social scientists in different disciplines studying these issues must also work more closely together and engage more directly with each other's work. And to the extent that research findings conflict or studies are limited or incomplete, resources should be spent on expanding and deepening the work.

[44] *See infra* Sections II.B.3. & II.C.

[45] *See supra* note 27.

already adults. Although the results seem counterintuitive, recent data suggest that older Americans are more likely to forward "fake news" online.[46] If so, then the empirical focus on childhood learners and even college students may be too narrow and too long-term a response to the problem of online mis/disinformation today. Alternatively, anecdotal observation suggests that younger adults appear to be more skeptical than older people about what they read online.[47] It may be that older adults—who grew up in a news environment characterized by editorial gatekeeping and assume the continuation of editorial curation now as well—are more likely to believe what they read online.[48]

Moreover, there is reason to challenge the breadth of the relevant audience categories: neither "children" nor "adults" is a homogeneous grouping. Kindergarteners, tweens, 17-year-olds who are almost voting citizens, and 85-year-old retirees are fundamentally different in cognitive abilities, judgment, and level of skepticism about information to which they are exposed. Among adults as well, there is a broad spectrum with respect to political interest and commitment, and predispositions with respect to beliefs and interpretive templates. People self-select what they want to hear, and they ignore and interpret information at will, often on the basis of unchallenged predispositions, beliefs, and group memberships.[49] And context matters: different contexts influence the degree to which audience members believe information.[50]

The variety of audiences for fake news detection would suggest that a single type of media literacy tool would not likely be optimally effective. A variety of debunking methods might serve different audiences, at different times, and with

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[46] *See* Andrew Guess et al., *Less than You Think: Prevalence and Predictors of Fake News Dissemination on Facebook*, 5 SCI. ADVANCES 1 (Jan. 9, 2019), https://advances.sciencemag.org/content/5/1/eaau4586#F1 [https://perma.cc/Y6QT-YN4U]; Laura Hazard Owen, *Old People Are Most Likely to Share Fake News on Facebook. They're Also Facebook's Fastest-Growing U.S. Audience*, NEIMANLAB (Jan. 11, 2019, 7:00 AM), https://www.niemanlab.org/2019/01/old-people-are-most-likely-to-share-fake-news-on-facebook-theyre-also-facebooks-fastest-growing-u-s-audience/ [https://perma.cc/R7C7-EGD2]; Schiffrin, Demand Side, *supra* note 2, and sources cited therein.

[47] *See* Guess et al., *supra* note 37, at S10–S14.

[48] I thank RonNell Andersen Jones for a comment on this point during our symposium panel. Another possibility is that older users' digital literacy skills lag behind those of younger people online. *See* Casey Newton, *People Older than 65 Share the Most Fake News, a New Study Finds*, THE VERGE (Jan. 9, 2019, 2:00 PM), https://www.theverge.com/2019/1/9/18174631/old-people-fake-news-facebook-share-nyu-princeton [https://perma.cc/N9EV-KY9E].

[49] *See, e.g.*, Gordon Pennycook & David Rand, *Why Do People Fall for Fake News?*, N.Y. TIMES (Jan. 19, 2019), https://www.nytimes.com/2019/01/19/opinion/sunday/fake-news.html [https://perma.cc/T8YD-W83J] (describing social science research on people's susceptibility to believing fake news and strategic mis/disinformation).

[50] *Cf.* CASS R. SUNSTEIN, #REPUBLIC: DIVIDED DEMOCRACY IN THE AGE OF SOCIAL MEDIA 98–136 (2017) (arguing, inter alia, that echo chambers or filter bubbles will tend to increase the extremism of the views expressed).

respect to different kinds of news.[51] Perhaps, then, media literacy approaches should differ depending, *inter alia*, on age, credulity, technological adeptness, and degree of partisanship of the variety of audiences. For example, experience with increasing information skepticism through the use of digital games might provide a fruitful avenue, especially for young people.[52] For older and less digitally savvy audiences, the focus could be an emphasis on tools for critical reading online (although query whether memory problems could complicate this kind of suggestion[53]), as well as instruction in the structure and operations of the media today—so that such audiences understand more clearly the decline of the gatekeeper/editorial function online. Admittedly, some of these criteria are less objectively verifiable and harder to identify than others, but the principal point is that what works may differ for different audiences and should, therefore, be specifically studied empirically.

2. Lessons from the Social Sciences

Media literacy programs should work closely with cognitive psychologists and other social scientists to figure out which debunking strategies are likely to be effective, for which audiences, and when. One of the most promising aspects of legislation like the DCMLA is that it calls for empirical assessments of media literacy education initiatives.[54] To what extent are current media literacy initiatives taking account of work in the main fields addressing media literacy? How much do current media literacy efforts rely on credible social and cognitive psychology

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[51] *See* Owen, *supra* note 46 (discussing the need to focus fake news solutions on older people and not just digitally savvy youth); *see also* Newton, *supra* note 48 (paraphrasing political scientist Matthew Gentzkow that "the new study's findings about age could help tech platforms design more effective tools").

[52] Such games could be used for a variety of debunking ends, but one helpful use tested so far has been the use of games to understand the ways in which attention can be manipulated. *See, e.g.*, Jon Roozenbeek & Sander van der Linden, *Fake News Game Confers Psychological Resistance Against Online Misinformation*, 5 PALGRAVE COMM. No. 65 at 7 (June 25, 2019), https://www.nature.com/articles/s41599-019-0279-9#citeas [https://perma.cc/A6FG-HMBA]; Lindsay Grace & Bob Hone, *Factitious: Large Scale Computer Game to Fight Fake News and Improve News Literacy*, *in* CHI CONFERENCE ON HUMAN FACTORS IN COMPUTING SYSTEMS EXTENDED ABSTRACTS (2019), http://professorgrace.com/documents/Report_On_Fake_News_Game_And_Demographic_Performance.pdf [https://perma.cc/D79R-B7ZK].

[53] *But see* Daniel J. Levitin, *Everyone Knows Memory Fails as You Age. But Everyone Is Wrong.*, N.Y. TIMES (Jan. 10, 2020), https://www.nytimes.com/2020/01/10/opinion/sunday/age-memory.html [https://perma.cc/7VYU-5K4N].

[54] *See, e.g.*, Digital Citizenship and Media Literacy Act, H.R. 4668, 116th Cong. §§ 3(e), 5 (2019), https://www.congress.gov/bill/116th-congress/house-bill/4668 [https://perma.cc/SDJ2-TLQH] (requiring, respectively, reporting on impact by eligible entities and by the Government Accounting Office).

literature mapping how humans believe and detect falsity?[55] And how clear are the lessons of social science?

A recent report by scholars for Data & Society importantly calls for an inter-disciplinary approach to the question of media literacy.[56] Although empirical research has begun to explore the question of what will debunk online mis/disinformation, much still needs to be studied, and there does not yet seem to be a stable consensus in the social science literature.[57] Still, a few things have become clear. People's mental processes are subject to a variety of heuristics and cognitive biases—such as confirmation bias, familiarity- and fluency-biases, repetition bias, illusory truth effect, motivated reasoning—that make it difficult to design effective correctives to false information.[58] For example, correcting false information by repeating it in the course of providing true counter-information may well backfire or boomerang and reinforce the original false claim.[59] And people often have a "bias blind spot" as a result of which they can recognize others' biases while remaining unaware of their own.[60] Moreover, "belief echoes" based on false information can

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[55] Recently, the Data & Society Report has turned its focus on how to improve the empirical data available to assess media literacy efforts and recommended a national database and cross-disciplinary collaboration. *See* BULGER & DAVISON, *supra* note 2, at 4.

[56] *See* BULGER & DAVISON, *supra* note 2, at 4.

[57] *See* Nicholas Dias et al., *Emphasizing Publishers Does Not Effectively Reduce Susceptibility to Misinformation on Social Media*, 1 HARV. KENNEDY SCH. MISINFORMATION REV. 1, 2–3 (2020), https://misinforeview.hks.harvard.edu/wp-content/uploads/2020/01/V2_researcharticle_publishers_jan29.pdf [https://perma.cc/G6EC-DM6H] (warning, in the context of publisher identification models, of "the importance of social media platforms and civil society organizations rigorously assessing the impacts of interventions (source-based and otherwise), rather than [implementing] them based on intuitive appeal").

[58] *See, e.g.*, Xiaodan Lou et al., Observatory on Social Media, Ind. U., Bloomington, Manipulating the Online Marketplace of Ideas 2 (Apr. 12, 2020) (unpublished manuscript), https://arxiv.org/pdf/1907.06130.pdf [https://perma.cc/BF7Z-UM8T] ("[S]ocial media users have in recent years become victims of manipulation by various means . . . . These kinds of manipulation exploit a complex interplay of socio-cognitive, political, and algorithmic biases.").

[59] *See, e.g.*, Brendan Nyhan & Jason Reifler, *When Corrections Fail: The Persistence of Political Misperceptions*, 32 POL. BEHAV. 303, 303 (2010), https://doi.org/10.1007/s111 09-010-9112-2 [https://perma.cc/93L8-TFBC].

[60] *See, e.g.*, Prasad Chandrashekar et al., Free-Will and Self-Other Asymmetries in Perceived Bias and Shortcomings: Replications of the Bias Blind Spot and Extensions Linking to Free Will Beliefs (April 2020) (preprint of early stage research, ResearchGate), 10.13140/RG.2.2.19878.16961/2, https://www.researchgate.net/publication/331431431_ Agency_and_self-other_asymmetries_in_perceived_bias_and_shortcomings_Replications _of_the_Bias_Blind_Spot_and_extensions_linking_to_free_will_beliefs   [permalink unavailable] (asserting reproduction of original 2002 study finding "bias blind spot"); Emily Pronin et al., *The Bias Blind Spot: Perceptions of Bias in Self Versus Others*, 28(3) PERSONALITY & SOC. PSYCHOL. BULL. 369, 370 (2001), https://doi.org/10.1177/01461672 02286008 [https://perma.cc/L7CK-KQHN].

affect people's political attitudes even though they recognize the falsity of the information.[61]

Of course, people are not fungible, the cognitive biases described above are generalizations, and the empirical research is neither complete nor wholly consistent.[62] Moreover, identifying these cognitive biases enables the design of debunking strategies that can try to bypass them. So, for example, to the extent that people believe news they receive from people they trust without further examining the sources of the news stories, then focusing upstream might be helpful, especially if the upstream disseminator is not consciously weaponizing falsehood for strategic political purposes. To the extent that sharing false information leads to reputational harm in the user's social network, then reading slowly and critically might become more of a social norm in online networks. To the extent that celebrities help to propagate mis/disinformation, helping "influencers" to be more skeptical about what they post can have a beneficial funneling effect. Moreover, because people are more trusting of stories they receive from sources they perceive as credible,[63] and because they prefer to receive information that confirms their existing views,[64] research

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[61] *See* M. Anne Britt et al., *A Reasoned Approach to Dealing with Fake News*, 6(1) POL'Y INSIGHTS FROM THE BEHAV. & BRAIN SCI. 94, 96 (2019); Alice E. Marwick, *Why Do People Share Fake News? A Sociotechnical Model of Media Effects*, 2 GEO. L. TECH. REV. 474, 486–87 (2018). In the analogous context of beliefs in conspiracies, political scientists have found that information appears to have limited success in reversing conspiratorial beliefs for those of conspiratorial predispositions, although only 25% of people are found to have predispositions to believe conspiracy theories. *See, e.g.*, Joseph E. Uscinski, *The Study of Conspiracy Theories*, ARGUMENTA 1, 9 (2017), https://www.argumenta.org/wp-content/uploads/2017/10/Argumenta-Joseph-Uscinski-The-Study-of-Conspiracy-Theories. pdf [https://perma.cc/9S3G-5BA9]; *see also* Emily Thorson, *Belief Echoes: The Persistent Effects of Corrected Misinformation*, 33 POL. COMM. 460 (2016), https://www.tandfonline. com/doi/abs/10.1080/10584609.2015.1102187 [https://perma.cc/JHB5-J6BM]; Joseph E. Uscinski et al., *What Drives Conspiratorial Beliefs? The Role of Informational Cues and Predispositions*, 69(1) POL. RES. Q. 57, 59 (2016).

[62] For example, findings as to the backfire or boomerang effect may depend on group characteristics and how the correction is delivered. *See* Richard Bennett, *Does Fact Checking Work on Fake News?*, HIGH TECH F. (Dec. 20, 2018), https://hightechforum.org/does-fact-checking-work-on-fake-news/ [https://perma.cc/UHZ5-LBAY]. Moreover, one large study found that "[e]vidence of factual backfire is far more tenuous than prior research suggests." Thomas Wood & Ethan Porter, *The Elusive Backfire Effect: Mass Attitudes' Steadfast Factual Adherence*, 41 POL. BEHAV. 135, 135 (2019). https://doi.org/10.1007/s11109-018-9443-y [https://perma.cc/UM9V-93L2].

[63] *See, e.g.*, David Sterrett et al., *Who Shared It? Deciding What News to Trust on Social Media*, 7 DIGITAL JOURNALISM 783, 784–85 (2019).

[64] *See, e.g.*, Jason C. Coronel et al., *Investigating the Generation and Spread of Numerical Misinformation: A Combined Eye Movement Monitoring and Social Transmission Approach*, 46 HUM. COMM. RES. 25, 25 (2020), https://doi.org/10.1093/hcr/hqz012 [https://perma.cc/43AF-3NSV] (reporting findings that "individuals misremembered numerical information in a manner consistent with their schemas, and that person-to-person transmission can exacerbate these memory errors");

suggests that receiving fact corrections from "surprising validators" could be a useful debunking strategy.[65] Even those who hold strong beliefs may be nudged into a stance of "critical loyalty" with effective media literacy education, researchers have found.[66] Some argue for "pre-bunking"—that is, warning audiences in advance of bad information to which they will be exposed.[67] In addition, even if a small number of corrections would not dislodge a false belief, can a large enough number of challenges make people doubt whether they have made a bad decision? Moreover, even if people share false information online despite doubts as to its truth for reasons that have less to do with ignorance than with partisanship or predisposition, effective media literacy for the information-consuming public could well reduce the social currency of false information and act as a deterrent both to its initial dissemination and its further diffusion.

To the extent that "people fall for fake news because they *fail* to think [and] not because they think in a motivated or identity-protective way . . . interventions that are directed at making the public more thoughtful consumers of news media may have promise."[68] Thus, another possible solution is to prompt users to be in a deliberative mindset when confronted with information.[69] In order to reduce the

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Laura Hazard Owen, *People Who Are Given Correct Information Still Misremember It to Fit Their Own Beliefs*, NIEMANLAB (Dec. 13, 2019, 7:50 AM), https://www.niemanlab.org/2019/12/people-who-are-given-correct-information-still-misremember-it-to-fit-their-own-beliefs/ [https://perma.cc/L8M5-U8EV] (reporting on study).

[65] *See, e.g.*, Edward Glaeser & Cass R. Sunstein, *Does More Speech Correct Falsehoods?,* 43 J. LEGAL STUD. 65, 67 (2014) (coining ther term "surprising validators" and arguing that if antecedent beliefs are sharply divided, "[m]essages need to come from sources that are seen as credible to the relevant audience" because "when information that is unwelcome (in the sense that it casts doubt on one's prior beliefs) comes from someone who is highly credible and difficult to dismiss, a change in view is more likely").

[66] *See* Rosenwald, *supra* note 11 (citing to study); Joseph Kahne & Benjamin Bowyer, *Educating for Democracy in a Partisan Age: Confronting the Challenges of Motivated Reasoning and Misinformation*, 54 AM. EDUC. RES. J. 3, 3 (2016), https://journals.sagepub.com/doi/full/10.3102/0002831216679817 [https://perma.cc/5ART-UVT9] (finding that media literacy education improved judgments of accuracy more than political knowledge did).

[67] *See* Marc Daalder, *Why Do We Fall for Fake News?*, NEWSROOM (last updated Jan. 20, 2020), https://www.newsroom.co.nz/2019/11/06/896279/why-do-people-fall-for-fake-news [https://perma.cc/P25L-TAJX]; Schiffrin, Demand Side, *supra* note 2.

[68] Gordon Pennycook & David G. Rand, *Lazy, Not Biased: Susceptibility to Partisan Fake News Is Better Explained by Lack of Reasoning than by Motivated Reasoning*, 188 COGNITION 39, 48–49 (2018), https://www.sciencedirect.com/science/article/abs/pii/S001002771830163X [https://perma.cc/WG8Y-CG24].

[69] In a study specifically examining the effect of prompting investors to be in a deliberative mindset when looking at financial information, researchers report finding that those who were so prompted were less likely to believe false market information. *See* Stephanie M. Grant et al., Can a Deliberative Mindset Prompt Reduce Investors' Reliance on Fake News? 20 (Aug. 28, 2019) (unpublished manuscript), https://papers.ssrn.com/sol3/

"continued influence effect," for example, an intervention could be made before a user is faced with mis/disinformation to "reduce[] the strength of the information encoding . . . [or] 'information stickiness.'"[70] A prompt to put users in a more deliberative mindset is that kind of intervention. For example, if social media platforms could prompt users to be in a deliberative mindset before reading news, System 2 thinking could be triggered.[71] Research could help determine which prompts work best.[72] It should be noted that the prompt does not have to be particularly closely tied to the particular issue as to which the user is faced with mis/disinformation.[73]

In any event, the remaining uncertainty in the relevant social science argues in favor of exploring a variety of corrective mechanisms without the adoption of a single one-size-fits-all combination. One thing that does seem clear from the social science literature as it is developing is that the data do *not* support the conclusion that fashioning media literacy interventions in a careful way will inevitably fail. Having observed cognitive biases (such as confirmation bias and motivated reasoning) does not mean that the attempt to fight factual mis/disinformation is, by definition, doomed. What the complexity of the issue suggests, though, is that we should not proceed simply by intuition.

3. The Complexity of Relying on Fact-checking

Fact-checking has become a principal tool for media literacy, both in school-based media literacy programs and for general online audiences. The contemporary

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papers.cfm?abstract_id=3444228 [https://perma.cc/5VWV-W4C6]. While research on this has focused on investors, whose processing of financial information would predispose them to a more deliberative than hedonic mindset, it is possible that deployment of such prompts in the social media context could work as well.

[70] *Id.* at 7, 11.

[71] *See* Keith E. Stanovich & Richard F. West, *Individual Differences in Reasoning: Implications for the Rationality Debate?*, 23 BEHAV. & BRAIN SCI. 645, 658–59 (2000) (labeling Systems 1 and 2). Psychologists (dual process theorists) distinguish two modes of thinking—System 1 and System 2—with System 1 referring to rapid, automatic, unconscious and associative thinking, and System 2 referring to thinking that is conscious, requires effort, deliberation, analysis and logic. *Id.* Not unexpectedly, research suggests that System 2 demands more cognitive capacity than System 1. *Id. See generally also* DANIEL KAHNEMAN, THINKING, FAST AND SLOW (2011) (outlining the two systems of thinking). Again, not unexpectedly, people are reluctant to engage in System 2 thinking. *See* John M. Newman, Attention Markets and the Law 27 (July 23, 2019) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3423487 [permalink unavailable]. Admittedly, "human attention is scarce," and is susceptible to overload and depletion—which both make people susceptible to priming and persuasion. *Id.* at 28–30.

[72] With respect to financial news, for example, the Grant article suggests that "a news outlet could ask all readers to consider the pros and cons of an issue prior to providing access to the article." Grant et al., *supra* note 69, at 7.

[73] *Id.*

fact-checking industry reflects significant growth: there are now 195 fact-checking outfits (as opposed to 44 five years ago).[74]

Fact-checking has attracted both adherents[75] and skeptics.[76] Adherents suggest that, when designed appropriately, fact-checking can help audiences assess factual claims critically.[77] Fact-checking—by platforms, independent outfits, or other players in the media environment—seems like a natural tool to help audiences identify and avoid falling for mis/disinformation.

By contrast, skeptics of maximal reliance on fact-checking argue that there are both structural and behavioral problems with fact-checking as an antidote to mis/disinformation. One problem is that not everything fact-checkers purport to check is amenable to a binary, true/false decision.[78] Criticisms also include concerns that fact-checkers treat predictions about the future as if they are checkable facts,[79] that they do not hew to systematic selection criteria, allowing cherry-picking and selection bias,[80] that they do not have clear standards by which they purport to distinguish false from true or account for degrees of falsity (thereby leading to inconsistent results, especially with respect to ambiguous statements),[81] that they are politically biased,[82] and that their processes lead to false equivalencies among

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[74] *See* Emily Bell, *The Fact-Check Industry*, COLUM. JOURNALISM REV. (2019), https://www.cjr.org/special_report/fact-check-industry-twitter.php [https://perma.cc/2ABG-SJFE] (describing Duke University Reporter Lab census indicating the numbers in text).

[75] In itself, the burgeoning industry of fact-checkers and their use by news organizations evidences broad reliance on fact-checking as an appropriate response to falsity in the news environment. *See* Bell, *supra* note 74. Google, Facebook, and non-profit foundations are funding fact-checking philanthropy. *Id.*

[76] *See generally, e.g.,* Bell, *supra* note 74; Marwick, *supra* note 61, at 508; Andrew Moshirnia, *Who Will Check the Checkers?: False Factcheckers and Memetic Misinformation*, 2020 UTAH L. REV. 1029; Joseph E. Uscinski & Ryden W. Butler, *The Epistemology of Fact Checking*, 25 CRITICAL REV. 162, 162 (2013); Joseph E. Uscinski, *The Epistemology of Fact Checking (Is Still Naïve: Rejoinder to Amazeen)*, 27 CRITICAL REV. 243, 249 (2015) [hereinafter Uscinski, *Still Naïve*].

[77] *See, e.g.,* Alexander Agadjanian et al., *Counting the Pinocchios: The Effect of Summary Fact-Checking Data on Perceived Accuracy and Favorability of Politicians*, 6 RES. & POL. 1 (2019) (concluding that summary fact-checking—which "presents an overview of the fact-checking ratings for a politician" as opposed to focusing on the truth or falsity of a single statement—might be a useful tool both to promote critical reading and also to deter some false statements by politicians).

[78] *See, e.g.*, Uscinski & Butler, *supra* note 76, at 163.

[79] *Id.* at 170–72.

[80] *Id.* at 164–68, 172–75.

[81] *See, e.g.,* Chloe Lim, *Checking How Fact-Checkers Check*, 5 RES. & POL. 1, 1 (2018) (evaluating two major fact-checkers and finding that fact-checking is "difficult, and that validation is challenging . . . and [sometimes] strategic ambiguity of politicians may impede the fact-checking movement's goals").

[82] *See, e.g.*, *id.* at 1 (explaining that fact-checkers are often ignored "by simply dismissing the fact-checking community as politically biased"); David Harsanyi, *'Impartial'*

habitual liars and candidates whose statements may sometimes be misleading.[83] Fact-checking groups do not justify what facts they choose to check and why they exclude other facts and contexts as irrelevant to their inquiries about truth.[84] Fact-checking is difficult (especially for anything beyond outright falsehoods), and unsurprisingly, fact-checkers "disagree more than one might suppose."[85] In addition, the rise of automated fact-checking raises questions about journalistic comfort with the algorithmic vetting of information for truth value.[86] The fact-checking process becomes further complicated as fake news moves from public platforms like Facebook and Twitter to closed systems like WhatsApp.[87] Further, the appropriateness of looking to self-appointed fact-checkers to establish truth has been questioned both by audience members[88] and by researchers concerned about legitimacy and the "partnership press" resulting from teaming up by news organizations and technology companies.[89] Some claim that fact-checkers have been shown to be politically partisan and therefore untrustworthy as neutral authorities to establish truth.[90] Third-party fact-checkers have complained about the lack of

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Fact Checkers Are Revealing Their Partisanship Against Trump, N.Y. Post (Feb. 9, 2019), https://nypost.com/2019/02/09/impartial-fact-checkers-are-revealing-their-partisanship-against-trump/ [https://perma.cc/8EDJ-G7GJ].

[83] *See, e.g.*, Michael Calderone, *Democrats Decry Double Standard in Fact Checking*, Politico (Sept. 11, 2019), https://www.politico.com/story/2019/09/11/democrats-fact-checking-1489135 [https://perma.cc/7GYX-RJU5].

[84] Lim, *supra* note 81, at 1; Uscinski, *Still Naive*, *supra* note 76, at 249.

[85] Lim, *supra* note 81, at 1.

[86] *See* Bell, *supra* note 74. To the extent that small-scale entrepreneurship might be thought to be an avenue for diversity in AI content moderation, however, research suggests that successful automated disinformation solutions will likely be acquired by the major platforms, reducing long-term diversity of approaches. *See* Anya Schiffrin, German Marshall Fund of the U.S., AI Startups & the Fight Against Online Disinformation 2 (2019), http://www.gmfus.org/publications/ai-startups-and-fight-against-online-disinformation [https://perma.cc/5CPY-A4L9].

[87] *See* Bell, *supra* note 74.

[88] *See, e.g.*, Bill Adair, *Beyond the Truth-O-Meter*, Colum. Journalism Rev (July 24, 2018), https://www.cjr.org/first_person/beyond-the-truth-o-meter.php [https://perma.cc/3WHH-DZBA]. Skepticism about fact-checker bias appears to be greater among conservatives, but liberals have also complained about the inclusion of what they characterize as politically partisan fact-checking outfits. *See, e.g.*, Erik Wemple, *Study: Conservatives Despise the Fact-Checking Industry,* Wash. Post (June 9, 2017), https://www.washingtonpost.com/blogs/erik-wemple/wp/2017/06/09/study-conservatives-despise-the-fact-checking-industry/ [https://perma.cc/7FJX-MHLH].

[89] On such "partnership press" developments, see Mike Annanny, *Checking in with the Facebook Fact-Checking Partnership*, Colum. Journalism Rev. (Apr. 4, 2018), https://www.cjr.org/tow_center/facebook-fact-checking-partnerships.php [https://perma.cc/KA86-7W4S]; *see also* Bell, *supra* note 74.

[90] This has been most common among conservatives. *See, e.g.*, Adair, *supra* note 88.

transparency in their relationships with social media sites such as Facebook.[91] It is far from clear that people who come across news articles on social media will see negative fact-checks of those articles.[92] More broadly, journalists themselves have begun to argue recently that facts do not establish truth and that we shouldn't assume that correcting false facts necessarily provides truth.[93]

Another damning criticism of the fact-checking enterprise is the assertion that people believe things that are congruent with their predispositions and worldviews, even if they know the facts are, in fact, untrue.[94]

Even though correcting false facts does not necessarily establish *truth*, however, it can surely make at least some audiences more skeptical of *un*truths, at least sometimes. Sophisticated and self-conscious approaches to fact-checking, therefore, especially when transparent about selection processes, can still play a useful role—at least with regard to certain sorts of claims. And the reality of motivated reasoning and the fact that people do not easily change their world views in response to fact-debunking information do not mean either that there is no possibility of change in response to factual correction, or that *bona fide* efforts to engage in fact-checking should be rejected out of hand.

The reality is that the fact-checking landscape today is complex. A 2018 report by the Columbia Journalism Review describes a partnership, which developed in 2016, among Facebook and a number of news and fact-checking organizations.[95] That partnership is described as both providing the benefit of a joint enterprise of independent fact-checkers and entailing excessive and non-transparent control by Facebook.[96] Moreover, despite Big Tech's language lauding fact-checking efforts,

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[91] *See, e.g.*, Bell, *supra* note 74; *see also* FULL FACT, REPORT ON THE FACEBOOK THIRD PARTY FACT CHECKING PROGRAMME 6 (2019), https://fullfact.org/media/uploads/tpfc-q1q2-2019.pdf [https://perma.cc/S39B-MD87] (UK fact-checker report on Facebook initiative) [hereinafter FULL FACT REPORT].

[92] *See* Anya Schiffrin, *Is Fact-Checking Working?,* MEDIA POWER MONITOR (Aug. 30, 2019), http://mediapowermonitor.com/content/fact-checking-working [https://perma.cc/5XX5-XC29].

[93] *See, e.g.*, Phillips, *supra* note 8.

[94] *See* Kyle Pope, *Beyond Facts*, COLUM. JOURNALISM REV. (2019), https://www.cjr.org/special_report/beyond-facts-disinformation.php [https://perma.cc/77JM-98HF]; *see also* Marwick, *supra* note 61; Katherine Clayton et al., *Real Solutions for Fake News?*, POL. BEHAV. (2019), https://link.springer.com/article/10.1007/s11109-019-09533-0 [https://perma.cc/B5M4-PTLQ]. *But see* note 39, *supra* (citing to evidence that many people disseminate disinformation unknowingly).

[95] Mike Ananny, *Checking in with the Facebook Fact-Checking Partnership*, COLUM. JOURNALISM REV. (Apr. 4, 2018), https://www.cjr.org/tow_center/facebook-fact-checking-partnerships.php [https://perma.cc/SV3V-A4TY] [hereinafter Ananny, *Checking in*] (describing the partnership, which consisted of Facebook, ABC News, Associated Press, FactCheck.org, PolitiFact, and Snopes).

[96] *Id.*; *see also* Mike Ananny, *The Partnership Press: Lessons for Platform-Publisher Collaborations as Facebook and News Outlets Team to Fight Misinformation*, TOW CENTER FOR DIGITAL JOURNALISM (2018), https://www.cjr.org/tow_center_reports/partnership-

the reality is that the platforms have not allocated a significant amount of money to fact-checking (raising questions about their commitment to such projects in fact).[97]

Furthermore, studies suggest that how fact-checking results are presented may be important in the impact of fact-checking. An alternative suggested by some researchers is the use of source ratings—ratings of information sources rather than the truth of particular factual assertions.[98] One study recently found that negative source ratings reflected in summary indicators reduced social media users' beliefs in the articles and that detailed rating information both increased and decreased belief, depending on whether it was negative or positive.[99] Even tagging by platforms and fact-checking outfits of falsity for individual statements and stories can be done more (or less) effectively, depending on the design.[100] At the same time,

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press-facebook-news-outlets-team-fight-misinformation.php [https://perma.cc/FKC8-V6BN] [hereinafter Ananny, *The Partnership Press*]; HELEN LEE BOUYGUES, REBOOT FOUND., FIGHTING FAKE NEWS: LESSONS FROM THE INFORMATION WARS 19 (2019), https://reboot-foundation.org/wp-content/uploads/_docs/Fake-News-Report.pdf [https://perma.cc/5AZH-U36E]; FULL FACT REPORT, *supra* note 91 (UK fact-checker assessement of Facebook third party fact-checking program).

[97] *See* Bell, *supra* note 74.

[98] Such source ratings do not speak to the believability of the specific article at issue; rather, they indicate positive or negative ratings for the source of the original article, developed on the basis of reliability of prior articles. *See, e.g.*, Antino Kim et al., *Combating Fake News on Social Media with Source Ratings: The Effects of User and Expert Reputation Ratings*, 36 J. MGMT. INFO. SYS., 931 (2019) (describing the boundaries to the effectiveness of the source ratings approach); *see also* Patricia Moravec et al., *Do You Really Know If It's True? How Asking Users to Rate Stories Affects Belief in Fake News on Social Media*, HAW. INT'L CONF SYS. SCI. 6602, 6603 (2019) (finding that having to rate articles and sources pushed even non-expert source raters to think more critically about all the articles they read, not only those they rated); GALLUP/KNIGHT FOUNDATION, ASSESSING THE EFFECT OF NEWS SOURCE RATINGS ON NEWS CONTENT 1 (2018), https://knightfoundation.org/reports/assessing-the-effect-of-news-source-ratings-on-news-content/?utm_source=link_newsv9&utm_campaign=item_236123&utm_medium=copy2018 [https://perma.cc/C5G5-K9MT] (finding that perceived accuracy increased with green source cue associated with Gallup/Knight news source rating system and that the source tool was effective across the political spectrum).

[99] *See* Kim et al., *supra* note 98, at 932 (finding prevalence of confirmation bias). Recent publicly-posted unpublished works appear to support the point. *See, e.g.*, Patricia L. Moravec et al., Fake News on Social Media: People Believe What They Want to Believe When It Makes No Sense At All (Nov. 6, 2018) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3269541 [permalink unavailable]; Jorge Mejia et al., Black Lies vs. White Lies: Information Asymmetry and Bias in Fact-checking Platforms 36 (June 18, 2019) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3401284 [permalink unavailable] (finding that fact-checking can impact social perception of speakers and that providing full analysis of the fact-checking evaluation can mitigate race and gender bias in the perceived morality and competence of the speaker accused of lying).

[100] *See, e.g.*, Clayton et al., *supra* note 94.

fact-checking methodologies and processes—fact-checkers' use of heuristics, such as lateral reading—could be used to improve traditional media literacy education methods that rely, for example, on credibility checklists.[101] The variety of fact-checking initiatives should themselves be the subject of analysis and assessment.[102]

Fact-checking, then, is neither completely suspect nor the killer solution to the problem of mis/disinformation. In attempting to combat mis/disinformation, media literacy approaches cannot be exhausted by reliance on fact-checking. They should not rely on the fact-checking industry or the social media platforms' efforts uncritically and without accountability. At the same time, the investment of much more significant funding for such fact-checking efforts by Big Tech (as well as improvements in algorithmic approaches to fact-checking) could increase the robustness of such efforts. When accompanied by much greater transparency about such initiatives (as well as limited expectations), there is at least the possibility that fact-checking could be a useful element in a broader media literacy regime. The practical question is whether the platforms will cooperate.[103]

C. The Political "Deepfake" and Evolving Technological Challenges

Even if attention to social science data can help to improve the effectiveness of traditional, critical-thinking-based media literacy approaches, and even if fact-checking can be effective, technological challenges and evolution in disinformation techniques present difficult challenges for traditional approaches to media literacy going forward. For example, "deepfake" technology has become increasingly

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[101] *See generally* Sam Wineburg & Sarah McGraw, *Lateral Reading: Reading Less and Learning More When Evaluating Digital Information* (Stan. Hist. Educ. Group, Working Paper No. 2017.A1, 2017), https://pdfs.semanticscholar.org/5b26/9628f4dc29b514dfcb0b5e429e49fc0dae6d.pdf?_ga=2.64278639.139022754.1578718493-1096048913.1576449900 [https://perma.cc/5ZT2-37KR] (describing and criticizing checklist approach). Lateral reading refers to a fact-checking approach in which the reader does not evaluate a website's reliability by staying on and assessing the content of the site, but rather "leav[es] a site after a quick scan, opening up new browser tabs along the screen's horizontal axis to judge the credibility of the original site." *Id.* at 1.

[102] *See* Nathan Walter et al., *Fact-Checking: A Meta-analysis of What Works and for Whom*, 37 POLITICAL COMM. 350, 351–56 (2020).

[103] One could expect that they might be more amenable to increasing the amount of money spent on fact-checking than to opening any windows into their proprietary algorithms. On the platforms' hesitations to provide informational access to researchers, *see infra* note 110. The various social media platforms' different approaches to fact-checking political ads suggests that there might be variation here as well. *See, e.g.*, *Factbox: How Social Media Services Handle Political Ads*, REUTERS (Jan. 9, 2020, 10:15 AM), https://www.reuters.com/article/us-usa-election-advertising-factbox/factbox-how-social-media-services-handle-political-ads-idUSKBN1Z824O [https://perma.cc/3NRU-DQ4H] (describing social media differences on the subject).

technically sophisticated and has crossed the border from porn into politics.[104] If false and manipulated visual information becomes increasingly common, how can the traditional tools of critical reading and analysis work to distinguish the false from the true?[105] And even beyond the deepfake problem itself, if increasingly sophisticated data mining and psychometric user profiling analysis can lead to microtargeting, there is the possibility that messages can bypass the rational mind in

[104] *See* Holly Kathleen Hall, *Deepfake Videos: When Seeing Isn't Believing,* 27 CATH. U. J. L. & TECH. 51, 57 (2018); Levi, *supra* note 4, at n.57; Tom Simonite, *Prepare for the Deepfake Era*, WIRED (Oct. 6, 2019, 8:00 AM), https://www.wired.com/story/prepare-deepfake-era-web-video/ [https://perma.cc/L8H7-VZUS]; Mika Westerlund, *The Emergence of Deepfake Technology: A Review*, 9 TECH. INNOV. MGMT. REV. 39, 39 (2019). The term "deepfake" refers to highly realistic but AI-created fake video or audio. *See* James Vincent, *Why We Need a Better Definition of 'Deepfake,'* THE VERGE (May 22, 2018, 2:53 PM), https://www.theverge.com/2018/5/22/17380306/deepfake-definition-ai-manipulation-fake-news [https://perma.cc/RW62-U7HQ]. For recent scholarly articles discussing the threat of deepfake technology to democracy, see for example, Mary Anne Franks & Ari Ezra Waldman, *Sex, Lies & Videotape: Deepfakes and Free Speech Delusions*, 78 MD. L. REV. 892 (2019); Robert Chesney & Danielle K. Citron, *Deep Fakes: A Looming Crisis for Privacy, Democracy, and National Security*, 107 CAL. L. REV. 1753 (2019).

[105] *See, e.g.*, Drew Harwell, *Top AI Researchers Race to Detect 'Deepfake' Videos: 'We Are Outgunned,'* WASH. POST (June 12, 2019, 2:44 PM), https://www.washingtonpost.com/technology/2019/06/12/top-ai-researchers-race-detect-deepfake-videos-we-are-outgunned/ [https://perma.cc/X556-QT5D]; *see also* Bob Moser, *Interference 2020*, COLUM. JOURNALISM REV. (2019), https://www.cjr.org/special_report/interference-election-2020.php [https://perma.cc/9Q6R-KC4P] (discussing the "sleeper effect" of visual disinformation).

Some suggest that media literacy techniques should be sufficient to address the deepfakes problem by engendering a critical distance. *See* David Goldberg, *Responding to Fake News*, 47 SW. L. REV. 417, 433 (2018). But the fact that audiences may be aware that deepfakes exist does not mean that they will have the tools to challenge what they see in any given image. Recent studies suggest that visual fakes have more sticking power in audience recall. *See* Cuihua Shen et al., *Fake Images: The Effects of Source, Intermediary, and Digital Media Literacy on Contextual Assessment of Image Credibility Online,* 21(2) NEW MEDIA & SOCIETY 438, 438–463 (and sources cited therein) (2019) (describing, *inter alia*, damage done by manipulated imagery). This suggests that media literacy efforts should be specifically tailored to aid in visual debunking, in addition to efforts to promote deepfake detection and content authentication. *See generally* Jeffrey Westling, Are Deep Fakes a Shallow Concern? A Critical Analysis of the Likely Societal Reaction to Deep Fakes (Jul. 25, 2019) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3426174 [https://perma.cc/D8QJ-CJQA] (discussing how society will adapt to deepfakes with improved deepfake detection and media literacy for video); *see also* Nicholas Diakopoulos & Deborah G. Johnson, *Anticipating and Addressing the Ethical Implications of Deepfakes in the Context of Elections*, NEW MEDIA & SOC'Y (forthcoming 2020–21) (manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3474183 [https://perma.cc/5JNT-ESMW] (describing deepfake methodology and arguing for appropriate media literacy education in response).

order to trigger immediate emotional responses, and can disrupt the audience's ability to recruit text-based media literacy tools in the service of skeptical reading. How should media literacy evolve to address these evolving challenges?[106]

As a result of evolving deepfake technology, a more tech-savvy, visually-focused approach may be needed as an adjunct to the other media literacy techniques.[107] Another helpful possibility would be the circulation of guides, for journalists and others, on how to detect image- or audio-falsity.[108] Obviously, much of the work in this area will be left to institutions—such as research universities and technologists, but also to the digital platforms themselves.[109] Big Tech has the technical capacity to supplement these research university initiatives. But the difficulty with imagining a partnership between platforms and technologists to respond to technologically sophisticated disinformation techniques is that social media and other tech platforms have not been in the habit of sharing their algorithmic information with independent researchers.[110] This may be an area, then, in which the

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[106] *See* Levi, *supra* note 4, at 249 & n.57, 254 (noting difficulty of debunking deepfakes and concerns about psychometric approaches to online messaging).

[107] *See* Shen et al., *supra* note 105, at 457–58. Shen et al. recently found that Internet skills, photo-editing experience, and social media use were good predictors of image credibility evaluation (and perhaps better than most social and heuristic cues of online credibility (such as source and intermediary trustworthiness), although that finding may result from research design). *Id.* at 458. Thus, participants "can still be discerning consumers of digital images," and a visually technical focus for media literacy interventions designed to address video disinformation might help them be so. *Id.*

[108] *See, e.g.*, Michael Edison Hayden, *A Guide to Open Source Intelligence (OSINT)*, TOW CTR. FOR DIGITAL JOURNALISM (June 7, 2019), https://www.cjr.org/tow_center_reports /guide-to-osint-and-hostile-communities.php [https://perma.cc/5P9S-2XSD]. On the work of the Partnership for AI as part of the Deepfake Detection Challenge, see, for example, Bruce Sterling, *On the Subject of Weaponized Deep-Fakes*, WIRED (Jan. 14, 2020), https://www.wired.com/beyond-the-beyond/2020/01/subject-weaponized-deep-fakes/ [https ://perma.cc/V5DF-CPEP]; *see also* Jennifer Kavanagh et al., *Fighting Disinformation Online: A Database of Web Tools*, RAND CORP., https://www.rand.org/pubs/tools/TL323. html [https://perma.cc/V5DF-CPEP].

[109] Recently, social media companies have adopted policies banning deepfakes. *See, e.g.*, David McCabe & Davey Alba, *Facebook Says It Will Ban 'Deepfakes,'* N.Y. TIMES (Jan. 7, 2020), https://www.nytimes.com/2020/01/07/technology/facebook-says-it-will-ban-deepfakes.html [https://perma.cc/5UDF-3CKM]; Sarah Perez, *Twitter Drafts a Deepfake Policy That Would Label and Warn, But Not Always Remove, Manipulated Media*, TECHCRUNCH (Nov. 11, 2019), https://techcrunch.com/2019/11/11/twitter-drafts-a-deepfake-policy-that-would-label-and-warn-but-not-remove-manipulated-media/ [https://pe rma.cc/6JNV-RQBD] (detailing the proposed Twitter deepfake policy).

[110] *See, e.g.*, Marco Bastos & Shawn T. Walker, *Facebook's Data Lockdown Is a Disaster for Academic Researchers*, THE CONVERSATION (Apr. 11, 2018), http://theconversation.com/facebooks-data-lockdown-is-a-disaster-for-academic-research ers-94533 [https://perma.cc/8QC3-CT8W]. While there was a moment when Facebook seemed more open to sharing data with researchers, see, for example, Robbie Gonzales, *Facebook Is Giving Scientists Its Data to Fight Misinformation*, WIRED (May 29, 2018),

need to collaborate to fight against increasingly seamless visual disinformation should serve as a goad to the platforms to provide more research transparency.

In addition to the political deepfake, yet another evolving technological challenge for media literacy efforts is the increasing ability of social media platforms to personalize the content served to individuals. Especially if researchers are not granted access to the personalization algorithms for online users, it will be very difficult for those researchers to design appropriately contextual reliability-assessment techniques.[111] This is yet one more argument for expanded researcher access to the platforms' decision-making algorithms.

Finally, some early research suggests that the increasing sophistication of visual disinformation tools should expand the focus of media literacy interventions in the visual space.[112] To the extent that digital visual literacy—such as familiarity with photo-editing and manipulating digital visual media—seems more effective than traditional debunking techniques in reducing the credibility of visual fakes, then media literacy interventions need to expand to address that kind of literacy in order to increase effectiveness.

III. ENLARGING THE GOALS AND TARGETS OF MEDIA LITERACY BEYOND THE NATIONAL SECURITY FRAME

The previous section sought to describe ways in which media literacy programs could more robustly promote audience empowerment to improve factual debunking. But because the audience empowerment rubric is still often defined in terms of methods designed to help assess the credibility of specific news articles or bits of information, it sets too modest an objective for what is needed from media literacy today.

One critical underlying problem is the reality of public distrust in the press—an attitude that has existed for some time, but that has been increasingly weaponized

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https://www.wired.com/story/facebook-is-giving-scientists-its-data-to-fight-misinformation [https://perma.cc/AV63-G7QK], current reports suggest that this initiative is failing. *See, e.g.*, Davey Alba, *Ahead of 2020, Facebook Falls Short on Plan to Share Data on Disinformation*, N.Y. TIMES (Sept. 29, 2019), https://www.nytimes.com/2019/09/29/techno logy/facebook-disinformation.html [https://perma.cc/8724-P2QL]; Gillian Tett, *Why Facebook's Data-Sharing Initiative Is Faltering*, FIN. TIMES (Nov. 6, 2019), https://www.ft.com/content/98b5385e-0025-11ea-b7bc-f3fa4e77dd47 [https://perma.cc/2H P6-MBR6]. Facebook has argued that privacy-related concerns make broad information sharing very difficult. *See* Matthew Ingram, *Silicon Valley's Stonewalling*, COLUM. JOURNALISM REV. (2019), https://www.cjr.org/special_report/silicon-valley-cambridge-analytica.php [https://perma.cc/4LAW-A4TW] (discussing social media platform hesitations resulting from prior exposure of user data by Facebook to Cambridge Analytica and the impact of GDPR privacy rules).

[111] *See* BULGER & DAVISON, *supra* note 2, at 17. The platforms rely, *inter alia*, on privacy arguments in response to requests for researcher access.

[112] *See, e.g.*, Shen, *supra* note 105, at 439–40.

by President Trump and the Republican party leadership.[113] Media literacy policy could explore four ways to address public distrust—two focused on audiences and two on the press itself.

It is perhaps because of the deeper question of institutional legitimacy that media literacy as a tool to combat disinformation becomes most critical. It is not unreasonable to wonder whether disinformation online really presents such outcome-determinative electoral effects as to warrant massive expenditures of resources devoted to (inevitably fruitless) attempts to eradicate it.[114] But that is not the principal point. Even if disinformation did not directly lead to Trump's election in 2016, for example, the broader democratic and other harms of political attacks on the press are sufficient, in themselves, to justify attempts to adopt a broader version of media literacy.[115] And there is evidence of high levels of concern among audiences about mis/disinformation causing an increase in reliance on "reputable" sources of news.[116]

A. Expanded Audience Literacy

This Essay suggests two approaches to expand audience media literacy in the service of enhancing trust. First, some headway could be made if news consumers could better understand the processes of news reporting and the structure of the media ecosystem (including the news/opinion distinction, how to distinguish between the different social media news feeds, and the different social media approaches to news).[117] Media literacy should also turn audiences inward and include revealing to them both the ways in which their decisionmaking is subject to cognitive biases, and the strategies used by enterprising purveyors of destabilizing falsehoods to manipulate their reactions in targeted ways.[118]

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[113] *See, e.g.*, Levi, *supra* note 4, at 257–62.

[114] *See* discussion *supra* note 37.

[115] Scholars point to effects such as sowing distrust and suppressing voter turnout. *See, e.g.*, Schiffrin, Demand Side, *supra* note 2 (and sources cited therein). Beyond the directly political context, researchers seem to agree that disinformation has had pernicious effects in areas such as public health—for example, through the dissemination of false information by the anti-vaccine community. *See, e.g.*, Lawrence O. Gostin et al., *The Public Health Crisis of Underimmunisation: A Global Plan of Action*, 20 LANCET INFECTIOUS DISEASES e11, e14 (2020), https://www.sciencedirect.com/science/article/pii/S1473309919305584 [https://perma.cc/C8B4-W7BA].

[116] *See, e.g.*, NIC NEWMAN ET AL., REUTERS INSTITUTE DIGITAL NEWS REPORT 2019, REUTERS INST. FOR THE STUDY OF JOURNALISM 10 (2019), https://reutersinstitute.politics. ox.ac.uk/sites/default/files/2019-06/DNR_2019_FINAL_0.pdf [https://perma.cc/3MAN-838S].

[117] *See* discussion *infra* Section III.A.1.

[118] *See* discussion *infra* Section III.A.2.

1. Promoting Transparency About Press Processes to Encourage Public Trust

Recent studies show that the public at large is not well-informed about the journalistic process and the distinctions between factual and opinion statements in the news.[119] Given the extent to which large percentages of the American public appear to believe Trump's delegitimizing frame of the institutional press as the "enemy" and as itself "fake news,"[120] recent empirical data suggest that a significant portion of the public does not see the institutional press as a fundamental bulwark of democracy.[121]

Both of these developments are extremely dangerous. If people don't understand the realities of press function, they can all too easily assume an inaccurate degree of corruption and bad faith on the part of journalistic organizations with whose opinion pages they do not agree. And if the public increasingly distrusts the institution of the press, particularly when the legislature is quiescent, then that can unduly enhance executive power in ways dangerous for democracy and the public interest. If, on the other hand, media literacy initiatives were broadened to target public ignorance about the operations and democratic role of the press, there might be some amelioration of the failure of public trust.[122] Recent research suggests

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[119] *See* Amy Mitchell et al., *Distinguishing Between Factual and Opinion Statements in the News*, PEW RES. CTR. (June 18, 2018), https://www.journalism.org/2018/06/18/disting uishing-between-factual-and-opinion-statements-in-the-news/ [https://perma.cc/G47H-CYZG].

[120] *See, e.g.*, Jeffrey Gottfried et al., *Trusting the News Media in the Trump Era*, PEW RES. CTR. (Dec. 12, 2019), https://www.journalism.org/2019/12/12/trusting-the-news-media-in-the-trump-era/ [https://perma.cc/83RF-J4ZM].

[121] On public distrust of the press, see, for example, Mark Jurkowitz et al., *U.S. Media Polarization and the 2020 Election: A Nation Divided*, PEW RES. CTR. (Jan. 24, 2020), https://www.journalism.org/2020/01/24/u-s-media-polarization-and-the-2020-election-a-nation-divided/ [https://perma.cc/3AYQ-Q6FH]; Gottfried et al., *supra* note 120.

[122] *See* Colleen Shalby, *Journalists Become Media Literacy Teachers*, NIEMANLAB, https://www.niemanlab.org/2019/12/journalists-become-media-literacy-teachers/?utm_source=Daily+Lab+email+list&utm_campaign=8c5e856044-dailylabemail3&utm_medium=email&utm_term=0_d68264fd5e-8c5e856044-396145757 [https://perma.cc/QR4C-QDUF] (last visited Feb. 21, 2020). Some remind us that academic research is inconclusive on how media and institutions can rebuild credibility, the extent to which trust depends on journalism practices, and whether "specific" trust can become "diffuse" trust. *See, e.g.*, ANYA SCHIFFRIN ET AL., OPEN SOCIETY FOUNDATIONS, BRIDGING THE GAP: REBUILDING CITIZEN TRUST IN MEDIA 7 (2017), https://drive.google.com/file/d/1VRIMmdmvsRp2r2q7 ttexe3Ccn36hc3oz/view [https://perma.cc/7ZY3-M3M9]. Still, the BRIDGING THE GAP report shows that media organizations are all trying different ways of building trust, including revealing journalism practices and interacting with their audiences, and believe that "delivering accurate information is a way of gaining credibility in a world of diminisihing trust." *Id.* at Executive Summary.

Recently, Michael Schudson, eminent sociologist of journalism, has argued that although "[n]ews organizations should have to explain themselves . . ."—both with respect

that knowledge about the structure of the evolving media ecosystem and the "nuts and bolts of everyday journalism" can help dispel mis/disinformation and reduce belief in conspiracy theories.[123]

So, one expanded goal of media literacy should be to help reverse the distrust of the press. These structural and institutional literacy initiatives should, *inter alia*: (1) explain, in detail, process issues such as news organizations' approaches to newsgathering, editorial norms, sourcing policies (including anonymous sourcing); (2) clearly sketch (to the extent possible) the distinction between hard news and opinion; (3) provide the public with a sense of the cost and difficulties of accountability journalism; (4) explain the true costs of operating a newspaper and the death spiral of the traditional media's economic model; and (5) explain the complex relationships of journalism and social media/tech platforms today.[124] In

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to processes and even perspectives and values—it is not clear that such transparency would bolster public trust. Michael Schudson, *The Fall, Rise, and Fall of Media Trust*, COLUM. JOURNALISM REV. (Winter 2019), https://www.cjr.org/special_report/the-fall-rise-and-fall-of-media-trust.php [https://perma.cc/GAE3-FMWY]. While Schudson admits that greater transparency about how they produce the news could help, he anticipates that it could do so only "a tiny bit." *Id.* In his view, "[i]t will not matter how many 'meet the reporters' events news organizations sponsor or how much they itemize where every bit of information in a news story came from. What people don't like about the media is its implicit or explicit criticism of their heroes." *Id.*

Although I would not argue with Schudson that economic and social inequality are likely the key factors leading to public distrust in government and institutions, an analysis of what leads to—or at least reinforces—public distrust in the press should not discount the demonization of the mainstream press by President Trump and his administration, not to mention the modern media's own errors and "passion for play-by-play news." *Id.* To the extent that transparency about journalistic processes can help at least some members of the audience avoid or question knee-jerk assumptions of bad faith and strategic lying by the press writ large, generalized distrust can be replaced with a "trust but verify" attitude for at least some parts of the public. Not distrusting is quite different from affirmatively trusting. If a broad and properly calibrated media literacy campaign can help reduce *dis*trust, even if it does not affirmatively build trust, we are in a better position than when the delegitimizing rhetoric of the President leads to trust only in the Executive. Schudson himself admits that journalists' professional values—seeking truth, holding government publicly accountable, believing that government officials are public officials with obligations to the public— "would resonate with readers, if only they were articulated." *Id.* If so, it is worth an experiment.

[123] Jackie Spinner, *Study: Educating News Consumers About the Media Can Curb Conspiracy Theory Appeal*, COLUM. JOURNALISM REV. (Dec. 20, 2017), https://www.cjr.org/united_states_project/news-media-literacy-conspiracy-theory.php [https://perma.cc/KW2E-BLC8].

[124] On this point about transparency, this Essay is in good scholarly company. Michael Schudson recently argued that news organizations should have to "communicate the difference between the news department and the editorial page (more than a quarter of Americans do not understand the distinction); to show how they gather their news; to clarify why they sometimes cannot divulge their sources; to explain why it matters that nearly all

addition, news organizations might experiment with ways of providing journalistic context for individual stories as well.[125] Well-designed attempts to reverse ignorance might be helpful in mitigating distrust.[126] Recent research shows, though, that increasing publisher information in connection with headlines of news stories online has no meaningful impact on evaluations of headline accuracy.[127] Still, the evidence shows that members of the news-consuming public want to know more about how the news is made.[128]

There is of course the possibility (as suggested to me informally by a journalist) that journalists might fear too much transparency and might be concerned that a clear and accurate understanding of the processes of journalism might actually *decrease* rather than increase trust. It is doubtless true that exposure to the imperfections of any profession's processes could undermine trust, that journalists do not always adhere to their profession's ethical principles, that news media today span a broad spectrum with respect to norms and practices, and that in a polarized political environment, revelation of news organizations' points of view or errors could magnify and reify distrust by opponents. But significant segments of the public have

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scientific authorities believe that the most important element in global warming is that humans contribute to it. It may also be time for journalists to acknowledge that they write from a set of values, not simply from a disinterested effort at truth . . ." Schudson, *supra* note 122; *see also* Schiffrin, Demand Side, *supra* note 2 (describing the Institute for Propoganda Analysis's recommendation in the 1930s that journalists "build relationships with their communities to explain the importance of journalism" and the modern growth of grassroots efforts to explain journalism in the classroom).

[125] *See, e.g.*, Hanaa' Tameez, *Maybe Greater Transparency Can Increase Trust in News—But Readers Have to Find Your Transparency First*, NIEMANLAB (Jan. 30, 2020, 11:29 AM), https://www.niemanlab.org/2020/01/maybe-greater-transparency-can-increase-trust-in-news-but-readers-have-to-find-your-transparency-first/ [https://perma.cc/49LY-NGMG] (reporting that some newsrooms are "testing out ways to let readers see more context around the story—whether that's showing how the story was produced, how it fits into a larger narrative, or the editorial values that back the journalism").

Admittedly, a recent study indicates that most readers did not notice the 'Behind our reporting/Behind the Story' boxes that participating newspapers included to provide context for particular stories. *Id.* Nevertheless, most readers shown a "Behind the Story" card on its own, not in the context of a story, "said that the card would increase their trust in a news organization." These findings suggest that the issue is proper page placement and design, rather than reader disinterest in story context. *Id.*

[126] *See* Shalby, *supra* note 122.

[127] *See* Nicholas Dias et al., *Emphasizing Publishers Does Not Effectively Reduce Susceptibility to Misinformation on Social Media*, MISINFORMATION REV. (Jan. 14, 2020), https://misinforeview.hks.harvard.edu/article/emphasizing-publishers-does-not-reduce-misinformation/ [https://perma.cc/QC5A-QS97].

[128] *See, e.g.*, Kourtney Bitterly, *Transparency Isn't Just a Desire, It's an Expectation*, NIEMANLAB, https://www.niemanlab.org/2019/12/transparency-isnt-just-a-desire-its-an-expectation/ [https://perma.cc/49LY-NGMG] (last visited Feb. 21, 2020).

already adopted a stance of overall generalized distrust with respect to media.[129] Enhancement of public understanding of journalistic best practices for mainstream media could help counteract reflexive and presumptive distrust, even if it did not ensure trust, for at least some of the audience. Being able to see which news organizations comply with professional standards—and, most importantly, how frequently and how well—might also help audiences engage in reliability comparisons.

What to make of the argument that audiences are already so convinced of the partisan character of the press and generally disinclined to believe in reportorial objectivity, neutrality, truth, and good faith that such attempts to educate them on journalistic processes will inevitably fail? While doubtless true to a great degree, such an argument paints with too broad a brush. Admittedly, some recent empirical studies show that Republicans are more likely to distrust mainstream news outlets than Democrats and that even within Republicans, distrust of media tracks approval of Trump.[130] But this does not mean that, after exposure to clear, accurate, and complete information about the process of reporting, some percentage of that population might not moderate its level of distrust (or at least develop "critical loyalty" with regard to information from otherwise trusted sources).[131] Shifts in trust

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[129] *See, e.g.*, Jurkowitz et al., *supra* note 121 (describing both public distrust of the media and the partisan divide in which media are trusted).

[130] *See, e.g.*, Gottfried et al., *supra* note 120 (reporting findings that party affiliation is linked closely to how people view media); Jurkowitz et al., *supra* note 121.

[131] *See supra* note 65. Admittedly, some researchers have found that people spread "fake news" for novelty and reasons of emotional response rather than ignorance as to its falsity. *See, e.g.*, Marwick, *supra* note 61, at 508 (fake news shared because people's "worldviews are shaped by their social positions and their deep beliefs, which are often both partisan and polarized"); Soroush Vosoughi et al., *The Spread of True and False News Online*, 359 SCIENCE 1146, 1149–50 (2018); Bertin Martens et al., Joint Res. Ctr., Eur. Comm'n, *The Digital Transformation of News Media and the Rise of Disinformation and Fake News*, at 6, JRC Digital Econ. Working Paper No. 2018-02 (Apr. 2018), https://ec.europa.eu/jrc/sites/jrcsh/files/jrc111529.pdf [https://perma.cc/8XHX-S2JN]. *But see* Mitchell et al., *supra* note 39. Social scientists also contend that people believe information that tracks their prior beliefs and that being told that information is not true does not necessarily lead them to change their beliefs. *See, e.g.*, R. Kelly Garrett et al., *Epistemic Beliefs' Role in Promoting Misperceptions and Conspiracist Ideation*, PLOS ONE (Sept. 18, 2017),   https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0184733 [https://perma.cc/CC53-4T6V]; *see also* sources cited in Section II.B.2.

However, audiences may be more skeptical if confronted online with assertions that what they are reading is false. *See, e.g.*, boyd, *supra* note 35. Moreover, the studies noted above take a narrow snapshot of what people believe and should not be interpreted as proving a binary and unchanging decisional process. Decisions about what to believe, whether any given piece of inconsistent information is sufficiently significant to upend deeply held and clear views of the world (or identity or status-based affiliations that militate toward acceptance of commonly held views), and what institutions to trust are complex and doubtless subject to change and influence over time, as well as variable, for example,

need not be measured only with respect to the predispositions of the core Trump base; providing the more analytically-minded with tools to assess press function could have positive effects on the less ideologically-fixed segment of the audience. And to the extent that at least in 2016, the right-wing media was materially guiltier of spreading disinformation,[132] it is possible that consumers of conservative media could become more skeptical of those news sources if they were allowed to see under the hood.[133] Such responses might also depend on the kind of information in question, whether with respect to subject or degree of controversy. Especially if news organizations did more to distinguish between their hard news and opinion

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depending on subject. They surely also vary depending on epistemic beliefs, such as whether the people at issue rely more on intuition or empirical evidence to validate truth claims. *See, e.g.*, Garrett et al., *supra*. Moreover, to the extent that conspiratorial beliefs persist because they are "boosted" by politicians and others repeating falsehoods for strategic appeal to their bases, see Dietram Schaufele & Nicole Krause, *Science Audiences, Misinformation, and Fake News*, PNAS (Apr. 16, 2019), https://www.pnas.org/content/116/16/7662 [https://perma.cc/NCL3-ARBR], then a reduction of such boosting might have an ameliorative effect. As Jack Balkin has explained, two interrelated tactics for sowing distrust are gaslighting and propaganda. Comments by Jack Balkin, *Media & Information Law Panel, Danger, Drama & Self-Defeat: Diagnosing What Faces "The Press,"* AALS ANNUAL MEETING 2020 (Jan. 3, 2020), https://soundcloud.com/aals-2/section-on-communication-media-and-information-law-danger-drama-and-self-defeat-diagnosing-what-faces-the-press/s-WU9ob [https://perma.cc/QQ5S-TKNM]. The point of these techniques is to inject doubt into the discourse and decrease claims of press authority both to criticize governmental behavior and to establish facts. Surfacing the manipulative character of such techniques may in itself inject some counter-doubt into the environment of doubt.

More importantly, the transparency and education recommended here is as to journalistic *processes*, rather than the truth or falsity of—or belief in—the *substance* of individual bits of factual information. Even if confirmation bias and motivated reasoning play a significant (if not determinative) role in whether people choose not to disbelieve (whether they actually affirmatively believe) facts they are told are untrue, my goal for media literacy interventions here is to focus on the legitimation of the press as a democratically significant actor, rather than on the accuracy of specific items of information. This does not mean, of course, that those who are convinced that the N.Y. Times is untrustworthy because of its unadmitted liberal slant or those who believe that Fox News is not in fact a journalistic outlet will change their views if the N.Y. Times or Fox News explain more about their processes (though, for some, sufficient transparency on the part of the particular press organ both as to its processes and its editorial norms and partisan leanings might be seen as positive). It does assume, though, that there is currently a world beyond those outlets that have already been categorized on the basis of political partisanship. There are surely news organizations whose partisanship is not as clearly assumed by the audience and as to whose processes enhanced public information might actually increase trust (in journalistic good faith, if not in the credibility of each piece of reported information).

[132] *See, e.g.*, YOCHAI BENKLER ET AL., NETWORK PROPAGANDA: MANIPULATION, DISINFORMATION, AND RADICALIZATION IN AMERICAN POLITICS 105 (2018).

[133] Admittedly, social science reports of cognitive bias and motivated reasoning might suggest otherwise, but there is also evidence that such biases can be circumvented.

coverage, the public might be able to have more faith in the institutions of the press.[134] Moreover, recent studies show that people do not trust the news they access through social media.[135] So perhaps a public education campaign that distinguishes the work of news organizations from the news policies of social media platforms could help audiences better titrate their distrust.

Finally, if contemporary political problems are due less to ideological partisanship *per se* than to generalized, longstanding anti-establishment attitudes on the part of the non-elite voting public, then a concern about party-based, ideological close-mindedness should be less worrisome for the viability of a media literacy approach.[136] Understanding the conflict through this dimension suggests that spreading the word about the press's professional routines might have an impact on some people with anti-establishment views.[137]

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[134] *See* Jeffrey Gottfried & Elizabeth Grieco, *Younger Americans Are Better than Older Americans at Telling Factual News Statements from Opinions*, PEW RES. CTR. (Oct. 23, 2018), https://www.pewresearch.org/fact-tank/2018/10/23/younger-americans-are-better-than-older-americans-at-telling-factual-news-statements-from-opinions/ [https://perma.cc/JU5H-QU9X].

In contrast, some argue that the distinction between hard news and opinion is inevitably—and properly—fuzzy, and that point of view (political and otherwise) is inevitable in reporting. To those thinkers, then, the only thing that can properly be asked of the press is transparency as to point of view. *See, e.g.*, Jay Rosen, *The View from Nowhere: Questions and Answers*, PRESSTHINK (Nov. 10, 2010, 2:04 AM), http://pressthink.org/2010/11/the-view-from-nowhere-questions-and-answers/ [https://perma.cc/29NQ-Q6TF] (criticizing "the view from nowhere"). The position in text is not inconsistent with that view.

In addition, it might be argued that it would help if social media more consistently reaffirmed that distinction as well. The platforms' economic model thus far, however, keyed as it has been to engagement over other editorial commitments, leaves some observers skeptical that they have an incentive to do so.

[135] *See, e.g.*, Elisa Shearer & Elizabeth Grieco, *Americans Are Wary of the Role Social Media Sites Play in Delivering the News*, PEW RES. CTR. (Oct. 2, 2019), https://www.journalism.org/2019/10/02/americans-are-wary-of-the-role-social-media-sites-play-in-delivering-the-news/ [https://perma.cc/JPU6-J4JM].

[136] On partisan innocence, see generally, for example, DONALD R. KINDER & NATHAN P. KALMOE, NEITHER LIBERAL NOR CONSERVATIVE: IDEOLOGICAL INNOCENCE IN THE AMERICAN PUBLIC (2017); SAMARA KLAR & YANNA KRUPNIKOV, INDEPENDENT POLITICS: HOW AMERICAN DISDAIN FOR PARTIES LEADS TO POLITICAL INACTION (2016). On anti-establishment attitudes, see generally, for example, KATHERINE J. CRAMER, THE POLITICS OF RESENTMENT: RURAL CONSCIOUSNESS IN WISCONSIN AND THE RISE OF SCOTT WALKER (2016); RICHARD HOFSTADTER, THE PARANOID STYLE IN AMERICAN POLITICS (1964); ROBERT EDWARDS LANE, POLITICAL IDEOLOGY: WHY THE AMERICAN COMMON MAN BELIEVES WHAT HE DOES (1962); Edward G. Carmines et al., *Ideological Heterogeneity and the Rise of Donald Trump*, 14 THE FORUM 385, 386 (2016).

[137] Jan-Willem van Prooijen, *Empowerment as a Tool to Reduce Belief in Conspiracy Theories*, *in* CONSPIRACY THEORIES AND THE PEOPLE WHO BELIEVE THEM 432, 432–42 (Joseph E. Uscinski ed., 2018) (discussing how procedural justice allows people to evaluate authorities and the quality of their procedures, which can lessen belief in conspiracy

Attention to transparency design and operationalization could also enhance the effectiveness of a process-transparency strategy.[138] To the extent that the way in which the press communicates about its processes with the audience can influence the impact of the communicated content, thoughtfully designed transparency initiatives could affect outcomes.

Furthermore, in addition to transparency about professional standards, this Essay recommends transparency as to matters such as ownership or point of view of news distributors. Admittedly, and again as suggested to me informally by a journalist, recognition of the consolidation of the media ecosystem might undermine audience confidence. On the other hand, while it is possible that more disclosure of this kind could decrease trust, it is also possible that shining light into the formerly obscure could increase the public's confidence in its ability to assess media behavior.

Indeed, the possibility of enhanced oversight associated with increased public transparency might influence standards and norms applied by the consolidated entities themselves. The obligation to be publicly transparent about press practices and professional norms may well have positive impacts on *press* behavior. This might lead to better compliance by the press itself, at least to some degree, with the norms and processes that it has professed to the public. The possibility of public shaming on the ground that an institution has not complied with its own promises can be a useful tool for promoting behavior consistent with expressed norms. Moreover, to the extent that a push toward professional transparency will result in a segmented media ecosystem, with institutions arrayed on a spectrum of transparency about their processes, branding for trust may create opportunities for more knowledgeable decisions by the public on institutional trust.[139]

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theories); Stephanie Craft et al., *News Media Literacy and Conspiracy Theory Endorsement*, 2(4) COMMUNICATION AND THE PUBLIC 388, 388–401 (2017).

[138] For example, journalist accounts indicate that audience trust in the press in other countries is associated in part with reporters going out into the community and talking with the public about their work. *See, e.g.*, SCHIFFRIN ET AL., *supra* note 122, at 39.

[139] Another possible concern about transparency is that such approaches are too uncertain and indirect to solve the problems of information pollution. On this view, a focus on transparency—whose benefits have not been empirically proven—could turn reform efforts away from effective and direct government regulation. But transparency does not preclude other regulatory reforms if it is but one part of a multi-pronged approach. Admittedly, multi-pronged strategies increase transaction and coordination costs and, possibly, enhance the likelihood of delay, but those are not good enough reasons to preclude potentially promising initiatives. This is particularly so when direct regulation is likely to face strategic political and judicial challenges. Since the most constitutionally defensible types of regulatory interventions are likely to focus on media structure and ownership, or feature transparency rather than direct attempts to regulate content anyway, it is at best unclear whether government regulation would in fact do much more than the well-designed process-transparency approach recommended here. Although the proposed Honest Ads Act, for example, is designed to address foreign election meddling, it simply imposes funding disclosure and ad archiving requirements on Internet platforms in connection with political ads. *See* Patrick B. Pexton, *Graham, Klobuchar Introduce Internet Ads Bill to Boost*

2. Enhancing Public Knowledge About Attention Markets, Disinformation Techniques, and Cognitive Bias

In addition to increased transparency about the nature and goals of journalistic processes themselves, audiences would benefit from a better understanding of the shifting contours of the modern news and information environment (which has evolved considerably in the past decade), the evolving disinformation techniques to which they are subject, and the cognitive biases to which humans are susceptible.[140] Drilling down, they should also understand more clearly the operations of attention markets,[141] the varying interests of the numerous players in the modern informational ecosystem,[142] the evolving ways in which disinformation diffuses online, and the ways in which the operation of their own mental processes make them susceptible to manipulation and erroneous belief.

Further transparency, even with respect to the disinformation-debunking industry, would likely be helpful. One of the key elements of such transparency—both for the public and for fact-checkers and news organizations—would be increased transparency by Facebook (at least to researchers) about its disinformation processes and fact-checking partnerships.[143] The public's understanding of news

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Transparency, ROLL CALL (May 8, 2019), https://www.rollcall.com/2019/05/08/graham-klobuchar-introduce-internet-ads-bill-to-boost-transparency/ [https://perma.cc/7VRL-ZTH3]. Even this type of approach has been subject to constitutional and policy critique. *See, e.g.*, Bradley A. Smith et al., *Honest Ads Act Is False Advertising*, WALL ST. J. (Oct. 13, 2019), https://www.wsj.com/articles/honest-ads-act-is-false-advertising-11570995764 [https://perma.cc/VPA5-ASKT] (also reporting successful constitutional challenge brought against Maryland's recently-adopted political ad disclosure requirements).

[140] *See, e.g.*, John Gramlich, *10 Facts About Americans and Facebook*, PEW RES. CTR. (May 16, 2019), https://www.pewresearch.org/fact-tank/2019/05/16/facts-about-americans-and-facebook/ [https://perma.cc/7WTV-UG8C]; Emily A. Vogels & Monica Anderson, *Americans and Digital Knowledge*, PEW RE. CTR. (Oct. 9, 2019), https://www.pewresearch.org/internet/2019/10/09/americans-and-digital-knowledge/ [https://perma.cc/Q7K8-A3KU]; *cf.* Erik Ugland, *Expanding Media Law and Policy Education: Confronting Power, Defining Freedom, Awakening Participation*, 24 COMM. L. & POL'Y 271, 272–273 (2019) (arguing for media law and policy education in universities).

[141] For recent work on attention markets and antitrust, see generally, for example, Newman, *supra* note 71; Tim Wu, *Blind Spot: The Attention Economy and the Law*, 82 ANTITRUST L.J. 771 (2019).

[142] *See, e.g.*, Erin C. Carroll, *Platforms and the Fall of the Fourth Estate: Looking Beyond the First Amendment to Protect Watchdog Journalism*, MD. L. REV. (forthcoming 2020) (sketching varying incentives of participants in the "Networked Press").

[143] *See* Ananny, *Checking in, supra* note 95; Ananny, *The Partnership Press, supra* note 96. At a minimum, very significant transparency problems are posed by Facebook's apparently extensive use of nondisclosure agreements (NDAs) to prevent researchers and media analysts from discovering any information about its disinformation-debunking partnerships and efforts. Ananny, *Checking in, supra* note 95; Ananny, *The Partnership Press, supra* note 96; *see also* Carroll, *supra* note 142 (discussing platforms' practice of

operations and digital attention markets should also include increased familiarization with the relationships between news organizations and the big digital platforms.[144] And attention should be paid to the evolutionary aspects of disinformation dissemination online (such as the apparent platform shift of disinformation from Facebook to Twitter).[145]

Finally, some researchers have recently argued for the need to teach audiences epistemic vigilance.[146] They recommend that the public be made more aware of the memory and belief biases that may affect how they process information and leave them open to informational manipulation.[147] To the extent that audiences recognize the ways in which their responses can be manipulated by those who know how to trigger cognitive biases in order to weaponize mis/disinformation for their own ends, they can inculcate awareness. Nobody wants to see herself as a puppet dancing to someone else's tune.[148]

There are of course dangers to this aspect of media education. One problem is a concern about increasing, rather than decreasing, public distrust and cynicism.[149] System 2 thinking is hard and takes attention.[150] When people go online, they may

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providing limited access to information to researchers and journalists); Ingram, *supra* note 110 (addressing both Facebook and Twitter failures with respect to access).

[144] *See, e.g.*, Jonathan Albright et al., *Friend and Foe: The Platform Press at the Heart of Journalism*, TOW CTR. FOR DIGITAL JOURNALISM (Jun. 14, 2018), https://www.cjr.org/tow_center_reports/the-platform-press-at-the-heart-of-journalism.php [https://perma.cc/D6 3R-VKHN]; Emily Bell & Taylor Owen, *The Platform Press: How Silicon Valley Reengineered Journalism*, TOW CTR. FOR DIGITAL JOURNALISM (Mar. 29, 2017), https://www.cjr.org/tow_center_reports/platform-press-how-silicon-valley-reengineered-journalism.php#executive-summary [https://perma.cc/RPR8-857G].

[145] *See* Hunt Allcott et al., *Trends in the Diffusion of Misinformation on Social Media*, 6 RES. & POL. 1, 7 (2019), https://journals.sagepub.com/doi/full/10.1177/205316801984 8554 [https://perma.cc/Y6T4-6G4T] (indicating that "the magnitude of the misinformation problem on Facebook has declined since its peak."); *see also* Schiffrin, Demand Side, *supra* note 2 (describing 1930s Institute for Propaganda Analysis's media literacy approach as calling for a public articulation of propagandist techniques to arm people against them).

[146] *See* M. Anne Britt et al., *A Reasoned Approach to Dealing with Fake News,* 6 POL'Y INSIGHTS FROM THE BEHAV. & BRAIN SCI. 94–101 (2019), https://journals.sagepub.com/doi/pdf/10.1177/2372732218814855 [https://perma.cc/8ZUF-25PY]; Dan. Sperber et al., *Epistemic Vigilance,* 25 MIND & LANGUAGE 359–393 (2010), https://doi.org/10.1111/j.1468-0017.2010.01394.x [https://perma.cc/KL8H-RN2J] (arguing that people operate with a suite of epistemic vigilance tools targeted at the risk of being misinformed by others.) *See also* boyd, *supra* note 35 (calling for "cognitive strengthening exercises[] to help students recognize their own fault lines").

[147] *See* Britt et al., *supra* note 146, at 99 (recommending, *inter alia*, "public service announcements on the potential dangers of having low epistemic vigilance . . . ").

[148] *Cf.* Dannagal G. Young, *Let's Disrupt the Logic That's Driving Americans Apart*, NIEMANLAB, https://www.niemanlab.org/2020/01/lets-disrupt-the-logic-thats-driving-americans-apart/ [https://perma.cc/KPG5-DE3C] (last visited Mar. 2, 2020).

[149] *See, e.g.*, boyd, *supra* note 35.

[150] *See* discussion *supra* note 72.

want to relax and enjoy a less stressful, hedonic mindset. The easiest way to interpret warnings about disinformation in such circumstances may be to adopt a general attitude of cynicism and disbelief in all information, rather than choosing to develop a more granular system for cherry-picking types of information requiring a more critical outlook. This may be a rational response for people who feel inundated with information and who will be exposed to competing, contending, and fatiguing accounts of what is to be trusted online. Similarly, it is not unreasonable for people focusing on the workings of what has been called "surveillance capitalism" to become distrustful and resentful of their commodification in the online space.[151] The increasing public outcry against the power of Big Tech today may well be attributed to users' recognition of the specific—disempowered and manipulated—roles they play in attention markets. Further, widespread information about the ways in which online audiences are manipulated for political or economic purposes may lead to feelings of lack of control, being overwhelmed, and a degree of generalized distrust that could undermine possible benefits of transparency. People throwing up their hands is precisely contrary to the goals of media literacy.

Another problem particularly with the suggestion of transparency as to the evolving methods of disinformation and manipulation is that it would be undesirable to provide a playbook for bad actors—teaching unsophisticated purveyors of disinformation new and more effective methods, making sophisticated actors aware of what is already known about their methods (triggering further innovation in disinformation methodologies), and giving audiences the illusory sense that they are prepared to combat manipulation as new forms are morphing in the shadow of their false confidence.

These concerns should not be ignored. Indeed, they should be considered when designing the optimal ways to operationalize the types of transparency suggested here.[152]

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[151] I refer in text to the fact that users' online activities are the commodity from which the platforms profit. The tech platforms and social media profit significantly from extracting and selling an extensive amount of information they collect about their users. *See generally* FRANK PASQUALE, THE BLACK BOX SOCIETY: THE SECRET ALGORITHMS THAT CONTROL MONEY AND INFORMATION (2016) (explaining how tech platforms exploit and profit from their users' data); SHOSHANA ZUBOFF, THE AGE OF SURVEILLANCE CAPITALISM (2019) (coining the term "surveillance capitalism" to refer to commodification of personal information).

[152] While it is beyond the scope of this Essay to provide details, transparency initiatives should be tested against the question of whether they minimize the two types of negative effects identified above. For example, if the public were to trust source indicators and attention prompts, as discussed above in text accompanying notes 68–74, they wouldn't have to feel the need to shift from System 1 to System 2 thinking overall when going online. They could rely on outside triggers for their shift in modes of attention and application of critical thinking. Similarly, perhaps dissemination of information about disinformation could be designed to be effective without going into as great detail for the public at large as for journalists themselves.

B. Media Self-literacy

Much of the discussion above of media literacy (in both its narrow and broad meanings) focuses on the information-consuming public—the audience. But journalists as well must become the targets of literacy efforts. Recent research suggests that although most Americans do not blame journalists for creating "made-up news," the majority wants the media to be responsible for fixing the problem.[153] But reporters cannot "fix" the problem without themselves honing tools beyond traditional newspaper reporting.

If journalists can routinely become more self-conscious about and more deeply understand their sources and the data they crunch, and more able to use technological tools to communicate explanatory context for their work more effectively, then information literacy might have a more systemically positive impact—beyond making individual audience members more aware of specific pieces of informational falsity.[154]

Journalists and news organizations should also engage in more searching self-consciousness and adaptation. For example, close attention to the diffusion patterns of disinformation online suggests that the mainstream institutional press has not adequately addressed the degree to which its newsworthiness norms can manipulate it into repeating and amplifying false narratives on important social and political matters.[155] Improvements on that front might be helpful in reducing distrust.

1. Including Journalists as Proper Targets of Literacy Initiatives

Journalists today are working with less time, fewer resources, less security, more reliance on social media, more analytics-driven coverage decisions, and more fear of violence. They are at risk of drowning in Twitter feeds and unable to spend the time to nail down multiple sources for every story. They also operate with a much thinner layer of editorial oversight in newsrooms that are increasingly less insulated from the commercial operations of their news organizations.[156] The gutting of many

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[153] *See* Mitchell et al., *supra* note 39.

[154] *See* discussion *infra* Section III.B.1.

[155] *See e.g.*, BENKLER ET AL., *supra* note 132, at 34, 225–33 (discussing *inter alia* how mainstream media practices centered on balance and scoops inadvertently spread political disinformation circulated by ideological right-wing media); Phillips, *supra* note 8 (discussing media amplification of information pollution); *see also* JOAN DONOVAN & BRIAN FRIEDBERG, DATA & SOC'Y, SOURCE HACKING: MEDIA MANIPULATION IN PRACTICE 6 (Sept. 4, 2019), https://datasociety.net/output/source-hacking-media-manipulation-in-practice/ (describing "source hacking" techniques strategically used to convince mainstream media to further disseminate falsity).

[156] *See, e.g.*, Lili Levi, *A "Faustian Pact"? Native Advertising and the Future of the Press*, 57 ARIZ. L. REV. 647, 653–54 (2015).

newspaper beats has meant that layers of expertise have disappeared.[157] At the same time, the simultaneous availability of large swaths of data and technologically sophisticated analytical tools both create the possibility of new kinds of in-depth news and analysis and substantive challenges for many journalists who are inadequately trained in quantitative methods and data literacy. Furthermore, the increasingly visual environment in which news consumption takes place has led to the use of fact-heavy communicative modes, visual displays and graphics in storytelling, and explanatory journalism.[158] When journalists don't fully understand how to wield those tools (and when the public is not equipped to recognize deceptiveness in visuals), their output can itself be misleading.[159] Media literacy, then, should be read expansively to call for training with respect both to understanding and being able to explain data.

In addition, journalists today stand at risk of a variety of increasingly sophisticated "source hacking" techniques designed to manipulate their coverage by hiding the sources of questionable information in order to promote its diffusion in mainstream media.[160] Part of what media literacy means today should include journalists themselves becoming more deeply aware of the complex new ways in which journalistic processes can be manipulated.[161]

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[157] *See generally* PEN AMERICA, LOSING THE NEWS: THE DECIMATION OF LOCAL JOURNALISM AND THE SEARCH FOR SOLUTIONS (2019), https://pen.org/wp-content/uploads/2019/11/Losing-the-News-The-Decimation-of-Local-Journalism-and-the-Search-for-Solutions-Report.pdf [https://perma.cc/82AG-PVEB] (reporting on the effects of the "decimation of local news" at the community level); *cf.* Joshua Benton, *Damaged Newspapers, Damaged Civic Life: How the Gutting of Local Newsrooms Has Led to a Less-Informed Public*, NEIMANLAB (Nov. 22, 2019, 12:47 PM), https://www.niemanlab.org/2019/11/damaged-newspapers-damaged-civic-life-how-the-gutting-of-local-newsrooms-has-led-to-a-less-informed-public/ [https://perma.cc/J6S8-YRY3] (describing the negative impact of the decline of local newsroom staff on local politics).

[158] *See, e.g.*, John McDermott, *Explaining What's Behind the Sudden Allure of Explanatory Journalisme*, DIGIDAY (Mar. 17, 2014), https://digiday.com/media/explainer-rise-explanatory-journalism/ [https://perma.cc/4GNA-29TT] (defining explanatory journalism and exploring its development); Chip Scanlan, *How the New York Times Tracked Public Data to Produce "Killing Khashoggi,"* NIEMANSTORYBOARD (May 9, 2019), https://niemanstoryboard.org/stories/how-the-new-york-times-tracked-public-data-to-produce-killing-khashoggi/ [https://perma.cc/T7J6-R5TK] (discussing the emergence of visual journalism to report on "the tragedies of our time").

[159] *See generally* ALBERTO CAIRO, HOW CHARTS LIE: GETTING SMARTER ABOUT VISUAL INFORMATION (2019) (cataloguing, *inter alia*, common mistakes made by journalists about data and its visual representation).

[160] *See* DONOVAN & FRIEDBERG, *supra* note 155, at 5 (describing such "source hacking" techniques used to manipulate media, including viral sloganeering, leak forgery, evidence collages, and keyword squatting).

[161] For such a recommendation by a journalist, see Laurie Putnam, *There's a Growing Body of Research on Mis/Disinformation. Let's Put It to Work.*, MEDIUM (Jan. 30, 2020), https://medium.com/@laurieputnam/theres-a-growing-body-of-research-on-mis-disinform

2. Focusing Attention on Digital Newsworthiness Standards and Robust Truth-checking

It must be noted that news organizations themselves have played a role in the propagation and amplification of mis/disinformation online. Examples abound of maliciously planted "fake news" originating in a limited-audience chat room being viralized via dissemination by various levels of more established, mainstream news outlets.[162] Journalistic self-awareness—media self-literacy—should be an important component of an invigorated media literacy designed to reduce manipulation of the media.

Traditional ideas of newsworthiness sometimes lead to the coverage of mis/disinformation. When newsworthiness is interpreted as stories that will pique the audience's interest, these will sometimes be the most sensational stories—and those that are more likely to be subjects of mis/disinformation. So, a view of newsworthiness that promotes sensational material while reducing the ability of the news organization to engage in the appropriate level of confirmatory processes will often lead to an increase in unwitting dissemination of false information by reputable press organizations. In addition, although newsworthiness decisions have typically been made in mainstream news organizations via an editorial process, coverage decisions are increasingly subjected, *inter alia*, to algorithmic influences and analytics.[163] To the extent that newsworthiness decisions are made on the basis of analytics that focus on trending stories online, then sophisticated techniques of manipulation and "source hacking" can skew the newsworthiness decision to greenlight disinformation that has been positioned to trend well.[164] At a minimum, this kind of metric-influenced newsworthiness decision-making might skew toward undue tolerance for the possibility of disseminating false information.[165]

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ation-let-s-put-it-to-work-b697f4ec368f [https://perma.cc/W6D5-44XY] (calling for newsrooms and reporters to put to work existing research on mis/disinformation and how to curb it).

[162] *See, e.g.*, *id*.; Whitney Phillips, *The Oxygen of Amplification*, DATA & SOC'Y (May 22, 2018), https://datasociety.net/output/oxygen-of-amplification/ [https://perma.cc/4U6U-64AR] (considering the effects of reporting on certain topics and suggesting better practices for journalists); Ravi Somaiya, *The Junk Cycle*, COLUM. JOURNALISM REV. (2019), https://www.cjr.org/special_report/facebook-video-pelosi-media.php [https://perma.cc/2S L6-636N] (discussing a doctored video of Nancy Pelosi that was shared on Facebook and by several reputable sources); *see also* Whitney Phillips, *The Internet Is a Toxic Hellscape— But We Can Fix It*, WIRED (Feb. 3, 2020), https://www.wired.com/story/the-internet-is-a-toxic-hellscape-but-we-can-fix-it/ [https://perma.cc/E7LG-2LN2] (reporting on the "amplification feedback loops that exist between media manipulators and mainstream journalists . . .").

[163] *See, e.g.*, Carroll, *supra* note 142.

[164] *See* DONOVAN & FRIEDBERG, *supra* notes 155, 162.

[165] Traditional news organizations' approaches to newsworthiness might sometimes even lead to the dissemination of disinformation when the news organization knows that the information it is publishing is false. This is likely to happen when the press thinks that the

Customary presumptions underlying news organizations' approaches to newsworthiness determinations may lead to press self-sabotage.[166] To the extent that the spreading of disinformation has been part of a domestic political tactic (domestic governmental positioning), the press is often left flat-footed. For example, newsworthiness decisions about political and governmental matters have often been driven by structural imperatives and press norms. Traditional news norms presume that presidential statements are presumptively newsworthy and proper subjects of reporting. When such presidential statements are grounded on false facts or misleading characterizations[167] and constitute parts of a strategy to delegitimize other institutions (such as the press itself),[168] though, reporting on them pits traditional press norms against the imperative not to spread falsity. When a high public official's tweets are based on or refer to disinformation, they should simply not be covered.[169] Content rather than status should be the key in newsworthiness decisions. In addition, mindful of critiques of simple-minded "bothsideism,"[170] news

information should be further disseminated in an attempt to debunk it or because the media expect that audiences might find the fact of such falsehoods significant (for example, if it were disseminated by a public figure).

[166] Some argue that journalists and news organizations should subject themselves to quantitative analysis. *See, e.g.*, Sarah Schmalbach, *Journalist, Quantify Thyself*, NIEMANLAB, https://www.niemanlab.org/2019/12/journalist-quantify-thyself/ [https://perm a.cc/J9AE-YJYM] (last visited Feb. 21, 2020) (suggesting that journalists and news outlets become more self-reflective on what, and for whom, they are reporting).

News organizations should consider reducing the extent of opinion and commentary and clearly label their coverage. *See* Joseph E. Uscinski, *Conspiracy Theories for Journalists*, *in* CONSPIRACY THEORIES AND THE PEOPLE WHO BELIEVE THEM 443, 448 (2019).

[167] For an example of fact-checks describing President Trump's false or misleading statements, see *Donald Trump*, POLITIFACT, https://www.politifact.com/personalities/donald -trump/ [https://perma.cc/C4E5-WYK6] (last visited Feb. 21, 2020) (providing President Trump's falsity scorecard); Glenn Kessler et al., *President Trump Has Made 15,413 False or Misleading Claims over 1,055 Days*, WASH. POST (Dec. 16. 2019, 4:52 AM), https://www.washingtonpost.com/politics/2019/12/16/president-trump-has-made-false-or-misleading-claims-over-days/ [https://perma.cc/5LHW-7U3V].

[168] *See, e.g.*, David Smith, *'Enemy of the People': Trump's War on the Media Is a Page from Nixon's Playbook*, GUARDIAN (Sept. 7, 2019), https://www.theguardian.com/us-news/2019/sep/07/donald-trump-war-on-the-media-oppo-research [https://perma.cc/85TX-N4NB].

[169] If the whole point is to show that the President is relying for his information on false channels, that in itself should be sufficient to report, without further disseminating the underlying disinformation itself.

Media theorists, such as Prof. Jay Rosen, have called for the American press to take back the news agenda from the Trump administration. *See, e.g.*, Jay Rosen (@jayrosen_nyu), TWITTER (July 21, 2019, 3:44 PM), https://twitter.com/jayrosen_nyu/status/115305826197 4888448?lang=en [https://perma.cc/7QW5-U5XK].

[170] *See, e.g.*, Jon Allsop, *Both Sides*, COLUM. JOURNALISM REV. (Dec. 16, 2019), https://www.cjr.org/the_media_today/both-sides-impeachment-trump.php [https://perma.cc

organizations should interrogate their coverage practices and shy away from amplifying propaganda.[171] An increase in the diversity and inclusion of newsrooms—with respect, *inter alia*, to race, gender, class, approach to journalism, and ideology—may increase press self-examination and self-awareness in beneficial ways in these connections. The press should not allow itself to be treated like a pawn in a political exercise of public relations. Nor should it position itself as an enemy combatant whose every action is in reaction to an oppositional frame selected by the executive. The press should resist government appropriation of agenda-setting for public discourse and should reclaim its place as a monitor of power.

Journalistic practices are not exempt from blame. Reporters have been insufficiently self-conscious about the ways in which the ecosystem of news can be strategically manipulated to viralize the spread of disinformation.[172] They need to study the ways in which their own practices invite gaming by motivated actors. It is imperative for journalists (and audiences) to develop a sophisticated understanding of evolving techniques of disinformation and press manipulation.[173] In addition, easier and more complete access by researchers (if not journalists) to social media analytics and algorithmic developments could help.

Reporters' own process short-cuts also doubtless sow distrust. Sometimes, as noted above, the news organizations do not have the leisure—either economically or temporally—to vet the deluge of information reporters receive. Reporters cut corners and rely on proxies for believability and reliability—such as repeating stories previously reported by other relatively reputable organizations or relying on apparently trustworthy sources and stories on Twitter.[174] The newsworthiness

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/HU8K-7S5Z].

[171] *See, e.g.*, Jay Rosen, *The Christmas Eve Confessions of Chuck Todd*, PRESSTHINK BLOG (Dec. 26, 2019, 1:40 AM), http://pressthink.org/2019/12/the-christmas-eve-confessions-of-chuck-todd/ [https://perma.cc/XW8N-LRBA] (criticizing the press for "strategic blindness" in failing to recognize the intentional deployment of disinformation by the Trump administration and its political supporters).

[172] *See* discussion *supra* Section III.B.1.

[173] Donovan and Friedberg explain the need for journalists to increase awareness of the degree to which professional trolls understand the levers to pull to get press attention and the roles reporters play in an amplification network. *See* DONOVAN & FRIEDBERG, *supra* note 155, at 17; Mathew Ingram, *Source Hacking: How Trolls Manipulate the Media*, COLUM. JOURNALISM REV. (Sept. 12, 2019), https://www.cjr.org/the_media_today/trolls-manipulate-media.php [https://perma.cc/H3TV-4J3D].

[174] *See, e.g.*, DONOVAN & FRIEDBERG, *supra* note 155, at 31; Mathew Ingram, *Do Journalists Pay Too Much Attention to Twitter?*, COLUM. JOURNALISM REV. (Oct. 10, 2018), https://www.cjr.org/the_media_today/journalists-on-twitter-study.php [https://perma.cc/4U G5-SKY3]; Rob Tornoe, *Digital Publishing: To Stop Misinformation from Spreading, Journalists Shouldn't Fall Down the Social Media Rabbit Hole*, EDITOR & PUBLISHER (June 19, 2019), https://www.editorandpublisher.com/columns/digital-publishing-to-stop-misinformation-from-spreading-journalists-shouldnt-fall-down-the-social-media-rabbit-hole/ [https://perma.cc/GW3H-8NDN]; *see also* Logan Molyneux & Shannon McGregor, *Think Twice Before Turning to Twitter*, NIEMANLAB, https://www.niemanlab.org/2019/12/

decisions are thus deeply enmeshed with the rest of the news organizations' news generation and checking practices. If the fact-checking and corroboration practices are less robust as a result of economic pressures, then there will be little to serve as a counterweight to the appearance of newsworthiness and credibility. So, one aspect of an expanded approach to media or information literacy, particularly as directed to journalists themselves, would be to focus attention on the robustness of reputable news organizations' corroborative and investigative processes. It would be particularly important for journalists, as well as editors, to engage in better vetting of Twitter sources; to find corroboration prior to reporting on social media campaigns; to interrogate the algorithmically-derived results of inquiries into online information trends; to increase their fact-checking expertise (including through increased facility with information access tools such as state sunshine laws and the federal Freedom of Information Act (FOIA), and through effective crowdsourcing). Moreover—because errors are inevitable—sophisticated attention, informed by social science data, should be given to after-the-fact error correction by news organizations when they realize that they have disseminated false or misleading information. That sort of correction should not be left up to the obscure fact-checking processes of Big Tech platforms. (And speaking of the social media platforms, the nature of the relationship between news publishers and tech platforms is such that self-awareness on the part of legacy organizations is not sufficient. Sustained attention must be paid to the relationship between news media and social media platforms.[175])

CONCLUSION

The turn to media literacy as a weapon against mis/disinformation has much to recommend it—especially if it is implemented with a view to effectiveness through the responsive use of insights from social science research. But—even if media literacy techniques improve enough to allow effective debunking of individual false claims—such a narrow focus is insufficiently responsive to the critical problems of today. What is needed now is to fight not only individual bits of disinformation but the much broader delegitimizing enterprise of casting the mainstream news media as "fake news." A good start for that is to provide transparent information about the processes of journalistic activity itself, the structure of the rapidly changing media ecosystem, the cognitive biases that affect human decisionmaking, and the ways in which information online can be strategically manipulated.

It is neither naïve nor unwarranted to call for greater transparency and public access to information about press processes and to search for ways to reverse public distrust of the press. Surely media literacy can be an effective part of that project,

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think-twice-before-turning-to-twitter/ [https://perma.cc/3XVP-SDRD] (last visited Mar. 2, 2020) (describing the unhealthy feedback loop between journalists and Twitter).

[175] Such an analysis is beyond the scope of this Essay.

although not its only tool.[176] While much press criticism is right on point, the question is always "compared to what?" The American press has, by-and-large, been a commercial industry since before the Founding.[177] That alone cannot be enough to justify deeming it, as such, unworthy of trust. American newspapers have been increasingly professionalized. The history of the American press in the twentieth century reveals the growing adoption of professional ethical standards, at least among legacy press organizations[178] (even if those standards are typically honored in the breach by at least some segments of the media). Today, with widespread informational access and public discussion, the press is subject to extensive study and critique. Media entities are busily attempting to define their brands.[179] Even though many people get their news via social media, it is important to distinguish between social media and the press—and not to attribute to the press/news organizations either the incentives or the practices of information distributors/intermediaries. To the extent that the public distrusts news on social media and calls for information from reputable sources, news organizations have economic incentives to invest in reputations for credibility.

It is not enough simply to place the burden of addressing information pathologies on the audience. Such an individualized, user-focused approach should

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[176] Because the focus for media literacy should not be limited to inoculation against individual pieces of false information, critiques of media literacy claiming that people share fake news for reasons beyond ignorance of falsity (*see, e.g.*, Marwick, *supra* note 61) are less damning.

[177] *See, e.g.*, Martha Minow, *The Changing Ecosystem of News and Challenges for Freedom of the Press*, 64 LOY. L. REV. 499, 518–19 (2018).

[178] For important histories of the American press, see generally, for example, MICHAEL SCHUDSON, DISCOVERING THE NEWS: A SOCIAL HISTORY OF AMERICAN NEWSPAPERS (1978); PAUL STARR, THE CREATION OF THE MEDIA: POLITICAL ORIGINS OF MODERN COMMUNICATIONS (2004). Although journalism ethics in Europe can be traced back to the Seventeenth Century, professional codes of ethics of objective journalism developed in the U.S. in the early Twentieth Century, with the American Society of Newspaper Editors publishing its ethical principles in 1923. *See* Harvey Saalberg, *The Canons of Journalism: A 50-Year Perspective,* 50 JOURNALISM QUARTERLY 731, 731 (1973); *see also* SPJ CODE OF ETHICS, SOCIETY OF PROFESSIONAL JOURNALISTS, https://www.spj.org/ethicscode.asp [https://perma.cc/RUQ2-WMPK] (last updated Sept. 6, 2014) (detailing contemporary journalism ethics guidelines). In addition to such codes, many mainstream news organizations' ethics codes can be found at *Codes of Ethics: North America*, ACCOUNTABLE JOURNALISM https://accountablejournalism.org/ethics-codes/north_america [https://perma.cc/L7YS-BT6Q] (last visited Mar. 15, 2020). *See generally* JOURNALISM'S ETHICAL PROGRESSION: A TWENTIETH CENTURY STORY (Gwyneth Mellinger & John P. Ferré eds., 2020) (collectings essays).

[179] A recent study suggests that how audiences perceive the reporting of news organizations on social media may not have much to do with their brand. *See* Sterrett et al., *supra* note 63, at 794–97. Although this study refers to the existing landscape rather than future efforts, its results should still be taken into account as news organizations negotiate for carriage with the social media platforms.

not distract from the thornier structural issues implicated in information policy. The field of antitrust has revived and is even being rethought in ways that can be helpful in structural media critique.[180] But, at the same time, structural solutions do not necessarily solve for the ways in which people process information and engage both with news and democratic institutions. An expanded view of media literacy can fruitfully be seen as one part of a mosaic of responses to the pathologies in today's information landscape.

However we get there, framing the issue in this way makes it clear that the choice is not between the perfect and the good enough, but between degrees and types of imperfection. Imperfect as it is, a free and robust press makes signal contributions to democracy. Indeed, the possibility of renewed public support for core press activity may itself be a first step toward building a virtuous cycle in which at least some press sectors more intentionally seek to meet their public interest obligations. We risk too much if we do not commit to a sustained, rigorously evidence-based, multi-pronged attempt to rehabilitate the democratic role of the press. Well-thought-out initiatives for media literacy could productively be part of that strategy.

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[180] Beyond the scope of this Essay but certainly relevant to the project of promoting better journalism, for example, would be attention to the negative consequences of financially-justified coverage decisions of increasingly consolidated legacy newspaper organizations. *See, e.g.*, Penelope Muse Abernathy, *The Expanding News Desert,* HUSSMAN SCH. OF JOURNALISM AND MEDIA, https://www.usnewsdeserts.com/reports/expanding-news-desert/ [https://perma.cc/G7BF-3DUY] (last visited Feb. 21, 2020). The problematic impact of media concentration is obviously one of the structural issues that must be addressed in addition to the audience-focused frame of traditional media literacy efforts.